

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.82 of 2011

- 1.1. Lalita Devi W/o Nageshwar Pd. Singh, Resident of Rampur Pratappur, P.O. - Pratappur, P.S. - Awatar Nagar, District- Saran. Presently residing at Emergency Colony, Katihar, Quarter No. T-272, Post - Katihar, P.S. - katihar, District- Katihar, Bihar.
- 1.2. Ashok Kumar Singh Son of Late Nageshwar Pd. Singh, Resident of Rampur Pratappur, P.O. - Pratappur, P.S. - Awatar Nagar, District- Saran. Presently residing at Emergency Colony, Katihar, Quarter No. T-272, Post - Katihar, P.S. - katihar, District- Katihar, Bihar.
- 1.3. Manoj Kumar Singh Son of Late nageshwar Pd. Singh, Resident of Rampur Pratappur, P.O. - Pratappur, P.S. - Awatar Nagar, District- Saran. Presently residing at Emergency Colony, Katihar, Quarter No. T-272, Post - Katihar, P.S. - katihar, District- Katihar, Bihar.
- 1.4. Sanjay Kumar Singh Son of late Nageshwar Pd. Singh, Resident of Rampur Pratappur, P.O. - Pratappur, P.S. - Awatar Nagar, District- Saran. Presently residing at Emergency Colony, Katihar, Quarter No. T-272, Post - Katihar, P.S. - katihar, District- Katihar, Bihar.
- 1.5. Santosh Kumar Singh Son of late Nageshwar Pd. Singh, Resident of Rampur Pratappur, P.O. - Pratappur, P.S. - Awatar Nagar, District- Saran. Presently residing at Emergency Colony, Katihar, Quarter No. T-272, Post - Katihar, P.S. - katihar, District- Katihar, Bihar.
2. Baleshwar Singh S/o Late Rajendra Pd. Singh, resident of Village Rampur Pratappur, P.S.-Awatar Nagar, District-Saran, presently residing at Emergency Colony, Katihar, Quarter No. T-272, Post-Katihar, P.S.-Katihar, District-Katihar, Bihar.
3. Mosamat Munni Devi, W/o Late Nand Kishore Singh, resident of Village Rampur Pratappur, P.S.-Awatar Nagar, District-Saran, presently residing at Emergency Colony, Katihar, Quarter No. T-272, Post-Katihar, P.S.-Katihar, District-Katihar, Bihar.
4. Vikash Kumar Singh, son of Late Nand Kishore Singh, by professions Agriculturists. resident of Village Rampur Pratappur, P.S.-Awatar Nagar, District-Saran, presently residing at Emergency Colony, Katihar, Quarter No. T-272, Post-Katihar, P.S.-Katihar, District-Katihar, Bihar.
5. Subash Kumar Singh, son of Late Nand Kishore Singh, by professions Agriculturists. resident of Village Rampur Pratappur, P.S.-Awatar Nagar, District-Saran, presently residing at Emergency Colony, Katihar, Quarter No. T-272, Post-Katihar, P.S.-Katihar, District-Katihar, Bihar.
6. Amit Kumar Singh, son of Late Nand Kishore Singh, by professions Agriculturists. resident of Village Rampur Pratappur, P.S.-Awatar Nagar, District-Saran, presently residing at Emergency Colony, Katihar, Quarter No. T-272, Post-Katihar, P.S.-Katihar, District-Katihar, Bihar.
7. Ajit Kumar Singh, son of Late Nand Kishore Singh, by professions Agriculturists. resident of Village Rampur Pratappur, P.S.-Awatar Nagar, District-Saran, presently residing at Emergency Colony, Katihar, Quarter No. T-272, Post-Katihar, P.S.-Katihar, District-Katihar, Bihar.



... .. Appellant/s

Versus

1. Jugal Kishor Singh son of Late Raghunandan Pd. Singh, Resident of Rampur Pratappur, P.O. - Pratappur, P.S. - Awatar nagar, District- Saran. Presently residing at Barmasia, P.N.T. Colony, P.O. - Katihar, P.S. - Katihar, District- Katihar.
2. Bimal Kishore Singh, son of Late Raghunandan Pd. Singh, Resident of Rampur Pratappur, P.O. - Pratappur, P.S. - Awatar nagar, District- Saran. Presently residing at Barmasia, P.N.T. Colony, P.O. - Katihar, P.S. - Katihar, District- Katihar.
3. Most. Meena Singh, W/o Late Braj Kishore Singh, Resident of Rampur Pratappur, P.O. - Pratappur, P.S. - Awatar nagar, District- Saran. Presently residing at Barmasia, P.N.T. Colony, P.O. - Katihar, P.S. - Katihar, District- Katihar.
4. Kumari Sunita Singh, Daughter of Late Braj Kishore Singh, Resident of Rampur Pratappur, P.O. - Pratappur, P.S. - Awatar nagar, District- Saran. Presently residing at Barmasia, P.N.T. Colony, P.O. - Katihar, P.S. - Katihar, District- Katihar.
5. Kumari Sangeeta Singh Daughter of Late Braj Kishore Singh, Resident of Rampur Pratappur, P.O. - Pratappur, P.S. - Awatar nagar, District- Saran. Presently residing at Barmasia, P.N.T. Colony, P.O. - Katihar, P.S. - Katihar, District- Katihar.
6. Guddi Kumari, Daughter of Late Braj Kishore Singh, Resident of Rampur Pratappur, P.O. - Pratappur, P.S. - Awatar nagar, District- Saran. Presently residing at Barmasia, P.N.T. Colony, P.O. - Katihar, P.S. - Katihar, District- Katihar.
7. Juli Kumari, Daughter of Late Braj Kishore Singh, Resident of Rampur Pratappur, P.O. - Pratappur, P.S. - Awatar nagar, District- Saran. Presently residing at Barmasia, P.N.T. Colony, P.O. - Katihar, P.S. - Katihar, District- Katihar.
8. Subham Singh (Minor) Daughter of Late Braj Kishore Singh, Through natural guardian Mosamat Meena Singh. Resident of Rampur Pratappur, P.O. - Pratappur, P.S. - Awatar nagar, District- Saran. Presently residing at Barmasia, P.N.T. Colony, P.O. - Katihar, P.S. - Katihar, District- Katihar.
9. Gyaneshwar Prasad Singh, son of Late Raghunandan Prasad Singh, resident of Rampur Pratappur, P.O.-Pratappur, P.S.-Awatar Nagar, District-Saran. presently residing at Barmasia, P.N.T. Colony, P.O.-Katihar, P.S.-Katihar, District-Katihar.
10. Ajay Kumar Singh, son of Late Raghunandan Prasad Singh, resident of Rampur Pratappur, P.O.-Pratappur, P.S.-Awatar Nagar, District-Saran. presently residing at Barmasia, P.N.T. Colony, P.O.-Katihar, P.S.-Katihar, District-Katihar.
11. Abhay Kumar Singh @ Mukul, son of Late Raghunandan Prasad Singh, resident of Rampur Pratappur, P.O.-Pratappur, P.S.-Awatar Nagar, District-Saran. presently residing at Barmasia, P.N.T. Colony, P.O.-Katihar, P.S.-Katihar, District-Katihar.



12. Smt. Puspa Rani W/o Sohan Prasad, resident of Barmasia P.N.T. Colony, Mirchaibari, P.S. Katihar, Dist.-Katihar.
13. Sri Brajnandan Sharma, S/o Sakhichand Sharma, resident of Barmasia P.N.T. Colony, Mirchaibari, P.S. Katihar, Dist.-Katihar.
14. Smt. Asha Devi, W/o Prem Kumar Sharma, resident of Barmasia P.N.T. Colony, Mirchaibari, P.S. Katihar, Dist.-Katihar.
15. Smt. Meena Kumari Singh W/o Braj Kishore Singh, resident of Barmasia P.N.T. Colony, Mirchaibari, P.S. Katihar, Dist.-Katihar.
16. Seema Devi, W/o Gyaneshwar Prasad Singh, resident of Barmasia P.N.T. Colony, Mirchaibari, P.S. Katihar, Dist.-Katihar.
17. Smt. Mala Rani Singh, W/o Chandranand Singh, Resident of Mirchaibari Katihar, P.S.-Katihar, District-Katihar.
18. Smt. Indrasana Devi, w/o Sukhdeo Rai, Resident of Mirchaibari, P.S.-Katihar, District-Katihar.
19. Sri Binod Kumar Singh, Son of Trilokinath Singh, resident of Barmasia, Near Jagarnath Mandir, P.S.-Katihar, District-Katihar.
20. Sri Premnath Singh, son of Trilokinath Singh, resident of Barmasia, Near Jagarnath Mandir, P.S.-Katihar, District-Katihar.
21. Smt. Kalpana Devi, Wife of Girish Mandal, Resident of New Railway Colony, P.S.and Dist. Katihar, at present resident of Lohia Nagar, Barmasia, P.S.and Dist.-Katihar.
22. Smt. Sita Devi, Wife of Dhaneshwar Prasad Singh, Resident of Barmasia, Near Scotish School, P.S. and District-Katihar.
23. Smt. Saroj Singh, w/o Binod Kumar Singh, Resident of Mirchaibari Near Jagarnath Mandir, P.S. and District Katihar.
24. Premnath Singh, son of Trilokinath Singh, Resident of Mirchaibari Near Jagarnath Mandir, P.S. and District Katihar.
25. Bir Bahadur Singh, S/o Late Akalu Singh and husband of Late Shanti Devi, resident of Village-Nawada Repura, P.S. and Anchal-Rivilganj, P.O. Mukrera, Distt-Saran at Chhapra.
26. Sachidanand Singh, S/o Bir Bahadur Singh, resident of Village-Nawada Repura, P.S. and Anchal-Rivilganj, P.O. Mukrera, Distt-Saran at Chhapra.
27. Sarbanand Singh, S/o Bir Bahadur Singh, Resident of Vrindavan Colony, Kashi Bazar, Bhagwan Bazar, PO and PS-Chhapra, Distt-Saran.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ganpati Trivedi, Sr. Adv Mr. Madan Mohan, Adv Mr. Ritik Shah, Adv Mr. Saurav Suman, Adv
For the Appellant No. 2	:	Mr. Anand Kumar Ojha, Adv Mr. Ram Kishore Singh, Adv
For the Respondent/s	:	Mr. Bajarangi Lal, Adv



**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

CAV JUDGMENT

Date : 17-03-2026

Heard learned counsel for the appellants as well as learned counsel for the respondents.

2. This First Appeal has been filed against the judgment dated 26.02.2011 and decree dated 17.03.2011 passed by the learned Sub-Judge III, Katihar (hereinafter referred to as 'Trial Court') in Title Suit No. 88 of 2001 wherein the plaintiff/appellants suit for partition of 2/3rd share in Schedule-I and Schedule-II properties was dismissed by the learned Trial Court.

3. For the sake of convenience, the parties where required shall be referred to in terms of their status before the learned Trial Court.

4. The facts of the case, in brief, is that the plaintiff/appellants instituted the aforesaid Title Suit No. 88 of 2001 claiming partition of 2/3rd share in the properties described in Schedule-I and Schedule-II of the plaint. According to the plaintiffs, the parties (plaintiff and defendant Ist set) belong to joint Hindu *Mitakshara* family having a common ancestor, namely Krishna Dayal Singh, who died leaving behind four



sons, namely Gaya Singh, Hardeo Singh, Kailash Singh and Rajendra Singh. The plaintiffs are the sons of Late Rajendra Singh, whereas the defendants (Ist set) are the descendants of Gaya Singh. It was pleaded that Hardeo Singh and Kailash Singh died issueless, and after the death of Hardeo Singh, his share devolved upon Rajendra Singh, as a result of which Rajendra Singh became entitled to 2/3rd share in the family properties. The further case of the plaintiff is that although disputes arose in the family and the parties separated in mess and business around the year 1976, there had been no partition by metes and bounds of the ancestral and joint family properties. It was also asserted that certain properties situated at Katihar (Schedule-II properties) were acquired in the name of Ram Sumaro Devi, wife of Raghunandan Singh, out of the income of the joint family properties, and therefore, continued to be joint family properties. The plaintiffs further alleged that some sale deeds executed in favour of different purchasers were forged, fraudulent and without consideration, and therefore, did not affect their share in the suit properties. On these pleadings, the plaintiff sought a decree for partition of their alleged 2/3rd share by metes and bounds.

5. Defendants Ist set appeared and filed their written



statements contesting the suit. It was stated that there was no unity of title and possession between the parties as the family members had already separated and were dealing with their respective properties independently for a long time. The defendants specifically contended that the properties described in Schedule-II situated at Katihar were not joint family properties, rather the same had been acquired by different persons from their personal income and were also recorded in their respective names in the record of rights. It was further stated that various registered sale deeds had been executed in favour of several purchasers, who were in possession of the lands and had constructed houses thereon. The defendants therefore contended that the suit was not maintainable, was barred by limitation, suffered from non-joinder of necessary parties, and that the plaintiff had no cause of action for seeking partition.

6. In view of pleadings of both the parties, learned Trial Court framed following issues for determination:

- (I) Whether the suit as framed is maintainable?*
- (II) Whether the plaintiffs have valid cause of action for the suit?*
- (III) Whether the suit is barred by law of limitation waiver, estoppel and acquiescence?*
- (IV) whether the suit is suffering from non-*



joinder of necessary parties?

(V) Whether both the parties (plaintiff and defendant Ist set) have unity of title and unity of possession over the suit land, if so, is plaintiffs are entitled for a decree of partition to the extent of share as claimed by them?

(VI) Whether the acquired property mentioned in schedule-2 of the plaint have been acquired by the joint family fund?

(VII) To what relief/reliefs as claimed by plaintiffs are entitled for?

7. In support of their cases, plaintiffs have adduced oral as well as documentary evidences. The plaintiffs have examined altogether eight witnesses, namely, PW-1 Khela Manjhi, PW-2 Ravindra Nath Singh, PW-3 Nageshwar Prasad Singh (Plaintiff) PW-4 Domaodar Choubey, PW-5 Anwar Wahav (Formal) PW-6 Dinesh Lal Thakur (Formal) PW-7 Dilip Kumar Singh (Formal) and PW-8 Baleshwar Singh (plaintiff but he is formal because he has not spoken a single word upon the facts of this case).

8. Moreover, the plaintiffs, in support of their case, have produced documentary evidences which have been marked as Exhibits 1 to 10 as under:

Exhibit 1, 1/a, 1/d, 1/f, 1/h, 1/i and 1/j are the sale deed executed by defendant of their father Raghunanden in respect of suit land. Exhibit 1/b and 1/c are the sale deed jointly executed by the plaintiff Nageshwar Singh, Baleshwar Singh and NandKishore Singh,



plaintiffs and Raghunandan Singh father of the defendants.

Exhibit-3 series Chaukidari receipt.

Exhibit-4 are the electric bills, etc. in the name of Hardeo Singh and Baleshwar Singh.

Exhibit-5 Series are the receipt of payment of dues in the name of Hardev Singh.

Exhibit-6 Deposit of levy of grains.

Exhibit-7 Warning notice to pay rent in the name of plaintiff Baleshwar Singh.

Exhibit-8 Notice of TS-36 of 1992

Exhibit-9 Series Khatian.

Exhibit-10 Written statement in Title Suit no. 40 of 1967

Exhibit10A- Judgment in Title Suit no. 40 of 1967

Exhibit10B-Decree

Exhibit10C-Deposition of Raghunandan Singh father of defendant first party.

9. No oral or documentary evidence was adduced on behalf of the defendants.

10. After considering the facts and circumstances of the case and upon perusal of materials available on record, the learned Trial Court held, *inter alia*, that the plaintiffs had failed to establish unity of title and possession between the parties with respect to the suit properties. The learned Trial Court further held that the properties described in Schedule-II at Katihar were not proved to be joint family properties acquired from joint family funds, and that several portions of the



properties had already been transferred to different purchasers who were in possession thereof. Consequently, the learned Trial Court dismissed the suit filed by the plaintiffs vide impugned judgment and decree dated 26-02-2011 and 17.03.2011 respectively.

11. Aggrieved by the aforesaid judgment and decree passed by the learned Trial Court in Title Suit No.88 of 2001, the plaintiffs have preferred the present First Appeal challenging the findings recorded by the learned Trial Court and seeking reversal of the impugned judgment and decree.

12. Learned counsel for the plaintiffs/appellants submitted that the impugned judgment and decree passed by the learned Trial Court is wholly unsustainable in law as well as in facts. It is submitted that the learned Trial Court travelled beyond the pleadings of the parties and dismissed the suit on the basis of conjectures and assumptions, without properly appreciating the materials available on record. It is further submitted that the findings recorded by learned Trial Court are perverse and contrary to the settled principles governing adjudication of a partition suit.

12.i. Learned counsel for the appellants submitted that although the defendants had filed written statements, but they



did not contest the suit during the course of trial and did not examine any witness in support of their pleadings and on the contrary, the plaintiffs/appellants examined several witnesses and produced documentary evidence in support of their case, but none of those witnesses were cross-examined by the defendants. It is submitted that in such circumstances, the oral and documentary evidence adduced on behalf of the plaintiffs remained unrebutted. Learned counsel further submitted that despite this position, the learned Trial Court erroneously relied upon the written statements of the defendants and discarded the uncontroverted evidence of the plaintiffs/appellants, which is contrary to the settled legal principle that pleadings without supporting evidence have no evidentiary value.

12.ii Learned counsel for the appellants further submitted that the learned Trial Court failed to properly consider the documentary evidence produced by the plaintiffs/appellants, including the series of registered sale deeds, rent receipts, *khatian* and other relevant documents, which clearly demonstrated the joint nature of the properties and the possession of the parties over the same. Learned counsel further submitted that the evidences on record clearly indicates that after the death of Hardeo Singh, who died issueless, his share



devolved upon Rajendra Singh, the father of the plaintiffs, thereby entitling the plaintiffs to claim 2/3rd share in the suit properties. However, the learned Trial Court ignored these aspects and wrongly concluded that there was no unity of title and possession between the parties.

12.iii. Learned counsel for the appellants therefore submitted that the findings recorded by the learned Trial Court regarding absence of unity of title and possession, existence of oral partition, and the nature of the Schedule-II properties are contrary to the evidence available on record. It is submitted that the impugned judgment has been passed without proper appreciation of the oral and documentary evidence and is against the weight of evidence and settled principles of law. On these grounds, it has been prayed by the learned counsel for appellants that the impugned judgment and decree be set aside and the suit of the plaintiffs for partition be decreed.

13. Learned counsel for the defendants/respondents submitted that the judgment and decree passed by the learned Trial Court do not suffer from any legal infirmity and the same has been passed after proper appreciation of the pleadings and evidence available on record. It is submitted that the plaintiffs/appellants themselves have admitted in several



paragraphs of the plaint that due to disputes within the family, the parties have separated long back and were dealing with their respective properties independently, and in such circumstances, the essential requirement of a partition suit, namely unity of title and unity of possession, was clearly absent. It is further submitted that the properties described in Schedule-II situated at Katihar were not joint family properties but were recorded in the names of different persons and some of the lands were purchased by Ram Sumaro Devi from her personal income derived from her parental home.

13.i. Learned counsel for the respondents further submitted that the materials available on record clearly indicate that for a long period the parties had been dealing with the properties separately and had executed several registered sale deeds in favour of different purchasers, who are now in possession of the lands and have constructed houses thereon. It is submitted that such long-standing transactions by members of the family constitute strong circumstances indicating that the parties had already separated by metes and bounds effected by mutual partition or family arrangement and had been exercising their respective rights separately. It is also submitted that the plaintiffs have approached the court after an inordinate delay,



long after the death of their father Rajendra Singh, who during his lifetime never asserted any exclusive rights over the alleged share of Hardeo Singh nor took any steps to get his name recorded in the revenue records.

13.ii. Learned counsel for the respondents further submitted that merely because the defendants/respondents did not actively contest the suit, the plaintiffs/appellants were not relieved of the burden of proving their case. It is submitted that in terms of the Section 101 of the Indian Evidence Act, the burden of proof lies upon the party who asserts a fact, and therefore, the plaintiffs were required to establish the existence of unity of title and possession through reliable evidence. It is submitted that the learned Trial Court has rightly concluded that the plaintiffs failed to discharge this burden. Learned counsel submitted that the oral evidence adduced by the plaintiffs/appellants also did not establish the joint nature of the Schedule-II properties situated at Katihar, and the documentary evidence such as the record of rights indicated separate ownership and transactions by the parties.

13.iii. Learned counsel for the respondents, in support of their case, placed reliance upon several judicial precedents. Learned counsel placed reliance upon the judgment of the



Hon'ble Supreme Court in *State of Madhya Pradesh v. Ushadevi* reported in *(2015) 8 SCC 672*, particularly paragraph 33, to contend that the burden of proof lies upon the party who asserts a fact under Section 101 of the Evidence Act. Further reliance has been placed upon the decision of the Hon'ble Supreme Court in *Union of India and Ors. v. Vasavi Cooperative Housing Society Limited and Ors.*, reported in *(2014) 2 SCC 269*, particularly paragraphs 15, 19 and 26, wherein it has been held that the plaintiff must succeed on the strength of his own case and cannot rely upon the weakness of the defence. Learned counsel for the respondents also relied upon the judgment rendered by the Division Bench of this Court reported in *AIR 1977 Pat 59* which contends that long-standing separate transactions by family members constitute strong evidence of prior partition. Lastly, reliance was placed upon the decision of the Hon'ble Supreme Court in *Ravinder Kaur Grewal & Ors. v. Manjit Kaur & Ors.*, reported in *(2020) 9 SCC 706*, specially paragraph 25, wherein the Hon'ble Supreme Court recognized the binding nature of family arrangements intended to settle disputes and maintain harmony within the family.

13.iv. Lastly, learned counsel for the respondents



submitted that the plaintiffs/appellants have failed to prove that the suit properties were joint family properties or that there existed unity of title and possession between the parties. It is submitted that the learned Trial Court, after evaluating the evidence on record, has rightly dismissed the suit, and therefore the impugned judgment and decree do not warrant interference in the present appeal.

14. In view of the rival contentions and submissions made on behalf of the parties, the point arises for determination in this instant First Appeal in *“whether the plaintiffs/appellants have been able to establish unity of title and unity of possession over the suit properties described in Schedule-I and Schedule-II of the plaint so as to entitle them to a decree of partition to the extent of 2/3rd share, and whether the judgment and decree dated 26.02.2011 and 17.03.2011 respectively passed by the learned Trial Court in Title Suit No. 88 of 2001 are liable to be interfered with?”*

15. I have heard learned counsel for the parties and carefully perused the pleadings, the evidence both oral and documentary brought on record, as well as the impugned judgment and decree passed by the learned Trial Court. Since the point for determination formulated above goes to the root of



the matter and subsumes the entire controversy involved in the present appeal, the same is taken up for consideration by examining the materials available on record and the findings recorded by the learned Trial Court.

16. At this stage, it would be appropriate to notice the settled legal principles governing a suit for partition. It is well established that a co-sharer in a joint property has an inherent right to seek partition unless the same has already been effected by metes and bounds. In a suit for partition, the primary question for determination is whether there exists unity of title and unity of possession among the parties in respect of the suit property. Unless it is shown that the property is held jointly and the parties are co-sharers therein, no decree for partition can be granted. At the same time, the law also recognizes that even where members of a family are living separately in mess or business, such separation by itself does not necessarily lead to disruption of the joint status of the property unless it is clearly proved that there had been a partition by metes and bounds or a complete severance of joint ownership.

17. It is equally settled that the burden of proof lies upon the party who asserts a particular fact. In terms of Section 101 of the Indian Evidence Act, the person who asserts the



existence of a legal right must prove the facts on which such right is founded. Therefore, in a suit for partition, the initial burden lies upon the plaintiff to establish that the suit properties are joint family properties and that there exists unity of title and possession between the parties. It is also well-recognized principle that the plaintiff must succeed on the strength of his own case and not on the weakness of the defence. Even if the defendants do not lead evidence, the court is still required to examine whether the plaintiffs have been able to prove their entitlement to a decree for partition on the basis of the pleadings and evidence brought on record.

18. The Hon'ble Supreme Court in *State of Madhya Pradesh v. Ushadevi (supra)* has observed in para 33 as under:

“33.it is settled law that parties are governed by their pleadings and the burden lies on the person who pleads to prove and further the plaintiff has to succeed basing on the strengths of his case and cannot depend upon the weakness of the defendant's case.....”

19. *Ad intelligendum*, it is necessary to note that merely because the defendant did not effectively contest the suit does not absolve the plaintiffs of their obligation to prove their case. It is well settled law that the burden of establishing the claim always lies upon the plaintiff who approaches the Court



seeking relief. Even where the defendant remains absent or does not lead evidence, the Court is still required to examine whether the plaintiff has been able to substantiate the claim through reliable pleadings and evidence. In this regard, reference may be made to the provisions of Order VIII Rule 5 and Rule 10 of the CPC, which provide that although the Court may proceed to pronounce judgment where the defendant fails to file a written statement or contest the proceedings, it may nevertheless require the facts pleaded in the plaint to be proved. Thus, a decree cannot be granted in favour of the plaintiff merely on account of the absence or non-participation of the defendant, the Court must satisfy itself that the claim made by the plaintiff is legally sustainable and supported by evidence on record.

20. In the present case, it is also to be noted that though the defendants had filed their written statement, they did not adduce any evidence in support of the averments made therein. A written statement by itself does not constitute proof of the facts pleaded therein unless the same is supported by evidence. In absence of any evidence led on behalf of the defendants, the averments contained in the written statement cannot be treated as proved. At the same time, such pleadings cannot automatically be treated as admitted merely because they



remain unsubstantiated. In other words, the statements made in the written statement remain as mere pleadings and cannot assume the character of evidence unless proved in accordance with law. Consequently, the case of the parties has to be examined primarily on the basis of the pleadings and the evidence adduced on record.

21. In view thereto, the Hon'ble Supreme Court in *Asma Lateef and Anr. v. Shabir Ahmad and Ors.*, reported in (2024) 4 SCC 696 has held as under:

“29. If indeed, in a given case, the defendant defaults in filing written statement and the first alternative were the only course to be adopted, it would tantamount to a plaintiff being altogether relieved of its obligation to prove his case to the satisfaction of the court. Generally, in order to be entitled to a judgment in his favour, what is required of a plaintiff is to prove his pleaded case by adducing evidence. Rule 10, in fact, has to be read together with Order 8 Rule 5 and the position seems to be clear that a trial court, at its discretion, may require any fact, treated as admitted, to be so proved otherwise than by such admission. Similar is the position with Section 58 of the Evidence Act, 1872. It must be remembered that a plaint in a suit is not akin to a writ petition where not only the facts are to be pleaded but also the evidence in support of the pleaded facts is to be annexed,



whereafter, upon exchange of affidavits, such petition can be decided on affidavit evidence. Since facts are required to be pleaded in a plaint and not the evidence, which can be adduced in course of examination of witnesses, mere failure or neglect of a defendant to file a written statement controverting the pleaded facts in the plaint, in all cases, may not entitle him to a judgment in his favour unless by adducing evidence he proves his case/claim.”

22. Keeping the aforesaid settled legal principles in view, this Court now proceeds to examine whether the plaintiffs/appellants have been able to establish that there existed unity of title and unity of possession between the parties over the suit properties so as to entitle them to a decree for partition. For this purpose, it is necessary to consider the pleadings of the parties, the oral and documentary evidence adduced before the learned Trial Court, and the findings recorded by the learned Trial Court while dismissing the suit.

23. In the present case, it appears that the relationship between the parties and the genealogy tracing their origin to the common ancestor Krishna Dayal Singh is not in dispute. It is also not in dispute that the properties described in Schedule-I situated in Saran were ancestral in nature. However, the principal dispute between the parties revolves around the nature



of the properties described in Schedule-II situated at Katihar. It is the case of the plaintiffs/appellants that some properties were purchased at Katihar in the name of Ram Sumaro Devi from joint family funds upon which all the members had joint possession, but the land had been recorded in *Khatian* in the name of Ram Sumaro Devi. On the contrary, it is the case of defendants/respondents that the said property was acquired from her individual source and were subsequently dealt with by the respective parties independently after an amicable separation thereby severing the joint family status and the joint character of the property.

24. Moreover, from the documentary evidence brought on record, particularly the R.S. *Khatian* (Exhibit-9 series), it transpires that the lands described in Schedule-II were recorded in the names of Hardeo Singh and Rajendra Singh jointly to the extent of two shares and Raghunandan Singh to the extent of one share. While this entry indicates that at a certain stage the ancestors of the parties had joint title over the said lands, the subsequent documentary evidence assumes considerable significance. The registered sale deeds (Exhibit-1 series) placed on record disclose that several plots of the suit land were transferred to different persons over the years. Some



of these transactions were executed by both the respective parties plaintiffs as well as respondents independently and some were executed jointly by members of both branches of the family, meaning thereby that all the persons transferred their share respectively from the joint share. Such dealings with the property *prima facie* indicate that the parties were exercising their respective rights over the lands and transferring them in favour of third parties separately.

25. Moreover, the oral evidence adduced on behalf of the plaintiffs also does not appear to conclusively establish the existence of joint possession over the suit lands. Although several witnesses were examined and their testimonies remained formally unchallenged, their statements are largely general in nature. P.W.-1 merely stated that no formal partition had taken place but did not depose specifically about the lands situated at Katihar. P.W.-2 admitted that certain lands of Schedule-II had already been sold to different purchasers who were continuing in possession after constructing houses thereon. The plaintiff himself, examined as P.W.-3, asserted that the lands standing in the name of Ram Sumaro Devi had been purchased from the joint family fund, however, apart from such assertions, no cogent material has been produced to establish the existence of a



sufficient joint family nucleus from which the said properties could have been acquired.

26. Notably, another circumstance emerging from the record is that both sides appear to have executed several sale deeds in respect of portions of the suit properties in favour of third-party purchasers. The fact that members of both branches of the family have been dealing with the properties and transferring them to different persons over a considerable period of time lends support to the inference that the parties were not exercising joint possession over the entire suit land. In the absence of any convincing evidence showing that the properties described in Schedule-II were acquired from the joint family fund and continued to remain under joint possession of the parties, the materials on record do not satisfactorily establish the essential ingredients of unity of title and unity of possession over the suit properties. Consequently, the plaintiffs have failed to discharge the burden cast upon them to prove that the suit properties retained the character of joint family properties so as to entitle them to a decree for partition.

27. In view of the aforesaid discussion and upon an independent appraisal of the evidence available on record, this Court does not find any material irregularity or perversity in the



appreciation of evidence by the learned Trial Court. The findings recorded by the learned Trial Court on the question of unity of title and unity of possession appear to be based on the materials available on record and on a proper consideration of the oral and documentary evidence adduced by the parties. This Court, therefore, finds no compelling reason to take a view different from that arrived at by the learned trial court on the said issue.

28. The general rule is that the Appellate Court should permit the finding of fact rendered by the Trial Court to prevail unless the Trial Court fails to consider the evidence and materials on record to reach on the said finding and the same is improbable. The Hon'ble Supreme Court in *Madhusudan Das v. Narayanibai (deceased) through LRs. and Ors.*, reported in (1983) 1 SCC 35 has held that:

“8. In an appeal against a trial court decree, when the appellate court considers an issue turning on oral evidence it must bear in mind that it does not enjoy the advantage which the trial court had in having the witnesses before it and of observing the manner in which they gave their testimony. When there is a conflict of oral evidence on any matter in issue and its resolution turns upon the credibility of the witnesses, the general rule is that the appellate court should permit the findings of fact rendered by the trial court to prevail unless it clearly appears that some special



feature about the evidence of a particular witness has escaped the notice of the trial court or there is a sufficient balance of improbability to displace its opinion as to where the credibility lies. The principle is one of practice and governs the weight to be given to a finding of fact by the trial court. There is, of course, no doubt that as a matter of law if the appraisal of the evidence by the trial court suffers from a material irregularity or is based on inadmissible evidence or on a misreading of the evidence or on conjectures and surmises the appellate court is entitled to interfere with the finding of fact.”

29. Accordingly, the point for determination framed by this Court is answered against the plaintiffs/appellants and in favour of the defendants/respondents. It is held that the plaintiffs have failed to establish unity of title and unity of possession over the suit properties so as to entitle them to a decree for partition. Consequently, this Court finds no infirmity in the findings recorded by the learned Trial Court while dismissing the suit.

30. In view of the aforesaid facts, circumstances, and settled principles of law coupled with the mandate of law as enumerated by the Hon'ble Apex Court, this Court is not inclined to reverse the findings arrived at by the learned Trial Court after discussing the oral and documentary evidence. The learned counsel for appellants has not succeeded to convince this Court that impugned judgment and decree passed by the learned



Trial Court is not sustainable in the eyes of law. The learned Trial Court has rightly decided the issues and the findings so given are quite correct and proper which requires no interference by this Court. The judgment and decree passed by the learned Trial Court is sustainable in law.

31. It is, accordingly, held that the impugned judgment dated 26.02.2011 and decree dated 17.03.2011 passed by the learned Sub-Judge III, Katihar in Title Suit No. 88 of 2001 stand intact. The findings of the learned Trial Court in the impugned judgment and decree are hereby confirmed.

32. Resultantly, the present First Appeal fails and is hereby dismissed.

33. The Interlocutory Application(s), if any, stand disposed of. If any interim order or injunction order passed regarding disputed land deemed to be set aside in the light of above findings.

34. Let the Trial Court records be sent back to the concerned Court forthwith.

(Ramesh Chand Malviya, J)

Sunnykr/-

AFR/NAFR	AFR
CAV DATE	17.2.2026
Uploading Date	17.03.2026
Transmission Date	NA

