

Faguni Devi and Ors Vs. Reli Mahto and Ors

Faguni Devi and Ors Vs. Reli Mahto and Ors

SooperKanoon Citation : sooperkanoon.com/65860

Court : Jharkhand

Decided On : Sep-16-2015

Appellant : Faguni Devi and Ors

Respondent : Reli Mahto and Ors

Judgement :

1 S.A. No.46 of 2002 [Against the judgment dated 19th February, 2002 and decree dated 7th March, 2002 passed by 3rd Additioinal District Judge, Hazaribagh in Title Appeal No.51 of 1994] ----- 1. Faguni Devi.

2. (a) Damar Lal Mahto. (b) Bajo Devi.

3. Gobardh Mahto @ Gobardha Mahto.

4. (a) Damar Lal Mahto. (b) Rajni Devi. . Appellants. -Versus- 1. Reli Mahto.

2. Runwa Devi.

3. Chanu Mahto.

4. (a) Bhola Mahto. (b) Bhalan Mahto.

5. Jagdish Mahto.

6. Bhauna Mahto.

7. Bhago Mahto.

8. Sukhwa Devi.

9. Sita Ram Mahto. 10.Jashwa Devi. 11.Rajwa Devi. 12.Godwa Devi. 13.Laldhari Mahto. 14.Sarkhu Mahto. 15.Most Dharami. 16.Ramlal Mahto. 17.Baso Mahto. 18.Rasho Mahto. 19.Parmeshwar Mahto. 20.Guda Mahto. 21.Daulat Mahto. 22.Sukhdeo Mahto. 23.Budhan Mahto. 24.Batai Mahto. 25.Gobardhan Mahto. 26.Ram Dayal Mahto. 27.Sohri Devi. 28.Gena Mahto. 29.Hari Charan Mahto. 30.Ramdeo Mahto. 31.Dhaneshwar Mahto. 32.Charku Mahto. 33.Bilash Devi. 34.Tilso Devi. 35.Ganeshi Devi.Respondents. ----- For the Appellants : Mr. Rajiv Ranjan Tiwari, Advocate For the Respondents : Mr. Arjun Narayan Deo, Advocate ----- 2 PRESENT HONBLE MR. JUSTICE D. N. UPADHYAY CAV on 8th Sept., 2015 Pronounced on 16th Sept., 2015 ----- D.N. UPADHYAY, J.:

1. This appeal has been preferred by the plaintiffs/appellants against the judgment dated 19th February, 2002 and decree dated 7th March, 2002 passed and signed by learned 3rd Additional District Judge, Hazaribagh in connection with Title Appeal No.51 of 1994, whereby judgment dated 20th September, 1994 and decree dated 30th September, 1994 passed and signed by 2nd Additional Munsif, Hazaribagh in connection with Partition Suit No.80 of 1989 have been affirmed.

2. The plaintiffs had filed partition suit for separating their Takhtas in respect of 4.39 acres of land according to registered sale deeds dated 17th June, 1970, 27th February, 1980, 22nd May, 1967, 7th March, 1967 and 14th September, 1972 on the basis of averments made in the plaint, which are stated herein below.

3. The land under Khata No.105 of village Chatar Mandu, P.S. Ramgarh, P.S. No.116, District Hazaribagh was originally recorded in the names of Surjan Mahto, Fuchan Mahto and Ghuju Mahto. Land pertaining to Khata No.125 of the same village was recorded in the names of Jitan Mahto, Mithun Mahto, Bigan Mahto, Bodhiya Mahto, Sukhan Mahto and Fuchan Mahto, whereas land pertaining to Khata No.55 of the same village was recorded in the names of Jitan Mahto, Surjan Mahto, Fuchan Mahto and Ghuju Mahto. All the recorded tenants died one after another. Sukhan Mahto died in the year 1939, leaving behind his widow Most.

Gahni and daughter-Bhukhli. Surjan Mahto during his lifetime brought the father of Plaintiff Nos.2 and 3 to his house and they started living as Gharjamai because Surjan Mahto was not having male child. He got his daughter-Bhukhli married with father of Plaintiff Nos.2 and 3. The Plaintiff Nos.3 and 4 had taken birth in house of Surjan. Most. Gahni transferred her share, pertaining to land described in Schedule-B of the 3 plaint, in favour of her daughter-Bhukhli by virtue of registered sale deed dated 25th June, 1940 (Ext. 1/F). After execution of the sale deed, Bhukhli got the land mutated in her name and started enjoying possession over the same and also by paying rent to the Government. Bhukhli executed a deed of mortgage in favour of Uttim Mahto for five years in the year 1946. Thereafter, she again transferred her share pertaining to Khata No.125 of Schedule-B land by registered deed of sale dated 27th February, 1980 in favour of Plaintiff Nos.1 and 2, who are none else, but sons of Bhukhli. They got their names mutated and started paying rent to erstwhile State of Bihar.

4. On 17th June, 1970 said Bhukhli (daughter of Surjan Mahto) transferred her share in the land (described in Schedule-C of the plaint) pertaining to Khata Nos.125 and 55 of the same village Chatar Mandu in favour of her two sons i.e. Plaintiff Nos.3 and 4 and, accordingly, Plaintiff Nos.3 and 4 also got their names mutated in the revenue record and started paying rent to the State. Though the plaintiffs had purchased the land according to share of the recorded tenants, but the properties were not partitioned by metes and bounds and the parties were cultivating the land according to their convenience. Since the lands were under their joint possession and there was unity of title, the plaintiffs thought it to get partitioned.

5. Laldhari Mahto, Barku Mahto, Sarkhu Mahto and Reli Mahto, the descendants of recorded tenant-Fuchan Mahto, also executed two sale deeds on 7th March, 1967 and 22nd May, 1967 (land described in Schedule-D of the plaint) in favour of Plaintiff Nos.3 and 4, which land they got mutated in their names and started paying rent to the State of Bihar. The descendants of Jitan Mahto, Mithun Mahto, Bigan Mahto and Bodhiya Mahto had separated themselves and partitioned their respective shares according to their separate Kabjawari and as such, they were not made parties to the suit. Defendant No.7 was a minor, who had been

represented through his natural guardian, his mother-Defendant No.6 and his interest was not adverse against minor. It was contended 4 in the plaint that the plaintiffs had started feeling difficulty and inconvenience in cultivation of the land and, therefore, they demanded partition according to registered sale deeds, which were executed in their favour, but the defendants did not agree and finally on 1st July, 1989 refused to partition the properties. The entire plot of Khata Nos.105, 125 and 55, which were in the share of recorded tenants, namely, Surjan Mahto, Fuchan Mahto and Ghuju Mahto, are described in Schedule-E of the plaint. Since the defendants refused to partition the properties, as claimed by the plaintiffs, they brought the suit, being Partition Suit No.80 of 1989, in the court of learned Munsif, Hazaribagh.

6. The defendants/respondents appeared after service of notice and filed their respective written statements. The Defendant Nos.1 to 5 are contesting defendants and they have filed their written statement separately. In continuance to the written statement filed, they also filed additional written statement. During the pendency of the suit, Defendant No.2-Uttim Mahto died leaving behind his legal heirs and successors, who have been substituted as Defendant Nos.2 to 2(g) and the substituted defendants also filed their written statement. Learned Munsif proceeded ex parte against Defendant Nos.6 to 9 and 11 and Defendant No.10 on 14th November, 1990 and 28th June, 1994, respectively. Defendant No.15 appeared by filing Vakalatnama, but did not file written statement. It was recorded on 28th June, 1994 that the case against Defendant No.15 shall proceed ex parte. Defendant Nos.17 to 21 are interveners and they had filed their separate written statement, supporting the case of the plaintiffs. Defendant Nos.12, 13, 14 and 16 had also supported the case of the plaintiffs by filing written statement. Written statements on behalf of Defendant Nos.2 to 2(e) and Defendant No.2(f) were filed on 17th March, 1993 and 28th June, 1994, respectively. Defendant Nos.2 and 2(g) had adopted the original written statement filed by Defendant No.2-Uttim Mahto.

7. The contesting Defendant Nos.1 to 5 have stated that the suit is not maintainable; there was no cause of action for the suit; 5 the claim of the plaintiffs was barred by Law of Limitation and adverse possession; the defendants had also perfected their title by adverse possession; the suit is also bad for non- joinder and

mis-joinder of necessary parties and names of those necessary parties have been disclosed in their written statement. It was also made clear that Lalit Mahto was not having a son, known as Sukhan Mahto, but the name of his son was Surjan Mahto, who died in the year 1935 and not in the year 1939. Surjan Mahto died leaving behind his widow- Gahni and three daughters. It is incorrect to say that Surjan Mahto died leaving behind his widow and one daughter. Bhukhli was the youngest daughter, who died in the year 1982, whereas her two sisters died in the year 1983 and 1988, respectively. The descendants of other two daughters have not been made parties to the suit and the genealogical table, as given in Schedule-A of the plaint, is neither correct nor complete. It is denied that the plaintiffs are family members or descendants of Surjan Mahto. It is also incorrect to say that Surjan Mahto brought the father of the Plaintiff Nos.2 and 3 to his house and kept him as his Gharjamai and Plaintiff Nos.3 and 4 were born in the house of Surjan Mahto. As a matter of fact, Bhukhli was given in marriage by her uncle-Fuchan and Ghuju after the death of Surjan, whereas other two daughters were married earlier during the lifetime of Surjan Mahto.

8. The main contention of the contesting defendants is that Surjan @ Sukhan Mahto died sometimes in the year 1935 and after his death, his widow-Most. Gahni did not inherit any right in the property, rather she was only entitled for her maintenance and it was provided to her by the surviving brothers of Surjan Mahto i.e. Fuchan and Ghuju. Most. Gahni occupied the house, which was in possession of Surjan Mahto, but she was not having cultivating possession over the agricultural land. After death of Surjan Mahto, the property devolved upon surviving brothers-Fuchan and Ghuju, who partitioned the entire properties and they acquired half share each and after partition they had been enjoying their rightful possession over every inch of the property. Two surviving 6 brothers of Surjan had been taking care of Gahni and providing maintenance to her for which she was entitled in the eye of law. Not only that the youngest daughter-Bhukhli was given in marriage by Fuchan and Ghuju. The important point which they have raised is that Most. Gahni was not having any valid right in the property and, therefore, transfer, if any, made by her in favour of her daughter-Bhukhli in the year 1940 was illegal and by that transfer her daughter- Bhukhli did not acquire valid right, title and interest in the property concerned. The aforesaid sale deed

was never given effect to nor the plaintiffs even came in possession either on the basis of sale deed executed by Most. Gahni in favour of Bhukhli or by the subsequent sale deeds, which were made by Bhukhli in favour of her sons.

9. The schedule properties for which partition has been sought for were not available for partition. There was no unity of title and possession. The suit framed is not maintainable. There was no cause of action. Therefore, the partition suit brought by the plaintiffs is required to be dismissed with cost. 10. Learned Trial Court on the basis of pleadings of the parties framed following issues:- (i) Whether the suit as framed is maintainable? (ii) Whether plaintiffs have got any cause of action for the suit? (iii) Whether the suit is bad for non-jopinder of necessary parties? (v) Whether plaintiffs are entitled to a decree for partition on the basis of sale deeds dated 17th June, 1970, 27th February, 1980, 22nd May, 1967, 7th March, 1967 and 14th September, 1972? (vi) Whether Most. Gahni had the right to transfer the land in favour of Bhukhli Devi on 25th June, 1940 and whether on that basis sale deeds dated 17th June, 1970 and 27th February, 1980 by Bhukhli Devi in favour of plaintiffs are valid? (vii) To what relief, if any, is the plaintiffs is entitled? 11. Learned Lower Appellate framed three points for determination of the appeal, which are as follows:- (I) Whether the suit as framed was maintainable? (II) Whether there was unity of title and possession in respect of the suit land between the parties? 7 (III) Whether Surjan @ Sukhan died in the year 1935 or in the year 1939? 12. This Court while admitting the appeal had framed following substantial questions of law:- (I) Whether Lower Appellate Court erred in law in applying the survivorship on the death of Surjan without taking into consideration the findings of the trial court that during the lifetime a partition had taken place between three brothers, namely, Surjan Mahto, Fuchan Mahto and Ghuju Mahto? (II) Whether Most. Gahni after death of her husband acquired independent right, title and interest in the property left by her husband? 13. The parties to the suit produced documents and adduced evidences in support of their claims and contentions. According to the plaintiffs, there was a partition between three brothers-Surjan, Fuchan and Ghuju and after partition, they had been enjoying exclusively their respective shares. After death of Surjan, his widow-Most. Gahni acquired a valid right, title and interest in the property left by him and the transfer made by her by virtue of registered deed of sale dated 25th June, 1940 (Ext.1/F) gave absolute

right to Bhukhli over the said property. After execution of said sale deed, Bhukhli executed sale deed in favour of Plaintiff Nos.3 and 4 on 17th June, 1970 (Ext. 1/D). Again Bhukhli and Gobardhan executed a sale deed on 27th February, 1980 (Ext.1/A) in favour of Plaintiff Nos.1 and 2. So far as sale deed dated 22 nd May, 1967 (Ext.1), it was contended that said sale deed was executed by Rali Mahto (original Defendant No.2) in favour of Plaintiff Nos.3 and 4 and regarding sale deed dated 7th March, 1967 (Ext.1/B) it is contended that it was executed by Defendant Nos.3 to 5 in favour of Plaintiff Nos.3 and 4. So far as sale deed dated 14th September, 1972 (Ext. 1/C) is concerned, the plaintiffs have not made any declaration. 14.To answer the substantial question of law framed by this Court, I have gone through lower court records and impugned judgments. The plaintiffs have tried to make out a case that Surjan died in the year 1939 after the Hindu Women's Right to Property Act, 1937 came in existence. During lifetime of Surjan, the property was partitioned between three brothers. 8 Therefore, Most. Gahni acquired valid right, title, interest and possession over the property left by her husband. In this context, the Trial Court has not framed a separate issue to decide the date of death of Surjan. Lower Appellate Court has given specific finding on the issue regarding date of death of Surjan, but the fact remains, the Trial Court as well as the Lower Appellate Court, both, have discussed the issue by referring the evidence adduced by both sides. Both the courts below have come to the conclusion that Surjan died sometimes in the year 1935. No exact date of death of Surjan has been brought on record, but concurrent findings of both the courts below are that Surjan died prior to 1937. In that view of the matter, Most. Gahni should have been held entitled only for her maintenance from the joint family properties. In view of concurrent findings of both the courts below that if Surjan had died prior to 1937, whether partition between three brothers had taken place or not, becomes immaterial. According to Hindu Succession Act, after the death of Surjan entire joint properties or even property left by Surjan had he got it in earlier partition should devolve/reverse in the surviving two brothers i.e. Fuchan and Ghuju, because Surjan was not having any male issue. The defendants have made out a case, after death of Surjan, Most. Gahni acquired the house property left by Surjan and after her death aforesaid house is under occupation of plaintiffs. It is specifically averred that Most. Gahni never had cultivating possession over

any agricultural property. The two remaining brothers, namely, Fuchan and Ghuju partitioned the entire properties between them and they acquired half share, each, and the partition was subject to providing maintenance to Most. Gahni till her lifetime, which they did. 15. In the facts and circumstances of the case and the evidence available on record, the proposition of law would be that Most. Gahni did not have acquired any right in the properties left by Surjan and she was not entitled to transfer any piece of land in favour of any one what to say about in favour of her daughter-Bhukhli in the year 1940. Both the courts below have given concurrent findings that Most. Gahni was not having valid right, title and interest and she was not entitled to transfer the property in favour of her daughter-Bhukhli in the year 1940. The Trial Court has taken note of that the enactment of the Hindu Women's Right to Property Act, 1937 was of no help to the plaintiffs because Most. Gahni had not acquired valid right in the property. Since it was decided that Surjan died prior to 1937, the principle of survivorship shall prevail and after death of Surjan surviving two brothers, namely, Fuchan and Ghuju had acquired entire joint family properties. 16. Learned counsel has relied on a judgment of the Hon'ble Supreme Court reported in (1977)3 SCC99AIR 1977 SC1944 in which application of Section 14(1) & (2) of the Hindu Succession Act, 1956 has been discussed, finding to that effect has been given. The facts and circumstances appearing in the said judgment do not appear to be applicable in the case at hand, because Most. Gahni died in the year 1940 i.e. before coming into force of Hindu Succession Act, 1956. Therefore, remedy indicated under Section 14(1) & (2) was not available to Most. Gahni. I have already held that Most. Gahni did not acquire right, title and interest in the property because Surjan died prior to coming into force of Hindu Women's Right to Property Act, 1937. In view of the discussions made above, I am of the considered view that Lower Appellate Court has not erred in law in applying the principle of survivorship on the death of Surjan. The findings of the Trial Court is simultaneously correct, where the Court has held that Most. Gahni did not acquire right, title and interest in the property left by her husband-Surjan because Surjan died prior to 1937 and after his death the property even if partitioned reversed to the joint family. 17. Though I have answered the substantial questions, but certain facts which are available on record need appraisal to avoid future complication. It appears that the plaintiffs

have not come up before this Court with fair hand. In the sale deed 10 (Ext.1/F) manipulation in place of Khata number had been done. In Ext. 1/F, the sale deed executed by Most. Gahni in favour of Most. Bhukhli on 25th June, 1940, Plot no.105 was mentioned after doing overwriting, but the record of the registry when brought in evidence it was indicative of fact that deed was executed for the plot pertaining to Khata No.150. Besides the above, genealogy given by the plaintiffs was also not correct because Surjan died leaving behind his widow-Most. Gahni and three daughters, including, Bhukhli, who was the youngest and she was not given in marriage during lifetime of Surjan Mahto, rather she was given in marriage by her uncles, namely, Fuchan and Ghuju, who had borne marriage expenses. The plaintiffs have not arrayed the descendants of other two sisters of Bhukhli and, therefore, the Trial Court has held that the suit is also bad for non- joinder and mis-joinder of necessary parties. 18. In course of extending argument, learned counsel for the appellants has submitted that Most. Gahni was entitled to sell the property fallen in the share of her late husband to meet necessary expenses, such as for the purpose of repairing of the house or for the purpose of performing Shradh or other rituals of her husband or to meet any other necessary expenses and, therefore, cause of action for sale of the property would well be considered valid. I do not find that any such assertion is made in the plaint or evidence has been led on this point. The facts beyond the pleadings are not required to be given weightage and, therefore, the argument so advanced is rejected outrightly. 19. It is not disputed that Surjan died without having male issue and the plaintiffs have claimed for partition on the basis of five sale deeds i.e. Ext.1 to Ext.1/D. The Ext.1/F is the sale deed executed by Most. Gahni in favour of her daughter- Bhukhli on 25th June, 1940. There is concurrent finding that there was no unity of title and possession of the plaintiffs over the suit property. If they have been claiming their right, title, interest and possession on the basis of aforesaid sale deeds, they should have framed the suit for declaration of 11 their right, title, interest and confirmation of possession over the properties described in the documents relied upon. The courts below have rightly held that the suit filed by the plaintiffs was not maintainable in its present form. 20. In view of the discussions made above and materials available on record, this appeal stands dismissed on contest with cost. (D. N. Upadhyay, J.) Jharkhand High Court, Ranchi, 16th

September, 2015 Sanjay/AFR

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com