

In the Court of Additional District Judge-III, Gaya

Petition under order 41 Rule 27 of C.P.C

In

Title Appeal No. 54/19/91/2007

Nanhu Yadav and otherappellants

Versus

Bishundhari Yadav & others.....respondent/defendants

ORDER

20.02.2020

A petition under order 41 Rule 27 of C.P.C. in the aforesaid appeal has been filed on behalf of petitioners/plaintiffs who sought permission to file certain documents as an additional evidence which is necessary for deciding the appeal.

The Ld. Counsel for the applicants while pressing the aforesaid petition submitted that a title suit no. 272/2003 was filed by these petitioners/plaintiffs against the respondents/defendants in the court below for declaration of title and possession over the suit land and also for a decree of permanent injunction to restrain the defendants not to disturb the peaceful possession of the plaintiffs. The Ld. court below after hearing both the parties dismissed the suit on contest by holding that the suit is barred by limitation, by the provisions of the specific relief, estoppel, waiver and acquiescence. The trial court also hold that the suit is not maintainable. After that the petitioners/plaintiffs filed the present appeal challenging the order of the court below. It is further submitted that from the material facts stated in the plaint it is apparent that Bulu Yadav, the common ancestor, died leaving behind three sons namely Rohan Yadav, Chintaman Yadav and Karu Yadav. Out of whom Chintaman Yadav died issue less and the plaintiffs are the sons of Rohan Yadav and defendants are heirs of Karu Yadav. It is also stated that the property acquired under Khata No. 45 Plot Nos. 1044, 1046 and 1048 area respectively measuring 87 decimal, 83 decimal and 55 decimal was acquired by Rohan Yadav under registered deed of sale dated 04.06.1931 and the said Rohan Yadav sold the said land to Jawala Prasad son of Hira Lal under registered deed of sale dated 09.12.1952 though in the said deed of sale at the request of vendee, name of Karu Yadav also has been shown as vendor. It is also stated that Rohan Yadav had also taken settlement from ex-landlord as well and also had purchased under registered deed of sale dated 24.06.1948. It is further submitted that an oral partition was taken place in the year June 1974 with respect to joint acquisition of land whereby Rohan Yadav was allotted 01 acre 13 decimal as well as Karu Yadav was also allotted 01 acre 13 decimal. It is further submitted that the document filed alongwith

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this petition being certified copy of registered deed of sale executed by Manji Ojha in favour of Karu Yadav dated 01.06.1970 in the eastern boundary of land covered by this deed of sale the name of Nanhu Yadav stand mentioned, which goes to establish that Karu and Nanhu were separate. It is further submitted that the petitioners have also filing alongwith this petition certified copy of R.S. Khatian in the name of Bishundhari Yadav sons of Karu Yadav in respect of Khata No. 118 of Village-Bhikhanpur. This documents also prove the factum of partition not only in between Rohan Yadav and Karu Yadav but also in between Karu Yadav and his son. It is further submitted on behalf of the petitioners/appellants that documents stated above being certified copy of deed of sale and certified copy of R.S. Khatian stated above are relevant document for appreciation of appellants/plaintiffs legal claim and contention and for effective adjudication of this appeal. It is further submitted that these documents were neither in knowledge nor was in the custody of the appellants hence could not be filed in the court below. There had no latches or negligence on the part of the appellants/plaintiffs in not filing these documents before the court below or before this court earlier and it is therefore prayed that these documents filed alongwith this petition being certified copy of registered sale deed executed by Manji Ojha in favour of Karu Yadav and certified copy of R.S. Khatian of Khata No. 118 of Mauja Bikhanpur in the name of Vishundhari Yadav, S/o Karu Yadav as stated above to be taken in evidence.

A rejoinder petition to the application under order 41 Rule 27 of C.P.C. has been filed on behalf of the respondent no. 1A to AE, 2 and 3 on 03.12.2019. Ld. Counsel for the respondents while opposing the application submitted that for producing additional evidence clause AA and B of order 41 Rule 27 must be satisfied. It is further submitted that the petition filed by appellants/plaintiffs apparently does not satisfy these provisions and the khata number and plot number mentioned in the petition has never been subject matter of the suit when the appellants themselves were the plaintiffs and prayed to reject the petition.

Heard the Ld. Counsel for the parties and perused the record. From perusal of the record it transpires that both the parties had common ancestor and case of the plaintiff is that in June 1974 an oral partition took place between Rohan Mahto and Karu Yadav with respect of the joint property in two equal part and 1.13 acres land was allotted to Rohan Yadav and remaining 1.13 acres to Karu Yadav and both came on exclusive physical possession with their respective share but the revisional survey khatian was prepared wrongly without any proper inquiry and it was prepared in the name of Rohan Yadav,

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Karu Yadav and Chintaman Yadav jointly having equal share the lands in given in schedule-I of the plaint which is referred as suit land. The case of plaintiff is that neither Karu Yadav nor Chintaman Yadav has/had any right title or share over the suit land nor the suit land is an ancestor land of the legal heirs of Bulli Yadav (common ancestor) rather same are the self acquired property of the father of the plaintiff namely Rohan Mahto and same are to be opened in the name of Rohan Mahto. The said Chintaman Yadav died issue-less. The further case of the plaintiff is that on the basis of the wrong survey entry the aforesaid Chintaman Yadav had executed a registered deed of gift on 10.09.1981 in favour of defendant no. 1 which is illegal and incorrect. The said Chintaman Yadav had no right to execute a gift of the portion of the suit property to the defendant no. 1 and the entire recital in the aforesaid deed of it is wrong, incorrect and has been created to grab the property of the plaintiff whereas the case of the defendant is that after partition Rohan Mahto and his other two brothers namely Karu and Chintaman separated and partitioned the then joint land covered under the sale deed dated 04.06.1931 and consequently Chintaman Yadav and his brothers filed mutation case no. 730/73-74 and got their names separately recorded and accordingly they paid rent separately and got rent receipts. Chintaman Yadav out of love and affection and also in lieu of the services rendered to him by the defendant no. 1 executed a deed of gift with respect to his entire property on 10.09.1981 which was put in possession and she has been duly mutated with respect to the land covered under the deed of gift. The further case of the defendants is that Rohan Yadav was hardly 10 years old in the year 1931, when the alleged land stated to be purchased by him. In fact his father Bulli Yadav had purchased the land covered in the sale deed as the capacity of Karta of the joint family constituted himself and his three sons including Rohan Yadav. So long as Bulli Yadav was alive he remained the Karta and manager of the joint family and after his death Rohan Yadav being senior most member of the family became the Karta till partition took place 30 years ago. Before death of Rohan Yadav he never claimed the property covered in the sale deed in the year 1931 as his exclusive property rather he treated those properties as joint family property and thus he allowed it to be partitioned among his brothers. Since, Rohan Yadav died in the year 1990 to the present plaintiffs have no right to execute the suit for declaration relating to the land in the sale deed of the year 1931. The plaintiff no. 1 himself has sold plot no. 1401, khata no. 181 of Vill. Bhikhanpur, Tola Meharbanpur to Rambali Yadav under a registered sale deed dated 02.07.1997 admitted the factum of partition likewise the defendant no. 2 Bishundhari Yadav has sold the land

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to different person pertaining to khata no. 108 (old) admitting the factum of partition. The further case of the defendant is that whatever execution were made in the joint family in the name of Rohan and Karu Gope was out of joint family fund and not otherwise as wrongly alleged by the plaintiffs. Rohan Gope and Karu Gope jointly executed a registered deed of sale in favour of Babu Jawala Prasad of Chowk Sahebganj, Gaya with respect to the land covered under the sale deed of 1931 on 08.12.1952 and in lieu thereof on the same day Babu Jawala Prasad executed a registered sale deed in favour of Rohan Gope and Karu Gope for an area of 2 bigha, 11 kathas for Rs. 50/- only, in other words the consideration money of Rs. 200/- which was received by Rohan Gope and Karu Gope which was utilized for purchase of 2 bigha 11 kathas land from Babu Jawala Prasad. The fact of partition is admitted by both the parties but a document before that partition how could help the appellants in prima-facie establishing his case. The appellants have failed to establish this fact.

Thus, it is clear that the question before the court is that whether properties purchased in the name of Rohan Yadav in the year 1931 was by joint family fund or his separate income and in this regard both the documents which the appellants want to file as additional evidence are not necessary to decide the appeal. In these circumstances, application filed under order 41 Rule 27 being devoid of merits, is hereby, **Rejected** and both the parties are directed to proceed further with the case.

(Dictated & Corrected)

Sd/-

(Sangam Singh)

**Additional District Judge-III,
Gaya**