

**Mostt. Sharda Devi and anr. Vs. Chandbala Devi (Substituted) and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/131444](http://sooperkanoon.com/131444)

**Court :** Patna

**Decided On :** May-31-2007

**Judge :** Syed Md. Mahfooz Alam, J.

**Appellant :** Mostt. Sharda Devi and anr.

**Respondent :** Chandbala Devi (Substituted) and ors.

**Disposition :** Appeal dismissed

**Judgement :**

**Syed Md. Mahfooz Alam, J.**

1. This Second appeal has been preferred by the defendants-appellants against the judgment and decree dated 12-2-1986 passed by Sri Prem Narain Shukla, 3rd Additional District Judge, Vaishali at Hajipur in Title Appeal No. 4 of 1983 modifying the judgment and decree dated 10-12-1982 passed by Sri Bhupendra Singh, Munsif 1st, Vaishali at Hajipur in Title Suit No. 150 of 1977.

2. The brief facts which gave rise to filing of this second appeal are as follows:

Original plaintiff Bachu Chaudhary filed Title Suit No. 150 of 1977 in the Court of the Munsif 1st, Hajipur for partition of his 1/5th share in the disputed property appertaining to C.S. Plot No. 713 corresponding to R.S. plot No. 83 (Ka) and 83 (Kha) under old khata No. 236, New Khata No. 335 comprising an area of 125

decimal with house standing thereon situated in Mohalla Pokhara, Town Hajipur, District Vaishali. The said suit was decreed in part by judgment dated 10-12-1982 and it was held that the plaintiff is entitled to get half share in the property recorded in the name of his mother Mostt. Sampatiya Devi. Against the said judgment, the plaintiff preferred appeal which was numbered as Title Appeal No. 4 of 1983. The appeal was disposed of by the judgment dated 12th February, 1986 by 3rd Additional District Judge, Vaishali at Hajipur whereby he has been pleased to modify the judgment passed by the learned Munsif 1st and held that the plaintiff is entitled to get 5/27th share in the suit property. Against the said finding, the defendants-appellants have preferred this Second Appeal.

3. Before making discussion on the substantial question of law, as formulated in this case, I would like to state the respective case of the parties.

4. The plaintiffs case, in brief, is that Bunnilal Chaudhary had five sons, namely, Ram Narain Chaudhary, Sheo Narain Chaudhary alias Nathuni Chaudhary, Kuldeo Chaudhary, Udit Narain Chaudhary and Deo Narain Chaudhary. All the five sons of Bunnilal Chaudhary were separate and in partition the plot in dispute was allotted to Sheo Narain Chaudhary alias Nathuni Chaudhary. The said Sheo Narain Chaudhary alias Nathuni Chaudhary had two wives. From his first wife, he had one son, namely, Anant Lal Chaudhary. From his second wife Sheo Narain Chaudhary alias Nathuni Chaudhary had three sons, namely, Bachu Chaudhary (original plaintiff), Yugal Kishore Chaudhary (defendant No. 3) and Dasrath Chaudhary (defendant No. 4) and four daughters, namely, Radha Devi, Janki Devi, Urmila Devi and Dharmshila Devi (defendant Nos. 5 to 8). Anant Lal Chaudhary, who was son of Sheo Narain Chaudhary alias Nathuni Chaudhary from his first wife, died leaving behind him his widow Sharda Devi, his son Parmeshwar Chaudhary alias Pappu Chaudhary and five daughters, namely, Shakuntala Devi, Lalita Devi, Neelam Devi, Punam Devi and Manju Devi. C.S. plot No. 713 under C.S. Khata No. 236 corresponding to R.S. Plot No. 83 (Ka) and 83 (Kha) under R.S. Khata No. 335 fell in the share of Sheo Narain Chaudhary alias Nathuni Chaudhary, who came in possession of the same and his name was mutated in the Shrista of the State of Bihar. The said Sheo Narain Chaudhary alias Nathuni Chaudhary died in the state of jointness leaving behind him his

abovementioned heirs, who all came in joint possession of the suit property but the plaintiff was feeling difficulty in joint enjoyment of the suit property and as such, the plaintiff requested the defendants to partition the suit property but on one pretext or the other the defendant kept the matter in abeyance and on 15-11-1977 they refused to partition the suit property mentioned in Schedule II of the plaint. The plaintiff claimed that he has got 1/5th share in the suit property whereas his mother has got 4/5th share and the defendants are entitled for the remaining share in the suit property.

5. Two separate written statements were filed - one on behalf of defendant Nos. 2 and 5 to 8 and another on behalf of defendant No. 1 Mostt. Sharda Devi. It appears that defendant Nos. 2 and 5 to 8 have supported the case of the plaintiff in their written statements but defendant No. 1 Mostt. Sharda Devi has contested the claim of the plaintiff. According to her written statement, there is no unity of title and unity of possession between the parties with respect to the suit land and the genealogical table given by the plaintiff is also not correct. Defendant No. 1 has further stated that it is true that Sheo Narain Chaudhary had two wives and from his first wife he had a son Anant Lal Chaudhary, who was her husband. Defendant No. 1 has also admitted that the said Anant Lal had one son Parmeshwar Chaudhary alias Pappu Chaudhary and five daughters. It has further been stated by the contesting defendant that Sampatiya Devi the second wife of Sheo Narain Chaudhary was firstly married to one Hardeo Chaudhary from whom she had three sons, namely, Yugal Kishore Chaudhary, Bachu Chaudhary and Dashrath Chaudhary. Sheo Narain Chaudhary alias Nathuni Chaudhary had performed Sagai form of marriage with Sampatiya Devi who after the said marriage brought her three sons to the house of Nathuni Chaudhary and so, Yugal Kishore Chaudhary, Bachhu Chaudhary (plaintiff) and Dashrath Chaudhary have got no concern with the properties of Sheo Narain Chaudhary alias Nathuni Chaudhary. However, the defendant No. 1 has admitted that the defendant Nos. 5 to 8 are the daughters of Sampatiya Devi from Nathuni Chaudhary. Further case of the defendant No. 1 Mostt. Sharda Devi is that the house and Sahan standing over plot Nos. 83 (Ka) and 83(Kha) belonged to Nathuni Chaudhary but it is false to say that this house was in joint possession of the plaintiff and the defendants. Further case of the defendant is that in the year 1968 there was panchayati in the family

between Sheo Narain Chaudhary alias Nathuni Chaudhary on the one hand and his son Anant Lal Chaudhary on the other hand. In the said panchayati the Panches partitioned the entire property between them and since that date Anant Lal Chaudhary was separate from Sheo Narain Chaudhary alias Nathuni Chaudhary and according to their share, they were in possession of the properties. The alternative case of the defendant No. 1 is that the suit property lies in Mohalla Pokhara of Hajipur town and in the said locality there is custom that if a man has two wives then the half share will go to the sons and daughters of first wife and second half will go to the sons and daughters of second wife but if any son is born after the partition he will not inherit any property. It is stated that after Panchayati in the year, 1968 a Panchanama was prepared and accordingly, entries in the khatian were made as per Panchanama. On the basis of the above pleadings, the defendant No.1 has prayed to dismiss the suit with cost.

6. From perusal of the judgment of the trial Court it appears that on the basis of the pleadings of the parties the trial Court framed altogether seven issues for determination in the suit which are as follows:

- (i) Is the suit as framed maintainable?
- (ii) Has the plaintiff got cause of action and right to sue?
- (iii) Is the suit barred by law of limitation, waiver and estoppel?
- (iv) Whether the plaintiff has got right, title and interest in the suit property?
- (v) Whether the story as propounded by the defendant No. 1 is correct?
- (vi) Is the plaintiff entitled to get decree as prayed for?
- (vii) Any other relief or reliefs, if any, to which the plaintiff is entitled?

7. From perusal of the judgment it appears that the trial Court accepted the case of defendant No. 1 that in the year 1968 her husband Anant La Chaudhary had separated from his father Sheo Narain Chaudhary alias Nathuni Chaudhary and in that partition her husband got half share whereas his father Sheo Narain Chaudhary alias Nathuni Chaudhary he got half share in the property and on the

basis of the said finding, the learned trial Court held that the plaintiff is entitled to get half share in the property which was allotted to Sheo Narain Chaudhary alias Nathuni Chaudhary in the partition which had taken place in 1968 and thus, the trial Court decreed the suit in part. Against the said finding, the plaintiff Bachu Chaudhary preferred appeal before the District Judge, Vaishali at Hajipur which was numbered as Title Appeal No. 4 of 1983. The said appeal was disposed of by 3rd Additional District Judge, Vaishali at Hajipur on 12th February, 1986 and by the said judgment the Additional District Judge allowed the appeal and held that the plaintiff has got 5/27th share in this suit property. The learned Additional District Judge also set aside the finding of the trial Court that there was partition between Anant Lal Chaudhary and his father Sheo Narain Chaudhary alias Nathuni Chaudhary in the year, 1968. According to the learned Additional District Judge, the alleged deed of partition dated 23-2-1968 is not a legal document and has not been legally brought on record and as such, the document (marked Ext. X for identification) cannot be looked into. Against the said finding of the first appellate Court, the defendant No. 1 Mostt. Sharda Devi and her son Parmeshwar Chaudhary have preferred this appeal.

8. From perusal of the record of this Second Appeal it appears that at the time of admission of this appeal, two substantial questions of law were formulated for determination in this appeal:

(i) Whether the Court below erred in not admitting the memorandum of family arrangement which has been marked Ext. X/1?

(ii) Whether family arrangement was lawful?

9. As per the case of the plaintiff, the property in dispute belonged to Sheo Narain Chaudhary alias Nathuni Chaudhary who was the common ancestor of the party. The said Sheo Narain Chaudhary alias Nathuni Chaudhary had two wives. From his first wife he had one son, namely, Anant Lal Chaudhary. Appellant No. 1 Mostt. Sharda Devi is the widow of late Anant Lal Chaudhary. The said Anant Lal Chaudhary had one son, namely, Parmeshwar Chaudhary and five daughters. From his second wife the said Sheo Narain Chaudhary alias Nathuni Chaudhary had three sons, namely, Bachu Chaudhary (Plaintiff), Dasrath Chaudhary and

Yugal Chaudhary and four daughters, namely, Radha Devi Janaki Devi, Urmila Devi and Dharmsheela Devi. The above genealogical table given by the plaintiff has been admitted by all the defendants except the contesting defendant No. 1 Sharda Devi who has stated that Bachu Chaudhary, Dasrath Chaudhary and Yugal Chaudhary are not the sons of the Sheo Narain Chaudhary alias Nathuni Chaudhary rather they are the sons of Sampatiya Devi from her first husband namely, Hardeo Chaudhary. It appears from the judgment of the trial Court as well as the first appellate Court that both the Courts below have rejected the case of the contesting defendant Sharda Devi (now appellant No. 1) that the plaintiff Bachu Chaudhary and his two brothers, namely, Dasrath Chaudhary and Yugal Chaudhary are the sons of the Sampatiya Devi from her first husband rather both the Courts below have held that they are the sons of Sheo Narain Chaudhary alias Nathuni Chaudhary from his second wife Sampatiya Devi. Since there is concurrent finding of both the Courts below on this point, as such I am of the view that the finding that plaintiff Bachu Chaudhary and defendants, Dasrath Chaudhary and Yugal Chaudhary are sons of Sheo Narain Chaudhary alias Nathuni Chaudhary from his second wife Sampatiya Devi has attained finality. Therefore, in any division of the property belonging to Sheo Narain Chaudhary alias Nathuni Chaudhary, his three sons, namely, Bachu Chaudhary, Dasrath Chaudhary and Yugal Chaudhary along with his four daughters shall also be entitled to get share. In this background I would like to see whether the alleged deed of partition or family arrangement of the year, 1968 marked as Ext. X for identification is valid and legal document or not.

10. According to the argument of the learned Advocate of the appellants, the learned first appellate Court has wrongly held that since the family arrangement/Sada partition deed (marked X for identification) having not been registered as such the same could not be legally brought on record, and so it cannot be looked into in order to come to the conclusion that in the year 1968 the suit property had been partitioned half and half between Anant Lal Chaudhary (the husband of appellant No. 1 Sharda Devi) and his father Sheo Narain Chaudhary alias Nathuni Chaudhary. He argued that the said unregistered family arrangement can be legally taken into evidence for collateral purpose and in this regard he has placed reliance upon the decision reported in : [1976]3SCR202 Kale and Ors.

appellants v. The Deputy Director of Consolidation and Ors. respondents. The learned Advocate of the appellants has further argued that a Sada deed of family arrangement does not require to be registered and in support of his argument, he has placed reliance upon the decision reported in AIR 1966 Supreme Court Page 1836 Maturi Pullaiah and Anr. appellants v. Maturi Narasimham and Ors. respondents.

11. It is settled principle of law that a Sada deed of family arrangement i.e. an unregistered deed of family arrangement can be legally used in evidence for collateral purpose i.e. for the purpose of showing the nature and character of possession of the parties in pursuance of the family settlement but for establishing this fact that the possession of a particular party over a portion of the property is by virtue of the partition or arrangement made through the said document it is mandatory to prove that such family arrangement was in accordance with law and in this particular case in conformity with Hindu Succession Act. In this background I would like to see whether the document marked Ext. X for identification i.e. the alleged Sada deed of family arrangement dated 23-2-1968 is really a family arrangement establishing the claim of the contesting defendant that there was complete partition between the heirs of Sheo Narain Chaudhary alias Nathuni Chaudhary with respect to the ancestral property. I have gone through the contents of the document and I am satisfied that this document cannot be a memorandum of partition showing the complete partition between the heirs of Sheo Narain Chaudhary alias Nathuni Chaudhary with respect to the ancestral property. The recital of the document shows that this document was brought into existence for settling differences between the husband of the contesting defendant, namely. Anant Lal Chaudhary and his father Sheo Narain Chaudhary alias Nathuni Chaudhary for running of the business and occupation of the house. It further transpires that no other heir of Sheo Narain Chaudhary alias Nathuni Chaudhary had participated in the said family arrangement. Thus, in my view, the alleged Sada deed of family arrangement marked Ext. X for identification cannot be said to be a legal document establishing the claim of the contesting defendant No. 1 that in the year 1968 all the heirs of Sheo Narain Chaudhary alias Nathuni Chaudhary had separated and they are in possession of the property according to their share. I am, therefore, of the view that the learned first appellate Court has

rightly held that the document marked Ext. X/X/1 i.e. the alleged Sada deed of family arrangement is not legally admissible in evidence. Accordingly, I hold that the learned first appellate Court has not committed any error in not admitting the memorandum of family arrangement marked Ext. X/X/1. Substantial Question of Law No. II

12. During course of argument, it has been submitted by the learned Advocate of the appellants that partition can be effected between the parties by an agreement and as per the case of the contesting defendant, in the year 1968 the parties arrived at an agreement to partition the entire ancestral property and by way of memorandum of partition, a document of family arrangement was prepared and, therefore, this document of family arrangement is a lawful document and the learned first appellate Court has wrongly ignored this document.

13. I have already stated above that the alleged deed of family arrangement is not a legal document as by way of the alleged family arrangement the share of all the heirs of Sheo Narain Chaudhary alias Nathuni Chaudhary was not defined and there was no division of property in accordance with the specific share of each heir of Sheo Narain Choudhary and so I am of the view that this document cannot be a proof that in the year 1968 partition had taken place between all the heirs of Sheo Narain Chaudhary alias Nathuni Chaudhary. Moreover, this document simply shows that some arrangement had taken place between the father and son namely, Sheo Narain Chaudhary and his son Anant Chaudhary for smooth running of shop and peaceful occupation of residential house in which the other heirs of Sheo Narain had not participated. Thus, this division of the property was definitely not in accordance with Hindu Succession Act as the other sons and daughters of Sheo Narain Chaudhary including his second wife Sampatiya Devi were not allotted any share in the property at the time of the said partition and therefore, in my view, the alleged family arrangement cannot be held to be lawful. Accordingly, I hold that the family arrangement as stated by the contesting defendant No. 1 Sharda Devi was not lawful and hence, this substantial question of law is answered.

14. Before concluding my judgment, I would like to point out that as per the finding of the first appellate Court, the share of the plaintiff in the suit property was declared 5/27th share but in my view, this is not the correct division of the share. According to me, the plaintiff, his mother Sampathiya Devi, his other two brothers and four sisters along with defendant Sharda Devi will inherit 1/9th share each in the suit property whereas Parmeshwar Chaudhary son of Anant Lal Chaudhary along with her five sisters will each get 1/54th share in the suit property.

15. In the result, I do not find any merit in this appeal and as such, the same is hereby dismissed with modification in the judgment of the first appellate Court that the plaintiff will be entitled to get 1/9th Share in the suit property instead of 5/27th share as ordered by the first appellate Court. In the circumstances of the case, there will be no order for cost.

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