

Drapa Narayan Singh Deo Vs. Ajit Narayan Singh Deo and anr.

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Court : Jharkhand

Decided On : Aug-06-2003

Reported in : 2003(3)BLJR2170; [2003(3)JCR554(Jhr)]

Judge : P.K. Balasubramanyan, C.J. and; R.K. Merathia, J.

Acts : Land Acquistion Act; Bihar Land Reforms Act

Appeal No. : L.P.A. No. 14 of 1993 (R)

Appellant : Drapa Narayan Singh Deo

Respondent : Ajit Narayan Singh Deo and anr.

Advocate for Def. : N.K. Prasad, Sr. Adv. and; Pratush Kumar, Adv.

Advocate for Pet/Ap. : Lalit Kumar Lal and; Amar Kumar Sinha, Adv.

Disposition : LPA dismissed

Judgement :

R.K. Merathia, J.

1. This appeal arises out of the judgment and decree dated 21st May, 1993, passed in F.A. No. 13 of 1984 (R) by the learned Single Judge of this Court dismissing the appeal and confirming the judgment and decree dated 11.10.1983 passed by the Subordinate Judge, Chaibasa in T.S, No. 49/1992.

2. The appellant (plaintiff) filed this suit for partition claiming his half share in the suit properties. The case of the appellant in brief is that the parties are governed by Mitakshra School of Hindu Law in the matter of inheritance and succession. Schedule 'A' properties in the suit are the 'Nij-Jote' lands and Schedule 'B' and 'C' properties are homestead lands belonging to the father of the appellant and the respondent No. 1 (defendant No. 1). In other words the case of the appellant is that the suit properties are the private properties of the father of himself and respondent No. 1 and therefore, he is entitled to his half share in the suit properties on partition. The further case of the appellant is that he and respondent No. 1 jointly inherited the suit properties and were in joint possession thereof, according to their convenience. There was no partition with regard to the suit properties although there has been partition with regard to other properties. Respondent No. 1 being Karta of the joint family was looking after the suit properties and disputes arose between the parties and it was not possible for them to remain joint with respect to the suit properties.

3. Respondent No. 1 is the elder brother of the appellant and the respondent No. 2 (defendant No. 2) is the son of the respondent No. 1. A joint written statement was filed by the respondents. In brief, their case was that respondent No. 1 is in possession of suit properties exclusively since the death of his father which occurred in 1945. Respondent No. 1 as a Zamindar of Icha Estate settled Schedule 'C' properties with his son, - the respondent No. 2 by Patta dated 24.3.1952 and since then the respondent No. 2 is in possession of Schedule 'C' properties on payment of rent to Zamindari Serista and after vesting of Icha Estate, in the State of Bihar, the said property is recorded in the name of the respondent No. 2 in the survey settlement operation. Schedule 'A' and 'B' properties were recorded in the name of respondent No. 1 in the survey settlement operation. The further case of the respondents is that previously Icha Estate was a division of the Estate of Saraikela and was held by a common ancestor of the parties. The rulership of Saraikela Estate was governed by the Rule of Lineal Primogeniture and inheritance of Zamindari of Icha was also governed by the same rule. The junior male members of the family used to get Kharposh (maintenance) grant before the vesting of Estate in the State of Bihar but they were not entitled to share in the property of ex-Zamindar. The eldest son in the

lineal line used to succeed to the Zamindari after the death of Zamindar. It was also mentioned in the survey record of rights of the year 1928 that Icha Estate was impartible Estate. The property under Khatas Nos. 1 and 140 of Icha were recorded respectively as 'Nij-Jote' and 'Anabad Malik' Khatas of Zamindar of Icha namely, Bidya Binod Singh Deo (the father of the appellant and respondent No. 1) in the said survey operation. The parties were governed by the rule of Lineal Primogeniture and not by Mistakshra School in the matter of succession. The respondent No. 1, as the Zamindar made Kharposh (maintenance) grant of village 'Soso' and 'Nimdihi' to the appellant in the year 1942 which became his property. Respondent No. 1 also created such maintenance grant of landed properties in favour of his four uncles. After the vesting of the Zamindari on 10.5.1956, the suit properties were exempted from vesting and after due enquiry rent was fixed by the State of Bihar in respect of the suit properties and other properties, in the name of respondent No. 1. The further case of the respondent No. 1 is that the appellant is a practising advocate at Chaibasa he appeared for respondent No. 1 and he looked after all the proceedings under the Bihar Land Reforms Act but he never claimed his right over the suit properties in those proceedings. The intermediary interest of the appellant in respect of the aforesaid villages 'Soso' and 'Nimdihi' vested in the State of Bihar and the appellant then submitted returns and drew compensation in respect of the same but at that time also he never claimed any interest over the suit lands. There were proceedings under Section 90 of the Chotanagpur Tenancy Act for correction of the entry of some plots of khata Nos. 1 and 140, which were represented by the appellant being a lawyer but he did not lay any claim over the suit lands. In 1947, respondent No. 1 settled lands in several villages including Icha with the appellant for which the appellant executed Kabuliat accepting such settlement. The appellant drafted objections on behalf of respondent No. 1 accepting therein the right, title and interest of the respondents over the suit properties when some lands were sought to be acquired by the State of Bihar wrongly.

4. The trial Court held that the suit properties were not the private and personal properties of the father of the appellant and respondent No. 1 and that the Zamindari of Icha was governed by the rule of Lineal Primogeniture and that respondent No. 1 alone was the owner of the suit properties described in Schedule

'A' and 'B' and that respondent No. 2 alone is owner of the properties described in Schedule 'C' of the plaint. The trial Court further held that there is no unity of title and possession of the parties with respect to the suit properties and that the appellant is not entitled to claim partition as claimed, and dismissed the suit.

5. The appellant preferred an appeal being F.A. No. 13 of 1984 (R) in this Court which was ultimately dismissed and the judgment and decree of the trial Court was confirmed.

6. In the said appeal, a petition for amendment of the plaint was filed to the effect that the suit lands have been acquired under the Land Acquisition Act during the pendency of the appeal and therefore a decree for half share of the appellant in the compensation awarded, be passed.

7. Learned counsel appearing on behalf of the appellant conceded before the Learned Single Judge and also before us, that the appellant cannot lay any claim on the Gaddi/Zamindari of Icha which was inheritable only by the eldest son of the last holder but the appellant has legitimate claim over the private properties of his father to which the rule of Lineal Primogeniture is not applicable.

8. Thus the question for our consideration is, as to whether the suit properties were private properties of the father of the appellant and the respondent No. 1, and were separate from Icha Zamindari. We have been taken through the pleadings and the evidence in support of the aforesaid contention of the appellant.

9. Learned counsel for the appellant placed reliance on exhibits 3/d, and 3/e being the certified copies of khatians, and other documents in support of his contention. Learned counsel for the appellant sought to draw inference from the said exhibits in support of his contention that the suit properties were private properties of his father. In this view of the matter, it has become necessary to examine the evidence of the appellant, who was examined as PW 1. He deposed inter alia as follows. In paragraph 4 he said that as the suit lands were going to be acquired, therefore, he requested his brother for partition, so that at the time of receiving compensation, it may be convenient. In paragraph 9 he said that only his elder brother (respondent No. 1) knows about the extent of ownership of their father in

Icha Zamindari. In paragraph 11 he stated that he does not know whether the suit properties are ancestral properties or self acquired properties but in the records they are in the name of his grandfather. In paragraph 14 he said that as he has seen his father cultivating the Schedule 'A' land, he was saying that those were his private properties. He does not know as to how his father got the said land. He also does not know whether the said lands were part of Icha Zamindari or not. He also said that he has been practising as a lawyer since 1956. He signed the papers blindly and without understanding their implication and therefore he did not raise any objection.

10. From the aforesaid statements made by the appellant in his evidence it is not possible to draw an inference from the records in support of the contention of the appellant that the suit lands were the private-self acquired lands of his father. From the pleadings and evidences on record it is clear that the appellant has not proved that the suit properties were the private properties of his father and the same were not part the Icha Zamindari. It appears from the materials on record that in view of the provisions of the Bihar Lands Reforms Act, the suit lands were saved from vesting, as the same were used personally by ex-zamindar, and accordingly the suit properties were held as such, by the father of the appellant and respondent No. 1. It is not possible to accept the argument that in paragraph 4 and 5 of the plaint there is an assertion that the properties are the self acquired properties and paragraph 12 of the written statement does not amount to a denial of that plea. On a reading of the plaint it has to be held that the appellant has not specifically pleaded that the properties are the self-acquisitions of the father and are partible as such. The relevant portion of the written statement shows that the claim set out by the appellant has been denied and the burden lay on the appellant to prove his claim. As indicated, he has failed to prove his claim for partition.

11. In this view of the matter, we are not in a position to accept the contention of the appellant that the suit properties were the private properties of the father of the appellant and respondent No. 1. In view of this finding the appellant is not entitled to maintain his claim of partition of the suit properties or the compensation awarded against them.

12. In the result, while affirming the judgments and decrees, passed by the trial Court and the First Appellate Court, we dismiss this Letters Patent Appeal. However, in the circumstances of this case, there will be no order as to costs.

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