

IN THE HIGH COURT OF JUDICATURE AT PATNA

SECOND APPEAL No.366 of 2017

(Against the judgment and decree dated 31.5.2017 passed by Additional District Judge-VII, Aurangabad in Title Appeal No.57 of 2012/09 of 2015 reversing the judgment and decree dated 28.8.2012 passed by Munsif Aurangabad in Title Suit No.21 of 2003)

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Smt. Kalawati Devi wife of Shri Sheopujan Singh, resident of village Dhanhara, Post Office Ramchandrar Nagar, Police Station Jamhore, Dist. Aurangabad.

....Plaintiff/Respondent/Appellant.

Versus

(1) Mostt. Ful Kumari Devi widow of late Krishna Singh.

(2) Upendra Singh S/o Late Krishna Singh

(3) Sharwan Singh S/o Lalte Krishna Singh

Name of Respondent Nos. 2 and 3 is added vide order dated
11.01.2018

(4) Vishun Singh son of late Karamdeo Singh.

All Nos. 1 to 4 residents of village Itwan, Post Office Jaihind Tendua,
Police Station Mali, District Aurangabad.

... ... Defendants-Appellants-Respondent 1st Set.

(5) Suresh Singh.

(6) Mithilesh Singh.

(7) Bimlesh Singh.

Nos. 5 to 7 sons of late Dharamdeo Singh (defendant no. 3),
residents of village Itwan, Post Office Jaihind Tendua, Police Station
Mali, District Aurangabad.

(8) Shobha Devi daughter of late Dharamdeo Singh and wife of Prem
Chandra Ram, resident of village, Post Office and Police Station
Manjhiawan, District Palamu, Resident of village, Post Office and
Police Station Manjhiawan, District Palamu.

(9) Suma Devi, daughter of late Dharamdeo Singh and wife of Upendra
Singh, resident of village Devaria Kala, Police Station Phesur,
(Jamhore), District Aurangabad.

(10) Basant Singh son of late Bhikhar Singh, resident of village Itwan,
Post Office Jaihind Tendua, Police Station Jamhore, District
Aurangabad.

(11) Radhika Devi wife of Krishna Singh, resident of village and Police
Station Akbarpur, District Rohtas at Sasaram.

(12) Sadhika Devi wife of Sarjug Singh, resident of village Ketakib, Police
Station Deo, District Aurangabad.

... ... Defendants/Respondents 2nd set/Respondent 2nd Set.



Appearance :

For the Appellant/s : Mr. Vidya Sagar, Advocate
For the Respondent/s : Mr. Shailesh Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV JUDGMENT

Date : 19-06-2026

Heard Mr. Vidya Sagar, learned counsel appearing for the appellant-plaintiff and Mr. Shailesh Kumar Singh, learned counsel appearing for the respondents-defendants.

2. The present Second Appeal has been preferred against the judgment and decree dated 31.05.2017 passed by the learned Additional District Judge—VII, Aurangabad, in Title Appeal No. 57 of 2012 / 9 of 2015 whereby the learned First Appellate Court allowed the appeal and reversed the judgment and decree dated 28.08.2012 passed by the learned Munsif, Aurangabad in Title Suit No. 21 of 2003 by which the suit filed by the plaintiff-appellant was decreed.

3. While admitting the present appeal on 20.04.2023, following substantial questions of law were formulated for determination:.

“(i). Whether three sons of the defendant no. 3 (vendor) can be termed as the necessary parties to the suit if no adverse impact is caused by virtue of the sale deed (Exhibit 1) to their right, title and interest in the property to be allotted to them out of their father's property? If not, whether their non-joinder would make the suit fail being barred by



non-joinder of necessary parties?

(ii). Whether the materials available on record are strong and cogent evidence in favour of the plaintiff to prove partition between Dharamdeo Singh and sons of Karamdeo Singh?

(iii). Whether a piece of land out of joint family property sold by a member of the family to the extent of his share is a valid transaction? If yes, whether right, title and interest in the suit properties validly accrued to the plaintiff by virtue of the sale deed (Exhibit -1)?”

4. The appellant herein was the plaintiff before the learned Trial Court, whereas the respondents herein were the defendants.

5. The plaintiff-appellant filed Title Suit No. 21 of 2003 for declaration of right, title, interest and possession over the suit land acquired by virtue of registered sale deed dated 06-06-2000 (Exhibit-1) executed by defendant no. 3, namely Dharamadeo Singh, father of the plaintiff-appellant for valuable consideration. The plaintiff further sought relief for putting her in possession over the suit land after removing the thatched roof (*phus-chhapar*) and *gumti* from the suit land and for permanent injunction against original defendant nos. 1 and 2.

6. In order to gauge the matter in its correct perspective, it is necessary to briefly restate what the suit entails.



7. The case of the plaintiff is that she purchased five decimals of the suit land by virtue of a registered sale deed dated 06.06.2000 from her father out of Plot No. 603 appertaining to Khata No. 15 being part of the 54 $\frac{1}{3}$ decimals share belonging to her father (defendant no. 3) for construction of her residential house for a consideration amount of Rs. 2,000/-. It is further pleaded that ever since the date of purchase the plaintiff has remained in peaceful possession over the suit property. After purchase, her name was mutated and rent receipts (Exhibit 2 to 2/ii) were issued on payment of rent. It is further pleaded that prior to purchase, the vendor, Dharamdeo Singh (defendant no. 3) was in possession over the suit land along with other area in the same plot. It is further pleaded that during mutation proceeding, the land was measured by *Anchal Amin* and no *thatched roof (phus-chhapar)* and *gumti* was found there and defendant no. 1st set forcibly put the same to grab the suit land of the plaintiff-appellant. It is further contended that late Panchu Singh and Bhikhar Singh purchased the land of Khata No. 15, Plot No. 603, area 1 acre 63 decimals through registered sale deed dated 26.05.1969 from Nanhak Singh S/o Chingi Singh. After purchase of the said land, Panchu Singh died leaving behind his two sons, Karamdeo Singh and



Dharmdeo Singh. Late Karamdeo Singh died leaving behind his two sons, Krishna Singh (defendant no. 1) and Bishnu Singh (defendant no. 2), who are cousin of plaintiff-appellant. It is further contended that there were amicable partition in between Dharamdeo Singh (defendant no. 3) and Bhikhar Singh. It is further contended that as Bhikhar Singh had half share, Bhikhar Singh was none, but was also close agantes of Karamdeo Singh and Dharamdeo Singh, as such, he took only $\frac{1}{3}$ share in the suit plot no. 603 of khata no. 15. Bhikhar Singh, Dharamdeo Singh and Karamdeo Singh got $54\frac{1}{3}$ decimals each share of the purchased land. The said land amicably partitioned about 25 years ago and since then all three persons or successors in interest are in separate possession. Dharamdeo Singh (defendant no. 3) has three sons and three daughters and as such defendant nos. 1 and 2 do not want that their uncle transfer his share to his daughters. The further case of the plaintiff is that after purchasing five decimals of land out of the share of her father, she erected boundary wall measuring approximately six feet in height around the suit land and remained in peaceful possession. She did not construct her residential house, but mostly resides with her father. It is the further case of the plaintiff that defendant no. 3 being her father



had constructed a house on Plot No. 603 and was residing there at the time of filing of the suit. It is further pleaded that Karamdeo Singh, father of defendant nos. 1 and 2 had sold the land of his share to his wife with specific boundaries on 03.12.1990 (Exhibit-4). The plaintiff-appellant purchased 5 decimals land much less than the share of her father. defendant Nos. 3 and 4 although not claiming the land of the plaintiff, but they have been impleaded as parties only to safeguard the interest for the future. It is alleged that defendant nos. 1 and 2 forcibly put *phus-chhapar* (*thatched roof*) and *gumti* over the land of the plaintiff on 31.12.2002 and claimed the entire area of 5 decimals. Hence, the necessity arose for instituting the suit.

8. Defendant nos. 1 and 2 appeared and filed their written statement and completely denied the claim of the plaintiff-appellant. It is pleaded that the disputed land is ancestral property of the plaintiff and defendants. The execution of deed by Dharamdeo Singh in favour of the plaintiff-appellant was denied and it was contended that the sale deed in favour of the plaintiff is a sham document and never came into operation. Dharamdeo Singh has not executed any sale deed in favour of the plaintiff. It is further contended that the land in-question, being part of the joint family property, sold by the father of the



plaintiff assuming his share without any valid partition in the eye of law, cannot be a valid transaction. Therefore, the plaintiff cannot claim her title on the basis of said transaction of the joint property without any partition. It is true that Karamdeo Singh and Dharamdeo Singh are close agnates of Bhikhar Singh, but partition took place between Bhikhar Singh and Panchu Singh. Subsequently, Panchu Singh died leaving behind two sons, Karamdeo Singh and Dharamdeo Singh, who inherited the property jointly. defendant Nos. 1 and 2, being sons of Karamdeo Singh, jointly inherited the property with Dharamdeo Singh. defendant nos. 1 and 2 admitted that Bhikhar Singh and Panchu Singh divided their share 30 years back and heirs of Panchu Singh are still joint and, therefore, the story of earlier partition between Dharamdeo Singh, Krishna Singh and Bhikhar Singh is totally wrong. Neither the boundary wall nor any residential house was constructed by the plaintiff as well as defendant no. 3 over the land in-question. It is further contended that the plaintiff has wrongly alleged in her plaint that Karamdeo Singh, father of defendant nos. 1 and 2, had sold his land on 03-12-1990 to his wife (mother of defendant nos. 1 & 2) with specific boundary and the said statement is imaginary and fictitious. It is true that defendant nos. 1 and 2 have put



thatched roof and *gumti* on the land with the knowledge and permission of defendant no. 3. It is further pleaded that since defendant Bishnu Singh was unemployed, a fair price shop had been allotted to him by the State authorities more than 15 years back. defendant no. 2 has been running his fair price shop with the consent of Dharamdeo Singh in his *gumti* kept in his land and also made one room of *thatched roof*. The *gumti* and *chappar* of the defendants are very old and the same are coming in peaceful possession of the defendants. The property, in-question, is still joint. There is no partition of Plot No. 603 among the co-sharers and hence, the claim of the plaintiff-appellant on the basis of the registered sale deed dated 06.06.2000 for an area of 5 decimals is illegal and inoperative.

9. Father of the plaintiff-appellant, defendant no. 3 also appeared and filed his written statement supporting the case of the plaintiff.

10. On the basis of pleadings of the parties, the learned Trial Court framed issues and after hearing the parties and considering the materials on record and evidence adduced by the parties, held that there was earlier partition in the family of defendant nos. 1, 2 and 3 and the land sold by defendant no. 3 in favour of his daughter, the plaintiff-appellant, through



registered sale deed (Exhibit-1) is valid. The earlier partition between Bhikhar Singh and Panchu Singh has been admitted by defendant Nos. 1 and 2 in their pleadings. Apart from the said admitted fact with regard to partition, defendant nos. 1 and 2 have claimed the suit land in their exclusive possession, which also shows the ground of partition because unless there was partition, they could not have claimed their exclusive possession. The evidence of D.W.-2 and D.W.-3 is very relevant. D.W. 2, in paragraph 12 of his deposition, categorically stated that separate houses of Karamdeo Singh and Dharamdeo Singh were situated and towards the north of the house of Dharamdeo Singh there was *parti* land. Further, DW-3 in paragraph 12 of his deposition, clearly supported the factum of partition stating that Dharamdeo Singh and Krishna Singh were living in separate houses, mess were also separate and they were living separately for the last 10 to 15 years ago. Exhibit-4 is sale deed executed by Karamdeo Singh, father of defendant nos. 1 and 2, in favour of his wife (mother of defendant nos. 1 and 2) for valuable consideration. The recital of the sale deed reveals that Karamdeo Singh got the land by virtue of Deorhbandi partition. Exhibit-2 series and Exhibit-A to A/1 are the rent receipts of the parties. After considering all



these cogent materials, the learned Trial Court arrived at the definite conclusion that there was partition in the joint family of the defendants and, since the sale deed was validly executed, right, title, interest and possession over the suit land rightly accrued to the plaintiff and restrained the defendants by permanent injunction.

11. Aggrieved by the judgment and decree of the learned Trial Court, heirs of defendant nos. 1 and 2 assailed the judgment and decree of the learned Trial Court in Title Appeal No. 57 of 2012/9 of 2015 before the learned First Appellate Court. However, no appeal was filed by the heirs of original defendant no. 4, namely, Bhikhar Singh.

12. After hearing the parties, the learned First Appellate Court formulated two points for consideration in the Title Appeal.

Point No. 1 is with respect to non-joinder of party. In this regard, the learned Trial Court held that it is an admitted fact that the suit property was not the self-acquired property of defendant no. 3 (father of the plaintiff) and rather forms part of the ancestral property in which three sons of defendant no. 3 also have a share in the suit property and further held that the three sons of defendant no. 3 ought to have been impleaded as



parties to the suit, as they were necessary parties for adjudication of the dispute. However, the plaintiff failed to implead them as parties to the proceeding. Therefore, the suit is hit by non-joinder of necessary parties. The learned First Appellate Court further held that the plaintiff failed to establish that the land in-question, had been allotted to her father pursuant to a partition between the plaintiff's father and her uncle and further failed to prove that the land sold by her father formed part of his exclusive allotted share. Consequently, the plaintiff was found to have failed to prove her possession over the suit land. Accordingly, the learned First Appellate Court set aside the judgment and decree passed by the learned Trial Court and dismissed the suit of the plaintiff, which has been challenged by the plaintiff-appellant in the present second appeal.

13. Learned counsel for the appellant submits that the learned First Appellate Court failed to consider the evidence adduced by the parties, especially Exhibit-4, which is the sale deed executed by the father of original defendant nos. 1 and 2 in favour of his wife. It is an admitted fact that Panchu Singh and Bhikhar Singh jointly purchased 1.63 acres of land out of Plot No. 603 appertaining to Khata No. 15 through registered



sale deed dated 26.05.1969 executed by Nanaku Singh for valuable consideration. After purchase, Panchu Singh died leaving behind his sons, namely, Karamdeo Singh and Dharamdeo Singh (defendant no. 3). defendant nos. 1 and 2 are the sons of Karamdeo Singh. After oral partition between Bhikhar Singh, Karamdeo Singh and Dharamdeo Singh, each got $54\frac{1}{3}$ decimals of land and they came in separate possession. It is pointed out that out of the said $54\frac{1}{3}$ decimals of land, Dharamdeo Singh and his three sons each became entitled to $\frac{1}{4}$ share i.e., $13\frac{1}{4}$ decimals. Out of his share $13\frac{1}{4}$ decimals, the defendant no. 3 sold only 5 decimals to his daughter through registered sale deed (Exhibit-1), which is much less than his share. Therefore, no adverse impact in any manner has been caused to the three sons of defendant no. 3. By virtue of the order dated 02.11.2007, the three sons of defendant no. 3 were mentioned in paragraph 8 of the plaint through amendment. It is further contended that since the sons of defendant no. 3 are neither proper nor necessary parties to the suit and no relief was sought against them, the finding arrived at by the learned First Appellate Court holding the suit to be barred by non-joinder of necessary parties is erroneous, baseless and not sustainable.

14. So far as point No. 2 framed by the learned First



Appellate Court is concerned, the plea of earlier partition was disbelieved on the ground that there was no averment disclosing which portion had been allotted to which person. However, in the same paragraph, the learned First Appellate Court, for the time being and on the basis of Exhibit-4 executed by the father of defendant nos. 1 and 2 in favour of his wife, accepted that a partition had taken place, but observed that the issue could not be finally determined unless it was established as to which portion had been allotted to whom. Ultimately, the learned First Appellate Court held that the plaintiff failed to establish her title and possession and reversed the finding recorded by the learned Trial Court, particularly with respect to issue No. 3 framed by learned Trial Court. It is further submitted that the learned First Appellate Court travelled beyond the admitted evidence of the defendants witnesses regarding partition. The same has not at all been considered by the learned First Appellate Court. The evidence of the defendants as well as the plaintiff are strong and cogent evidence to prove partition. The D.W. 1 in his cross-examination supported the purchase of land. The evidence of D.W.-2 fully supported the case of the plaintiff that there was earlier partition between Dharamdeo Singh and Karamdeo



Singh. D.W.-3 also supported the previous partition. DW-6 emphatically supported the partition between Dharamdeo Singh and Karamdeo Singh. D.W. 7 (defendant no. 2) himself admitted the case of the plaintiff regarding mutation and issuance of rent receipt. defendant no. 3 (father of the plaintiff) fully supported the case of the plaintiff on all counts.

15. In support of the submissions advanced on behalf of the appellant, learned counsel for the appellant has relied upon the judgment of the Apex Court rendered in the case of *C. Venkata Swamy Vs. H.N. Shivanna (D) by L.R. & Ors.*, reported in *2018 (1) PLJR 87 (SC)*, placing particular emphasis on paragraph Nos. 11, 13, 16, 18(3), and 20(4) & (5). Learned counsel has further relied upon the decisions of this Court in the case of *Ganesh Sahu and Anr. Vs. Dwarika Sao & Ors.*, reported in *AIR 1991 Patna 1* (paragraph No. 50), and in the case of *Arjun Mahto & Others Vs. Monda Mahatain & Others*, reported in *AIR 1971 Patna 215 (DB)*, particularly paragraph Nos. 6, 7 and 13. The learned counsel for the appellant further submitted that a family member can sell out of the joint family property even without partition to the extent of his share. The said transaction is much less than the share of defendant no. 3 which is a valid transaction and right, title and



interest in the suit land validly accrued to the plaintiff through Exhibit-1. Due to non-consideration of the material evidence of the defendants' witnesses, the judgment and decree passed by the First Appellate Court is perverse. In the aforesaid facts and circumstances, the impugned judgment and decree is fit to be set aside and the instant appeal deserves to be allowed by affirming the learned Trial Court's judgment and decree.

16. On the other hand, learned counsel for the defendants-respondents submitted that it is an admitted fact that the suit land is the ancestral property of the parties. It is further submitted that transfer of joint Hindu family property in absence of partition cannot be decided in a Title Suit; rather, the same is required to be decided in a Partition Suit. It is further submitted that the plaintiff has not filed any documentary evidence with regard to the earlier partition, although the plaintiff, in her deposition before the learned Trial Court, stated that partition had taken place between Dharamdeo Singh (father of the plaintiff) and Karamdeo Singh. It is further contended that neither the plaintiff nor her father produced any document in support of the alleged earlier partition. It is further contended that Dharamdeo Singh (defendant no. 3/DW-1), in his deposition, did not disclose the extent of share allotted to him



nor specify the relevant plot and khata numbers under the alleged partition. It is also submitted that during his cross-examination, Dharamdeo Singh (defendant no.3) admitted that he had no knowledge regarding the total area of Plot No. 603. Accordingly, it is contended that the deposition of defendant no. 3 itself supports the conclusion that no partition had taken place between Karamdeo Singh and Dharamdeo Singh. It is next argued that all the sharers are residing in different portions of the joint house and that none of them was cultivating the land separately; rather, the *Bataidars* were cultivating the land and distributing grains jointly according to the requirements and needs of the family members, which, according to the defendants, clearly indicates that the land had not been partitioned. Learned counsel for the defendants-respondents further argued that the suit filed by the plaintiff was bad for non-joinder of necessary parties. It is next argued that Dharamdeo Singh has three sons, three daughters and a wife, namely Dulari Kuar and each of them has an equal share in the joint property of Karamdeo Singh and Dharamdeo Singh. Therefore, it is submitted that the learned First Appellate Court rightly dismissed the suit on the ground of non-joinder of necessary parties. It is further submitted that the plaintiff failed



to establish the plea of earlier partition and, in the aforesaid facts and circumstances, the findings recorded by the learned First Appellate Court are just, proper and do not warrant any interference by this Court.

17. Having considered the submissions made on behalf of the parties and perused the impugned judgments as well as the substantial questions of law framed by this Court in the present appeal, it is evident that the suit has been filed only for declaration of title, confirmation of possession and grant of permanent injunction. The materials available on record further indicate that the property in-question, forms part of the ancestral property of the parties. It is also undisputed fact that Panchu Singh and Bhikhar Singh had purchased the land bearing Khata No. 15, Plot No. 603, measuring 1.63 acres, through a registered sale deed dated 26.05.1969. From the admitted genealogy, Dharamdeo Singh (defendant no. 3) is the son of Panchu Singh whereas, Krishna Singh (defendant no. 1) and Bishun Singh (defendant no. 2) are the sons of Karamdeo Singh and grandsons of Panchu Singh. Admittedly, the plaintiff is one of the daughters of Dharamdeo Singh. It appears from the record that Dharamdeo Singh executed a registered sale deed (Ext. 1) in favour of the plaintiff in respect of 5 decimals



of land of Plot No. 603 (tota area 1.63 acre) appertaining to Khata No. 15 asserting the same to be from his share in the property. Admittedly, no challenge has been raised earlier by any of the co-sharers against the said sale deed and the transaction has remained unquestioned. It is also apparent from the recital of the registered sale deed dated 3.12.1990 (Exhibit-4) executed by Karamdeo Singh, father of defendant nos. 1 and 2 in favour of his wife with specific boundaries that the property sold by him had been got through *Deorhbandi* partition. This shows that partition had taken place between defendant nos. 1, 2 and 3 and, therefore, the father of the plaintiff had full right to transfer his allotted share to any person. Moreover, the plaintiff is one of the daughters of defendant no. 3. The plaintiff specifically claimed that her father was allotted his share from the ancestral property measuring $54\frac{1}{3}$ decimals out of 1.63 acres. It is also apparent that the share of the plaintiff's father was much more than the suit land (5 decimals). Further, none of the heirs of defendant no. 3 raised any objection to the transfer of the said 5 decimals of land in favour of the plaintiff.

18. Moreover, Exhibit 4 further goes to reveal that Karamdeo Singh executed a sale deed in favour of his wife with



respect to his share in the ancestral property wherein, he admitted that the land sold under the sale deed had been obtained through partition.

19. In such view of the matter, there can be no manner of doubt that a previous partition had already been taken place in respect of the ancestral property. It is apparent from the record that after purchase of the suit land the name of the plaintiff was mutated in the revenue records and such mutation order was never challenged either by defendant nos. 1 and 2 or by the heirs of defendant no. 3. It further appears from the record that the heirs of defendant no. 3 never raised any objection to the possession of the plaintiff. Since no adverse impact has been caused to the heirs of defendant no. 3 and no relief was claimed against them, the sons of defendant no. 3 are not necessary parties to the present suit. The learned First Appellate Court, without taking into consideration Exhibit 4, came to the conclusion that previous partition had not taken place between defendant nos. 1, 2 and 3.

20. In view of the evidence available on record, such finding cannot be sustained as the sons of defendant no. 3 are not necessary parties to the suit. The finding that in the absence of the heirs of defendant no. 3, the suit is hit by non-joinder of



necessary parties is contrary to the evidence adduced by the parties and the materials available on record. Since the suit was filed for declaration of title and possession and the relief sought by the plaintiff was confined only to defendant nos. 1 and 2, the heirs of defendant no. 3 are not necessary parties in the present proceeding.

21. Having regard to the foregoing discussion and materials available on record, there can be no doubt that the learned First Appellate Court erred and was not justified in dismissing the suit of the plaintiff and the impugned finding cannot be sustained.

22. In the facts and circumstances of the case, the substantial questions of law formulated are answered in favour of the plaintiff-appellant.

23. Thus, the second appeal deserves to be allowed and is, accordingly, allowed.

24. Consequently, the judgment of the learned First Appellate Court dated 31-05-2017 passed by the Additional District Judge, VII, Aurangabad in Title Appeal No. 57 of 2012/09 of 15 is set aside, and the suit of the plaintiff-appellant is decreed and the judgment and decree of the learned Trial Court dated 28.08.2012 passed by the learned Munsiff,



Aurangabad in Title Suit No. 21 of 2023 is hereby affirmed.

25. Pending interlocutory application(s), if any, shall stand disposed of.

26. Let the lower Court records be transmitted to the Courts below forthwith.

27. There shall be no order as to costs.

(Khatim Reza, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	18-02-2026
Uploading Date	22-06-2026
Transmission Date	

