

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.255 of 2008

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1. Uma Pandey son of Late Mahendra Pandey
2. Anil Pandey, son of Uma Pandey
Residents of village Haziapur, P.S. +District- Gopalganj.
..... Appellant/s

Versus

1. Munna Pandey
2. Tuna Pandey
Both sons of Late Ravindra Pandey
3. Usha Devi
4. Sudha Devi
Both daughters of late Ravindra Pandey
5. Yogendra Pandey
6. Bijendra Pandey
7. Nirmala Devi
8. Bindu Devi
All sons and daughters of late Rama Pandey , residents of village Haziapur,
P.S. + District- Gopalganj.
..... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashutosh Tripathi
Mr. Awanish Kumar Pandey

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL ORDER

10 16-07-2014 Defendants of the suit are the appellants. They have filed the present appeal under Section 100 of the Code of Civil Procedure aggrieved by and dissatisfied with the judgment and decree dated 14.7.2008 passed by learned 1st Additional District Judge, Gopalganj in Appeal No. 77 of 2005/06 of 2007 reversing the judgment and decree dated 12.7.2005 and 23.7.2005 respectively passed by the learned Sub-Judge-V, Gopalganj in Title Suit No. 21 of 1993.


For the sake of convenience, the parties will be

referred by their status at the trial.

Before noticing the case of the plaintiffs be it noted that it is admitted case of the parties that Ram Kishun Pandey and Gajar Pandey were full brothers. Ram Kishun Pandey died issueless before the Revisional Survey leaving behind his two sons namely Raghunandan Pandey and Sheo Nandan Pandey. Gajar Pandey died issueless leaving behind his wife Patiya Devi who also died issueless and the share of Gajar Pandey came under the title and possession of Ram Kishun Pandey. Raghunandan Pandey had a son namely Rama Pandey. The defendants first set are heirs of Rama Pandey. Sheo Nandan Pandey @ Sukhlal Pandey had a son called Mahendra Pandey. Plaintiff no. 1 is son of Mahendra Pandey whereas plaintiff no. 2 is the son of plaintiff no. 1. The parties are further in agreement that land mentioned in Schedule-I of the plaint was ancestral/agricultural land whereas land mentioned in Schedule-III was ancestral homestead land. Land mentioned in Schedule-II of the plaint was purchased land whereas Schedule-IV of the plaint incorporated movable property. The case of the plaintiffs, in brief, is that there was separation between the plaintiffs and Rama Pandey in 1970 in mess and business whereafter they started cultivating some land jointly. The property mentioned in Schedule-II of the plaint was purchased

from joint family nucleus and was in joint possession. In the light of the aforesaid facts, the plaintiffs sought partition of half share in Schedule-I to IV property.

Per contra, the case of the defendants 1st set as put forth in the written statement was that the entire family property has not been set out as the suit land inasmuch as the purchasers have also not been made party to the suit which was bad for partial partition and defect of parties. It was averred that 11 bighas 10 kathas of land under khata no. 150 was sold exclusively by the plaintiffs alongwith some lands of different villages but neither that property has been incorporated in the suit land nor its purchasers have been made party. The defendants' case was that in such a situation, the plaintiffs claim for half share in the entire suit property set out in different schedules would be highly illegal and inequitable. It was particularly averred that partition in the family by metes and bounds had taken place in the year 1936 and a memorandum of partition was prepared but the same in due course of time was damaged and as such, another memorandum of partition was prepared in the year 1970. The parties were dealing their properties as per their share. The further case of the defendants was that the purchased land was self acquired property of the defendants.



In the light of pleadings and evidence, the learned Trial Court formulated several issues. The issues framed under VII, VIII and IX were found the core issues which were interlinked and considered together. It was held that plaintiffs were entitled for partition of half share in Schedule-I and Schedule-III properties and also in respect of plot nos. 375, 424, 553 and 539 of Schedule-II. The Trial Court further found that rest land mentioned in the Schedule-II was self acquired and as such not liable to be partitioned. The finding(s) recorded by the learned Trial Court against the plaintiffs was not challenged. Seen thus, as per the judgment and decree of the learned Trial Court except land of plot nos. 375, 424, 453 and 539 embodied in Schedule-II and movable property set out in Schedule-IV, other suit properties were liable to be partitioned half and half. The learned Trial Court also found that Issue no. III was not pressed and the suit was not barred by law of limitation/estoppel, acquiescence or under Section 34 of Specific Relief Act.

Aggrieved by the judgment and decree passed by the learned Trial Court, the defendants filed Title Appeal No. 77 of 2005/06 of 2007. The learned Lower Appellate Court in the light of submissions advanced on behalf of the parties formulated the following three points:

POINT No. A

Whether the suit as framed is maintainable and the finding of lower court in this respect is correct and supported by evidence?

POINT No. B

Whether the finding of the lower court that there is unity of title and possession in respect of suit land is correct and supported by evidence?

POINT No. C


Whether the finding of lower court that the suit is not bad for partial partition and defect of party is correct and supported by evidence?

The Lower Appellate Court on reappraisal of the evidence in the light of the points so formulated by it held that memorandum of partition was re-prepared on the basis of partition effected in the year 1936. It was wholly unjust and inequitable on the part of the plaintiffs in not including all properties of the family as the suit land. Marshalling the oral evidence and the documentary evidence produced on behalf of the parties, it was found that there were many sale deeds exhibited by the plaintiff(s) which demonstrably proved that parties were cultivating their share of properties separately right from 1936 inasmuch as they were dealing in the properties as if they were partitioned and fell in their share. The deposition on the side of the plaintiffs in another case also supported the case of the defendants that there was partition in the joint family. The point formulated under (C) was also answered in favour of the defendants. Having held so, the appeal was allowed and the judgment and decree


passed by the learned Trial Court was reversed and the suit was dismissed. Aggrieved thereby, the present appeal has been filed.

Learned counsel for the appellants contended that the learned Lower Appellate Court erred in relying on the unregistered deed of partition for upholding the case of the defendants. It has next been contended that the *kora* document of partition on which the signature of the plaintiffs was denied was wrongly held to be a relevant document without comparing the signature/L.T.I. of the plaintiffs with the help of a Handwriting Expert. It has also been contended that the learned Lower Appellate Court completely failed to consider that the sale deeds executed by both Rama Pandey and Uma Pandey together did show unity of title and jointness of family.

I have considered the submissions of the learned counsel for the appellants and perused the judgment under appeal. The learned Trial Court found the deed of partition prepared in the year 1970 unregistered and thus not admissible in evidence and secondly the signature of the plaintiff on the document (Ext.A.) has not been got compared by the Handwriting Expert. The learned Lower Appellate Court on perusal of the Ext.A found that the same was not a partition deed. In fact, as per the defendants, partition in the family had taken place in the year 1936 and




subsequently, the memorandum of partition was drawn in the year 1970 which was not required to be registered. The learned Lower Appellate Court thereafter with reference to the oral and documentary evidence on record found that such document (Ext.A) was corroborated and proved which demonstrated that there was partition in the family in the year 1936 and subsequently, memorandum of partition was drawn in the year 1970. In this connection, learned Lower Appellate Court has relied on the depositions of D.W. 17 and D.W. 10 who were Panches and signed on Ext.A. D.W. 18, the contesting defendant no. 4 also proved execution of Ext.A as against this no tangible evidence was adduced on behalf of the plaintiffs to disbelieve Ext.A. The genuineness of Ext.A was being questioned by the plaintiffs and as such, the burden was upon the plaintiffs to demonstrate that Ext.A was a forged/fabricated document but no evidence was adduced on this point. Consequently, Ext.A was accepted as a valid document demonstrating partition between the parties in the year 1936. The learned Lower Appellate Court further found that there were several sale deeds such as Exts. 1/B, M, M/1 executed by the defendants and/or plaintiffs reciting therein that the vendor had got this land by virtue of private partition. Similar was the case found with Ext. M 1/2 which was another sale deed dated 1.8.1981




executed by the plaintiffs in favour of Babulal Bhagat reciting therein that said land was allotted to the plaintiffs in partition. Exts. M/3 and B/4 were yet another documents of sale demonstrating the aforesaid state of affair. The learned Lower Appellate Court in the light of ratio laid down in 1991 (1) P.L.J.R. 577 concluded that if the stipulation in these documents indicate that properties were partitioned between the executor and the co-sharer then the same would be a relevant fact to demonstrate partition. The burden was heavy on the plaintiffs to demonstrate unity of title and possession. Referring to the ratio laid down in 1992 (2) P.L.J.R. page 1, the learned Lower Appellate Court found that plaintiffs' admitted severance of joint status of the family in the recitals of those deeds which would be relevant and admissible. The learned Lower Appellate Court having held so did not approve the reasonings and the findings of the learned Trial Court for discarding the aforesaid documentary evidence.

The next contention of the appellants is not well founded and does not raise a substantial question of law. The learned Lower Appellate Court in view of the findings recorded therein under Point no. A concurred with the findings of the learned Trial Court. While dealing with point no. C, the learned Lower Appellate Court found that a clear stand was taken in this



regard in the written statement by the defendants inasmuch as name(s) of all the persons who were necessary parties were also set out. Those persons were the vendees of the plaintiffs. After having sold the land, the plaintiffs stoutly did not incorporate those lands as suit land nor their purchasers were made parties and claimed half share in the land embodied in different schedule which was found wholly unjust and prejudicial to the defendants. The law obligates the plaintiffs to incorporate entire joint family property in the schedule of the suit to be partitioned inasmuch as the vendee should also be made parties. The plaintiffs in their evidence clearly accepted that those lands were not the suit lands nor purchasers thereof had been made party. Accordingly, the learned Lower Appellate Court held that the suit was bad for defect of parties and partial partition will be inequitable and to the great prejudice of the defendants. The conduct of the plaintiffs was not found above board. Resultantly, the suit was found bad for partial partition and defect of parties. The contention of the appellants that signature of the plaintiffs has been denied on Ext.A was considered and rejected by the learned Lower Appellate Court on the basis of oral and documentary evidence. If any document is found proved by oral evidence in juxtaposition with documentary evidence then there was no legal necessity to get the signature

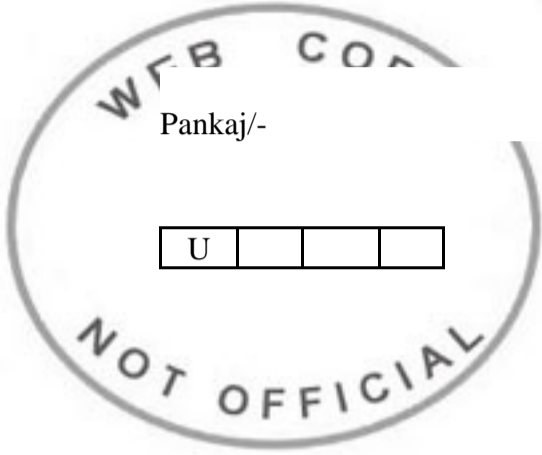


compared with the help of expert. This Court on close scrutiny finds that several documentary evidence including the deposition of the witnesses were considered to conclude that Ext.1 was a valid document brought into existence by both sides which demonstrated separation in the family as propounded by the defendants. In this connection, it may be noted that Ext.G-2 is the certified copy of the deposition of mother of the plaintiffs in a suit in which she deposed that her husband died and her son (plaintiff no. 1) was 'karta' because she was separate. The learned Lower Appellate Court also relied on the said document to find fault with the case put up by the plaintiffs.

On a conspectus of the evidence on record as considered by the learned Court below, in my view, the appeal does not raise any substantial question of law for consideration. The learned Lower Appellate Court has considered each and every relevant evidence (oral and documentary) and the conclusions drawn therefrom appear to be sound and well founded. The findings of fact so recorded by the learned Lower Appellate Court have not been shown to be perverse and/or perfunctory by the learned counsel for the appellants. The appeal, therefore, does not raise any substantial question of law.

In the result, this Court finds no merit in the appeal. It

is accordingly dismissed.



(Kishore Kumar Mandal, J)