

IN THE COURT OF DISTRICT JUDGE-III, KATIHAR (BIHAR)

District- Katihar, (Bihar)

Present-

Sunil Kumar Singh-III
District Judge-III, Katihar

Date of Judgement- 22nd Day of July 2026

TITLE APPEAL NO- 03 of 2018

(Mosmat Halima & Others Vs Bibi Sabnam Khatoon & Others)

[This appeal arises against the Judgment dated 29th Day of November 2017 and the Decree having signed on 13th Day of December 2017, passed by Shri Jabin Jamal, the then Learned Civil Judge (J.D.), Katihar in Title Partition Suit No. 68/2005, (Bibi Sabnam Khatoon & Others Vs Mosmat Halima & Others)]

IN THE MATTER OF :

1. Mosmat Halima, Aged about 50 Years, W/O-Lt. Md. Ilias, R/O-Village-Lakshmipur, PS-Barari, Dist-Katihar, Bihar,
2. Md. Fakruddin, Aged about 33 Years, S/O-Lt. Md. Ilias, R/O-Village-Lakshmipur, PS-Barari, Dist-Katihar, Bihar,
3. Bibi Jakira Khatoon, Aged about 35 Years, W/O-Md. Idris, D/O-Lt. Md. Ilias, R/O-Village-Kurwa Dhatta Laxmipur, PS-Simraha, Dist-Araria, Bihar,
4. Bibi Mithu Khatoon, Aged about 27 Years, W/O-Md. Jabir Hussain, D/O-Lt. Md. Ilias, R/O-Village-Rahua, PS-K. Nagar, Dist-Purnea, Bihar,

.....Appellants/Defendants

Represented By- Md. Gholam Rasheed, Ld. Advocate

Versus

1. Bibi Sabnam Khatoon, Aged about 50 Years, W/O-Lt. Md. Muslim, D/O-Lt. Jahoor Ali, R/O-Village-Bisaharia, PS-Korha, Dist-Katihar, Bihar,

2. Bibi Jamila Khatoon, Aged about 47 Years, W/O-Md. Khurshid Alam, D/O-Lt. Jahoor Ali, R/O-Village-Lakshmipur, PS-Barari, Dist-Katihar, Bihar,
3. Bibi Khushboon, Aged about 45 Years, W/O-Md. Sattar, D/O-Lt. Jahoor Ali, R/O-Village-Gogra, PS-Kadwa, Dist-Katihar, Bihar,

.....Respondents/Plaintiffs

Represented By- Sri Subhash Chandra Jha, Ld. Advocate

JUDGEMENT

1. The present appeal has been brought by the original defendants Mosmat halima and others, against the judgment dated 29th Day of November 2017 and the Decree having signed on 13th Day of December 2017, passed by Shri Jabin Jamal the then Learned Civil Judge (J.D.), Katihar in Title Partition Suit No. 68/2005, (Bibi Sabnam Khatoon & Others Vs Mosmat Halima & Others).

Case of Plaintiffs / Respondants

2. The case of the plaintiffs who are the respondents is that one Lt. Jahoor, the father of the plaintiffs died leaving behind him, his one son Lt. Md. Ilias and three daughters namely Bibi Sabnam, Bibi Jamila and Bibi Khusboo who are plaintiffs in this suit. Further, Md. Ilias died leaving behind his widow Mosmat Halima and three sons namely Md. Fakruddin, Md. Jakir Hussain and Md. Gulshan as well as three daughters namely Bibi Jakira Khatoon, Bibi Mithu Khatoon and Rukhsana who are defendants. The plaintiffs and defendants are governed by Mohammad Law. Lt. Jahoor owned and possessed an area about 8.25 acres cultivable land besides some residential land which he obtained through inheritance which are fully mentioned in Schedule-A appended at the foot of the plaint and it is the suit land in this case. Lt. Jahoor during his lifetime sold 3.66 decimals land of RS Plot No-1077 and 1078 under RS Khata No-16 of Mauza-Lakshmipur. The plaintiffs, after death of their father, even having their inheritencial right and share in the suit land, are living joint with the defendants but since their full brother Md. Ilias died leaving behind the defendants as successors in interest of his share, the plaintiffs

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are feeling inconvenience in jointness with the defendants with their respective shares.

3. The suit land of the plaintiffs are still joint with the defendants and there is unity of title and possession among the plaintiff and defendants but this continuity of jointness cannot be taken together any further with the defendants in view of the facts that the suit lands are in hotch-potch condition and it has resulted into mismanagement causing much more inconvenience and great loss to the plaintiffs. In view of the facts and circumstances, it has become quite essential for the plaintiffs to get the suit land partitioned by metes and bounds as per the share of the parties. The cause of action arose on several dates and occasions and lastly on 30.04.2005 when the defendants flatly refused for partition. The plaintiffs have valued the suit at Rs 30,000/- but as it is a simple suit for partition, only a fixed court fee of Rs 250/- is payable thereon. Hence, the plaintiffs have prayed to pass a preliminary decree for partition of the suit land with respect to the respective shares of the plaintiffs. Further, prayed to appoint a survey knowing pleader commissioner to affect the partition by metes and bounds and to prepare a separate sheet of takhta of the parties shares and after report of survey knowing pleader commissioner, final decree be passed. Plaintiffs have also prayed to award any other relief or reliefs if they found entitled to along with the cost of the suit.

Case of Defendant No-1, 2, 5 & 6 / Appellants

4. The written statement of the defendants/appellants in brief is that the suit is not maintainable and plaintiffs have got no cause of action to file this suit against these defendants. It is barred by principles of estoppel, waiver and acquiescence. The Khata in the suit is recorded in the name of Aghori Mian and the said Aghori Mian died leaving behind four sons namely Wahid, Buniyad, Hamid and Jahoor and all the aforesaid sons of Lt. Aghori Mian died leaving behind their respective legal heirs. Wahid died leaving behind two daughters namely Kabitan and Bibi Saijun Nisa. Buniyad died leaving behind a son Taimur. Hamid died leaving behind four sons namely Akbar, Noor Mohammad, Haidar and Wadud and his wife and one daughter Futki Khatoon. It has been pleaded that after death of Aghori Mian, the land of aforesaid khata in the suit was inherited by

the sons of Lt. Aghori Mian and after death of his four sons, their respective legal heirs inherited the land of the aforesaid khata in suit and 1/4th area of the khata in the suit have been included in the suit without boundary and there is no case of the plaintiff in the plaint that their ancestor got the suit land by virtue of oral partition and accordingly the legal heirs of the Lt. sons of Lt. Aghori Mian are necessary parties in the suit and as such, the suit is hit by non-joinder of necessary party.

5. Beside the necessary parties, Bishwanath, Arjun Sah, Binod and others are the purchasers of the portion of the suit land but they have not been made parties to the suit. The suit is also hit by principle of adverse possession. Jahoor Mian was the ancestor of the plaintiffs and defendants who die twenty years ago and after his death, his only son Md. Ilias came in possession of 1/4th share of his father Jahoor Mian in the suit land and plaintiffs never came in possession of an inch of the suit land as the plaintiffs were ousted from the suit land and the suit is hit by principle of ouster. It has been submitted that suit is grossly under valued. The value of the suit could not be less than rs 10000/- at the time of institution and so the suit is outside the pecuniary jurisdiction of this court. the defendants denied all the allegations made in the plaint save and except which has been expressly admitted. The statement made in para-1, 2 and 3 of the plaint, are true and correct therefore admitted.

6. The statements of the plaintiffs made in para-4 of the plaint is the statement of necessity hence requires no comment. It is submitted by these defendants that land of Khata in suit detailed in Schedule-A of the plaint belonged to Aghori Mian and after his death, the land of Khata in suit was inherited by his four sons and not by Jahoor Mian. The defendants are unknown about the facts of para-5 of the plaint and denied the facts of para-6 since it is wrong and false. After death of Jahoor Mian, plaintiffs did not come in possession of any inch of suit land and till now by virtue of inheritance, they have been ousted and they have no share. The statement made in para-7, 8 and 9 are false, imaginary and designed for the purpose of this false suit. The suit is also barred by Section 4(1b) of Chakbandi Act. The plaintiffs are not entitled for any relief or reliefs

claimed in the plaint and in all respect, the suit is fit to be dismissed with cost.

7. On the basis of averments made in the pleadings of the parties, the Ld. Trial court has framed following issues :-

S. No.	Issues framed by Trial Court
Issue No-I	Whether the Suit as framed, is maintainable?
Issue No-II	Whether plaintiff has got cause of action?
Issue No-III	Whether the suit is barred by law by limitation, estoppel, waiver and acquiescence?
Issue No-IV	Whether the suit suffers from non-joinder of necessary parties?
Issue No-V	Whether the suit land is properly valued by the plaintiffs?
Issue No-VI	Whether the suit property is joint property and there is unity of the right, title, possession between the parties?
Issue No-VII	Whether the plaintiffs have share in the suit land?
Issue No-VIII	Whether the plaintiffs are entitled for relief or reliefs as claimed?

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8. In support of its case before the Ld. Trial Court, the Plaintiffs / Respondents have adduced following oral evidence:-

Sl. No.	Name of Witness	Examined as
1.	Md. Abul Hussain	Pw-1
2.	Rameshwar Prasad Sah	Pw-2
3.	Md. Ali	Pw-3
4.	Doman Mandal	Pw-4
5.	Anandi Mandal (Expunged)	Pw-5
6.	Bibi Sabnam Khatoon (Plaintiff)	Pw-6

9. Besides oral evidence, the Plaintiffs / Respondents have produced/proved the following documents in support of its claim :-

Sl. No.	Description of Document filed/relied by plaintiff	Marked As
1.	Certified copy of Khatian in the name of Aghori Mian	Ext-1 & Ext-1/a

10. In reply to the plaintiffs claim, the Defendants /Appellants have adduced following oral evidence:-

Sl. No.	Name of Witness	Examined as
1.	Suresh Yadav	Dw-1
2.	Sitaram Yadav	Dw-2
3.	Md. Fakruddin (Defendant)	Dw-3
4.	Pramod Sharma	Dw-4

11. Defendants /Appellants have produced/proved the following documents in support of its claim :-

Sl No.	Description of Document filed/relied by plaintiff	Marked As
1.	Sale-deed dated 05.08.2005	Exhibit-A
2.	Sale-deed dated 21.09.2005	Exhibit-A/1

12. The Learned Trial Court after considering the evidence, both oral as well as documentary, as available on the judicial record, decreed the Title Partition Suit No-68/2005 on contest without cost.

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13. The Defendants/ Appellants being aggrieved and dissatisfied by the judgement and decree, have preferred this appeal, challenging the legality, correctness and propriety of the same, on the ground that the findings given by the Ld. Trial court are arbitrary and based upon surmises and conjectures. The Appellants further claimed that Ld. Trial Court has misconstrued the facts stated by the parties and also not properly considered the oral and documentary evidence. The judgement and decree passed by Ld. Trial Court is bad in law, erroneous on fact and against the weight of material on the record.

Arguments on behalf of Parties to this Appeal

14. The Learned counsel on behalf of the defendant/appellant argued that judgement and decree of trial court is totally erroneous in law as on facts. It has been argued that after the death of Jahoor Mian, several portion of suit land has been sold and it is an admitted fact and even after this fact, the purchasers have not been made party to this suit land. It has also been argued that legal heirs of the ancestors have also not been made party and the suit is hit by non-joinder of necessary party. It has been contended that plaintiffs never came in possession of this suit land and they have been ousted and then how their share can be allotted to them. The

arguments has also been made on behalf of the appellants that trial court has not considered the facts and law and without considering the same decreed the suit.

15. The plaintiffs/respondents strongly contested the appeal and objected the claim of appellants. It is argued on behalf of Respondents that the Learned Trial Court has rightly decided and decreed the suit. It has been argued that defendants have admitted that they had the common ancestor and they have also admitted that suit land is recorded in the name of their common ancestor. In this respect, they have filed the khatian which is joint name of the common ancestor and this fact have not been even denied by the appellants. It has been argued that appellants and defendants have common ancestor and so principle of adverse possession or principle of ouster cannot be applied in this case. Hence prayed to dismiss this appeal.

Points to be determined in this present Appeal

16. After hearing the Learned Counsel appearing on behalf of rival parties, perusal of the Judgment / Decree impugned herein along with relevant record, in my considered opinion, every issue is required to be taken and decided here.

Findings and Grounds thereof

17. Issue No-VI & VII- These are the main and important issues of this case and the whole case is dependent upon the result of the finding of these issues. Hence, this court will first deal the Issue No- VI and VII that whether it is has been rightly determined by the trial court or not?

Issue No-VI	Whether the suit property is joint property and there is unity of the right, title, possession between the parties?
Issue No-VII	Whether the plaintiffs have share in the suit land?

18. It is the settled principle that burden lies upon the plaintiff to prove his case. Since suit has been filed by the plaintiff and he has sought the relief so primary burden is upon the plaintiff to prove the contents of the pleadings by adducing cogent and credible oral as well as documentary

evidence. However, like criminal case, plaintiff is not bound to prove beyond reasonable doubts rather he has to prove the pre-ponderance of probabilities. On the same time, if plaintiff discharges his burden of proof then it shifts upon the defendants to prove their pleadings and negate the facts and evidence of the plaintiff.

19. The concept of inheritance is rooted in the Islamic or Quranic principles enumerated by the Prophet. Islamic laws do not recognise joint tenancy, and the heirs are tenants-in-common, i.e., they can only seek to inherit the shares of the property that is held in common. Muslims do not follow or recognise the joint family system in matters of inheritance, and after the death of a Muslim person, the rights, title, and interest he held in his estate cease to exist and stand vested in others. However, inheritance is not guaranteed to every child that is born into the family, i.e. inheritance is not at all a birth-right under Muslim law. An heir-apparent must survive the deceased to claim an inheritance. A child in the womb of its mother is also competent to inherit, provided it is born alive. If the child is stillborn, it will be treated as though it never existed, and thus the interest in the share of property that was vested in the child is stripped off. Under Islamic laws, male and female heirs alike have the right to inherit property. Near female heirs or cognates are recognised in the class of heirs. However, the females get only half of the quantum shares allotted to their male counterparts, since under the Islamic system, females will go on to receive more wealth through mehr and the maintenance provided by their husbands, while males only have inheritance, which contributes to their duty of maintaining their wife and children. The Islamic laws also give priority to the ascendants of the deceased over the descendants in the scheme of inheritance by making them the immediate heirs or the first-in-line to inheritance. The Islamic scheme of inheritance comprises two kinds of heirs – the Sharers, or Quranic heirs, and the customary heirs, called the residuaries. However, there is divergence in the application of Quranic principles between the divided sects of Sunni and Shia Muslims, creating slightly different rules of inheritance – the Sunni law of inheritance and the Shia law of inheritance.

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20. The Sunni in India primarily belong to the Hanafi school and are governed by Hanafi school of law. The Hanafi laws attempt to create a more harmonious relationship between the customary law and the Quranic law by which the inclusion of the Quranic class of heirs does not deprive the customary heirs of their share but rather just a portion of the estate is allotted to the Quranic heirs. It is important to note that, even though the new class of heirs created included females, it still retained the preference of agnates over cognate heirs. That is, the Quranic class recognizes the female agnates' right to inherit a share much like their male counterparts. The position of the Quranic heirs and the customary heirs with respect to inheritance differs in two cases: If the Quranic heir is more in proximity to the deceased than to a customary heir, the Quranic heir gets a portion of estate first and then the residuary is given to the customary heir. If both the Quranic and customary heirs are equally close, the customary heir gets double of the amount of share given to the Quranic heir. Even though the agnates are given preference in inheritance over cognates, they're not completely excluded from the scope of succession, as cognates such as uterine brothers and uterine sisters are included. Under the Hanafi law, the heirs of the deceased are either sharers or residuaries, and in the absence of both of these classes of heirs, the estate is passed down to other relatives of the deceased, who fall under the category of "distant kindred". In case of absence or some inability that restricts the distant kindred from inheriting, the estate is passed on to the state by escheat, meaning that if a Muslim dies heirless, then the property is devolved on to the state. Further, the distribution of estates under the Sunni law is per capita, according to which the estate of the deceased is distributed equally among the heirs. Thus, the number of shares one gets is proportional to the number of heirs.

21. The claim of the plaintiffs is that the suit property described in Schedule-A of the plaint belongs to their father Md. Jahoor but it was never partitioned by meets and bound. It has been claimed that that as per the muslim law after the death of father, the property devolved upon his legal heirs and so they are entitled for partition according to the law. On the other hand, the defendants have claimed that Md. Jahoor was their grandfather and his sole son Aghori Mian died 20 years back leaving

behind his sole son Md. Illias. It has also been claimed that their father came only in possession of 1/4th share and plaintiffs never came in possession of the suit property and they have been ousted from the property of Md. Jahoor and so they are not entitled for any share in the property.

22. Ext-1 is the certified copy of the khatiyana and from its perusal, it is quite clear that the suit property is in the name of Aghori Mian. The defendants are grandson of Aghori Mian and it is an admitted fact that after death of Md. Illias, they came into possession of the suit property. It is not claim of the defendants that it is the self-acquired property of Md. Illias rather it is an admitted fact that Md. Illias succeeded that property from his father Aghori Mian. Naturally, Md. Aghori succeeded that property from his father Md. Jahoor. Moreover, there is no denial of the fact that plaintiffs and defendants belong to the same asendents/family and their forefathers were the same. Since, this is an admitted fact so claim of the defendants that plaintiffs had been ousted from the property, is not acceptable. There is no evidence that when, why and how the plaintiffs had been ousted from the property. The defendants have also claimed that they succeeded 1/4th share from his father Md. Illias. It means, they are indirectly claiming partition among the family. It is the basic rule of evidence that burden to prove any fact is upon the person who claims it. In the present case, burden is upon the defendants to prove the fact that if partition did not happen in the family then how their father got 1/4th share in the property of Aghori Mian and if partition really happened then burden is upon them to prove that when it took place and why plaintiffs did not get any share. Claim of defendants that plaintiffs have been ousted from the property is prima facie appears to be baseless and beyond the legal principles.

23. From the pleading of both parties and their oral evidences on the record, it is an admitted fact that plaintiffs are daughters of Lt. Md Illias who was son of Md. Jahoor. Md. Illias and plaintiffs are the full brother and sisters belonging to muslim sunni sect. every muslim has their separate and defined share and every individual has right to seek partition in the ancestral property. The trial court has right held that property standing in the name of the father of the plaintiffs, that is suit property treating the

same in the joint stock, soon after the death of father, his entire property devolved on his legal heirs i.e. his surviving sons and daughters as per the Hanfi Law. On the basis of the discussions made above, this court finds that daughters are entitled for residuary share as the son is entitled for double share. Hence, it is hereby ordered that each daughter is entitled for 1/5th share and son of Lt. Md. Ilias is entitled for 2/5th share in the suit property. Considering all the facts and circumstances as well as on the basis of the discussions made above, Issue No-VI and Issue No-VII, are hereby decided against the appellants/defendants.

Issue No-IV & V

Issue No-IV	Whether the suit suffers from non-joinder of necessary parties?
Issue No-V	Whether the suit land is properly valued by the plaintiffs?

24. The appellants/defendants have claimed that suit is hit by non-joinder of necessary parties but from the whole pleading as well evidence available on the case record, it is apparent that sons and daughters of Lt. Md Ilias have been made parties and they are necessary party to this suit. The rest one are not necessary parties and their non-joinder cannot affect the suit adversely. The appellants have also claimed that suit has not been properly valued but except oral statement, they did not adduce any single evidence on this point. On the other hand, there is report of the sirestedar that suit is properly valued according to law but there is no contradictory evidence contrary to this report. Hence Issue No-IV and Issue No-V, are decided against appellants/defendants.

Issue No-I, II & III

Issue No-I	Whether the Suit as framed, is maintainable?
Issue No-II	Whether plaintiff has got cause of action?
Issue No-III	Whether the suit is barred by law by limitation, estoppel, waiver and acquiescence?

25. These are the formal issues and have been raised by the appellants/defendants but any evidence has not been brought before the court in this respect before the court. On the basis of the discussions made above and in the light of the finding of Issue No-IV, V, VI and VII, this court is of

the considered view that suit as framed is maintainable and plaintiffs have got valid cause of action to brought this suit. Further, the suit is also not barred by law of limitation, estoppel, waiver and acquiescence. Hence Issue No-I, Issue No-II and Issue No-III are decided against appellants/defendants.

Issue No-VIII

Issue No-VIII	Whether the plaintiffs are entitled for relief or reliefs as claimed?
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26. On the basis of the discussions made above and in the light of the findings of the above decided issues, I find and hold that plaintiffs are entitled for the reliefs as claimed. Accordingly, Issue No-VIII is hereby decided against the appellants/defendants.

27. Thus, it is concluded that Learned Trial Court has rightly decided the issues, in the present suit and the Judgment and Decree passed by the Learned Trial Court is based upon reasonable grounds, after relying upon admissible evidence and the same warrant no interference in this Appeal. Accordingly, in the light of findings recorded herein above, it is hereby

ORDERED

that the Judgment dated 29th Day of November 2017 and the Decree having signed on 13th Day of December 2017, passed by Shri Jubin Jamal, the then Learned Munsif, Katihar in Title Partition Suit No. 68 of 2005 [Bibi Sabnam Khatoon & Others Vs Most. Halima & Others], is hereby confirmed in above terms and the present appeal is hereby dismissed on contest.

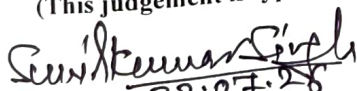
The cost throughout the appeal is to be borne by both parties.

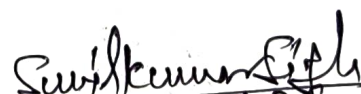
Let the Decree be prepared accordingly.

The Trial Court record be returned along with copy of this judgment after preparation of Decree.

Record be consigned as per rules.

(This judgement is typed and corrected by me.)


(Sunil Kumar Singh-III)
District Judge-III,
Katihar
Dated: 22.07.2026


(Sunil Kumar Singh-III)
District Judge-III,
Katihar
Dated: 22.07.2026

Appendix of Evidence

A. Oral Evidence- Evidence of Plaintiff/Respondent

Sl. No.	Name of Witness	Examined as
1.	Md. Abul Hussain	Pw-1
2.	Rameshwar Prasad Sah	Pw-2
3.	Md. Ali	Pw-3
4.	Doman Mandal	Pw-4
5.	Anandi Mandal (Expunged)	Pw-5
6.	Bibi Sabnam Khatoon (Plaintiff)	Pw-6

B. Documentary Evidence-

Sl. No.	Description of Document filed/relied by plaintiff	Marked As
1.	Certified copy of Khatian in the name of Aghori Mian	Ext-I & Ext-I/a

Evidence of Defendant/Appellant

A. Oral Evidence-

Sl. No.	Name of Witness	Examined as
1.	Suresh Yadav	Dw-1
2.	Sitaram Yadav	Dw-2
3.	Md. Fakruddin (Defendant)	Dw-3
4.	Pramod Sharma	Dw-4

B. Documentary Evidence-

Sl No.	Description of Document filed/relied by plaintiff	Marked As
1.	Sale-deed dated 05.08.2005	Exhibit-A
2.	Sale-deed dated 21.09.2005	Exhibit-A/I

Sunil Kumar Singh
(Sunil Kumar Singh-III)
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