

Present-Abhishek Ranjan
District Judge-II, Jhanjharpur
Partition Appeal No-06/2015
Ashok Mahto & Ors V/s Surya Narayan Mahto & Ors.
Date of Judgement-03-07-2026

In The Court of District Judge-II, Jhanjharpur
District-Madhubani
Partition Appeal no. 06/2015

Partition Appeal No.06 of 2015

1. Ashok Mahto & Ors.

-----**Defendant 2nd set/Appellants.**

VERSUS

1. Surya Narayan Mahto & Ors.

-----**Plaintiffs/Respondent Ist party.**

2. Ramphal Mahto & Ors.

-----**Defendants 1st set/ Respondent IInd party.**

(This present Title Appeal is arising out of judgment dated 12.06.2015, and decree dated 24.06.2015 passed by Ld. Sub Judge-II, Jhanjharpur, in Partition Suit No. 20 of 1998).

For the appellants: Sri. Ram Sagar Sharma, Ld. Advocate
For the respondents : Sri. Raj Kumar Sah

Present: Abhishek Ranjan
District Judge-II, Jhanjharpur
Date of disposal :3rd of July, 2026.

JUDGMENT

1. This appeal has been preferred by the appellant/plaintiff against the judgment dated 12.06.2015, and decree dated 24.06.2015 passed by Ld. Sub Judge-II, Jhanjharpur, in Partition Suit No. 20 of 1998, whereby the suit for partition of 1/3rd share and for 1/2(Half) share from the lands mentioned in Sch. 1 & 2 of the plaint respectively, was partly decreed on contest.

2. Upon admission of the appeal for hearing, the notice was issued to the respondents, and original case record of T.S. No-20/1998 was called for, and received.

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3. In order to decide the appeal, let me narrate in brief the facts leading to the appeal.

Brief case of plaintiff/ Respondent 1st set:

4. The case of the plaintiff in nutshell is that according to genealogical table given in the foot of the plaint one Budhan Sudi was the ancestor of plaintiffs, and of the defendants 1st set. Soukhi Mahto was the ancestor of the defendants 2nd set. The said Budhan Sudi died leaving behind his two sons namely Mushahru Sudi, and Jhingur Sudi. Musharu Sudi died leaving behind his wife namely Reshma, and thereafter she died issue less. The said Jhingur Sudi died leaving behind his son Hari Kishun Mahto, who died leaving behind his two sons namely Hriday Mahto (Plaintiff no-1) and Ram Phal Mahto (defendant no-1). Plaintiffs no 2 & 3 are the sons of plaintiff no. 1, and defendants no 2 to 4 are the sons of defendant no. 1. Similarly, the said Soukhi Mahto died leaving behind his three sons namely Ganeshi Mahto, Ram Ji Mahto, and Shiva Mahto. The said Ram Ji Mahto and Shiva Mahto were traceless (Civil Death). Ganeshi Mahto died leaving behind his one son namely Jharokhi Mahto, who died living behind his two sons namely Bache Lal Mahto, (defendant no-5), and Achhe Lal Mahto (defendant no-9). Bache Lal Mahto died leaving behind his three sons (defendant no- 6 to 8). The defendant no-10 & 11 are the sons of defendant no-9. The defendants no-1 to 4 are the 1st set, while defendants no- 5 to 11 are the 2nd set. At the time of cadestral survey Mushahru Sudi, Jhingur Sudi, Ganeshi, Ram Ji, and Shiva (Plantiffs & defendants 1st & 2nd sets families) were joint family, and the entire properties were in jointness. Cadestral survey Khatiyani was in the name of above five persons having two

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shares Musharu Sudi and Jhingur Sudi (plaintiff & defendant 1st set), and 1/3rd share to other named three persons. Meaning thereby the plaintiff, defendant 1st set & 2nd set were the share holder of 1/3rd share each. The lands mentioned in sch. 1 of the plaint has been prepared accordingly. The lands mentioned in sch. 2 of the plaint was the personal property of “ Reshma” which was purchased by her, with the assistance of her “Naihar” (Mothers house) or by her personal fund. Reshma was issue less, therefore, after her death, her lands as mentioned in sch. 2 of the plaint devolved in her branch, and Hari Kisun Mahto (Father of plaintiff & defendant no-1) who was the nephew of her husband, came in possession over the same. The sch.2 lands are the joint property of only plaintiff and defendants 1st set, having equal share. About 27 years ago ie. about in year 1971, the separation took place between the parties, but the entire properties were in jointness and continue coming in jointness. There was no legal, actual, and "Jabtan" partition between the parties, with regards to the landed properties. Due to jointness of the properties, some problems were arisen between the parties. The plaintiff requested to the defendants for the legal and "jabtan" partition of the lands several times, but the same was denied. Hence, need for suit arose.

5. From L.C.R. it is revealed that Suit was admitted by Ld. Trial court. After the admission of the plaint, processes were exhausted for procuring the appearance of the defendants. Defendants 1st set and defendants 2nd set appeared in this suit, and had filed their written statement separately.

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Brief case of appellants/defendant 2nd set:

6. Defendant 2nd set in their written statement had stated that the suit is barred by the principle of estoppel, waiver and acquiescence. The suit is barred by law of limitation, by non-joinder of the parties (Purchasers of the sold lands) and by suppression of facts. The suit has not been valued properly, and sufficient court fee has not been paid there on. That the genealogical table as given in the foot of the plaint and facts there on as given in the plaint are admitted. According to cadastral survey the entire lands given in sch.1 of the plaint were joint, but some khesra of the lands have been entered wrongly in the said schedule. It has been admitted vide para 10 of W.S. that the lands mentioned in sch.1 of the plaint were purchased by the ancestors of the parties jointly, and according to consideration amount the share was fixed. After facts of para 5 of the plaint has not been denied ie. accepted as 2/3rd share was given to the plaintiff and defendant 1st set, and 1/3rd share was given to them ie to defendant 2nd set. Accordingly, the shares have been mentioned in cadastral survey khatian. There is no denial in respect of the ratio of share as given by the plaintiff. It has not been denied that since the cadastral survey, the ancestor of the parties were the members of joint family. Land mentioned in sch.2 of the plaint was not the personal property of "Reshma", and was not purchased by her personal funds, or with the assistance (aid) of her "Naihar" because her Naihar was very poor. The description given in sch.2 of the plaint is wrong. The separation of the parties, and jointness of the properties as alleged in para 10 of the plaint has been denied. It has been stated that his ancestors Ganeshi brothers, were already separate from the

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ancestor of plaintiff, and defendant 1st set namely Musharu Sudi and Jhingur Sudi. It has been denied that the documents relating to the lands are in the possession of the defendants 2nd set. It has been stated that the facts mentioned in para 18 of the plaint are wrong, in which it has been stated by the plaintiff that the sch.2 lands are only the joint property of the plaintiff and defendant 1st set. It has been accepted in para 26(B) of W.S. that the sch. 1 land was purchased in jointness, and according to consideration amount the share was fixed as 2/3rd, was given to plaintiff and to defendant 1st set, and 1/3rd to defendant 2nd set ie 1/3rd to each, and accordingly survey khatian was prepared. The land about 4 bigha, 3 katha, and 4 dhoors from the joint property as mentioned in sch.1 of W.S was sold by Mushahru Sudi and Jhingur Sudi to Ganeshi Sudi in year 1905, on which Ganeshi brothers came in possession, and therefore partition took place with regards to remaining properties, and in respect of the above sold land, document as "Yaddast" was prepared. The plaintiff intentionally left to mention relevant khesra as khesra no- 167, 1952, 546, and 593 in the plaint, and mentioned wrong khesera as khesera no- 1973, 1912, 2763, and 1954/17. Except the land mentioned in sch.1 of W.S. no land was in jointness between the parties. There was exchange of the lands between Ram Phal Mahto and Jharokhi Mahto, and according to exchange Ram Phal gave 4.5 dhoors land from his khesera 3840 land from his south/west by way of parcha, and Jhorokhi Mahto gave lands from his south/west side of khesera no-3832 by way of khista over which the house of Ram Phal and of plaintiffs is situated. Due to mistake in the said "yaddast" dated 15/07/1910 wrong khesera number as khesera 1942 was mentioned at the place of khesera no-1992. The recent survey was started in

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year 1969, and according to partition, khatian was prepared. The documents regarding partition was prepared which was in the custody of Mushahru Sudi, and thereafter came in possession of the plaintiff. Hence, prayed to dismiss the suit.

7. The defendants 1st set although had made some formal denial and objection with regards to the maintainability of the suit, but accepted the entire fact-um of the plaint in Toto seeking the same reliefs in their written statement.

8. On the basis of the pleading of the both parties, as many as nine issues were framed by the learned trial court which are as follows :

- 1) Whether the suit as framed and filed is maintainable?
- 2) Whether the plaintiffs have any cause of action to file this suit?
- 3) Whether the suit is barred bylaw of limitation, estoppel, waiver and acquiescence?
- 4) Whether the suit has been properly valued and sufficient court fee has been paid thereon?
- 5) Whether the suit is bad for the defects of the parties?
- 6) Whether the story of previous partition propounded by the defendants is correct?
- 7) Whether there is unity of title and possession between the parties in respect of the suit lands?
- 8) Whether the plaintiffs are entitled to a decree for partition as alleged?
- 9) Whether the plaintiffs are entitled for any other relief or reliefs?

9. During the trial both parties led oral, as well as documentary evidences to substantiate their claim. While from

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perusal of the judgment of the trial Court it appears that the learned trial Court after considering the evidences adduced by both sides, and after making full discussion had dismissed the suit. So, being highly aggrieved, and dissatisfied, appellant/defendant 1st set preferred this instant appeal against the judgment dated 12.06.2015, and decree dated 24.06.2015 passed by Ld. Sub Judge-II, Jhanjharpur, in Partition Suit No. 20 of 1998.

10. G R O U N D S :

- i) For that the judgment and decree passed by the learned Sub-Judge-II, Jhanjharpur, is based on surmises and conjectures.
- ii) For that the judgment and decree passed by the learned Sub- Judge-II, Jianjharpur, is bad in law and facts.
- iii) For that the judgment and decree passed by the learned Sub Judge II, Jhanjharpur, is against the weight of evidence on records.
- iv) For the learned Sub- Judge-II, Jhanjharpur, has misconstrued the law and facts involved in the suit.
- v) For that the court below has not properly framed the issues.
- vi) For that the court below ought to have framed the issue whether the story of exchange as made out by the defendant 2nd party is correct?
- vii) For that the court below has not properly considered the oral and documentary evidences available on the record.
- viii) For that the court below has not properly considered and discussed the Yaddasta dated 17.5.1910 (Ext.-A) filed on behalf of the defendant 2nd party, and the Revisional Survey khatian.
- ix) For that the court below ought to have taken in to account that there is presumption of correctness of the final publication of

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the khatian.

x) For that the court below ought to have held that Musaharco and Jhingur orally sold their lands to Ganeshi Mahto in the year 1905, and after receiving the consideration amount delivered possession to Ganeshi Mahto, and subsequently executed Yddasta in the year 1910.

xi) For that the court below ought to have held that there is no unity of title or possession between the plaintiffs and the defendants in respect of sch.1 of the plaint.

xii) For that the court below ought to have held that the story of partition as alleged by the defendant 2nd party is correct and the plaintiff is not entitled for the decree of partition in respect of sch.1 of the plaint.

xiii) For that the court below ought to have held that the story of exchange as alleged by defendant is correct.

xiv) For that the judgment and decree has been passed against dead person.

xv) For that Hriday Mahto who was plaintiff no.1 died in the year 2001. No substitution petition was filed, and the name of Hriday Mahto remained in the column of plaintiff, and in the decree.

xvi) For that Bachhelal Mahto defendant no.5 died, and his daughters were made defendants in the suit but summon was not issued against them.

xvii) For that whether issuing summon against the substituted defendants the court below passed the judgment and decree which is illegal, and on this ground alone the judgment and decree is fit to be set aside.

xviii) For that the judgment and decree is against the dead

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person and as such the judgment and decree is nullity and fit to be set aside.

FINDINGS :

11. It would be apt to refer the oral evidences adduced on behalf of the both parties, before considering the points raised in this appeal. In order to substantiate their case plaintiff/respondent no-1 have examined altogether (04) witnesses, which are, P.W.I- Ram Suchit Mahto (plaintiff), 2-Agam Lal Yadav, 3-Kailu Mukhiya, and 4-Yogendra Yadav. Beside oral evidences the following documentary evidence has been brought on the record on behalf of the plaintiff:

a) **Exhibit-1**- Certified copy of "Raj kagjat" issued from the office of Maharaj Darbhanga.

12. On the other side defendant had examined altogether (4) witnesses, D.W. 1-Achhe Lal Mahto (defendant 2nd set) D.W 2- Sonai Mansoori, D.W 3-Satya Narayan Yadav and D.W 4-Bulbul Yadav. Documentary evidence adduced on behalf of defendant are:-

(i) **Exhibit-A**-Original unregistered Kewala of 1910(Yaddast)

(ii) **Exhibit-B, B/1 & B/2** - Lagan receipt of Maharaj Darbhanga & of Bihar Govt.

(iii) **Exhibit- C, & C/1** – Copy of Raiyatı khatıyan in six pages.

(iv) **Exhibit-D** - Certified copy of Khatıyan.

13. Now, in the light of facts of this suit, findings given in the impugned Judgment and order, argument advanced by the learned counsel of both sides, following points arises for consideration to this court.

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POINT FOR DETERMINATION

14. In view of the above contentions of the parties, the points arises for consideration in this appeal are as to :

- A. Whether there is unity of title and possession between the parties in respect of the suit lands?
- B. Whether the plaintiffs entitled for 1/3rd share in schedule-1 of the plaint?

15. After perusal of the entire suit record, along with lower court record, as well as evidences adduced on the record, by both parties, this Court is of this definite opinion that on the basis of the evidences available on record, the point as framed aforesaid by this Appellate Court, can be decided, and there is no further requirement of additional evidence on the said points.

DISCUSSION, DECISION AND REASONS FOR THE DECISION

*** Point A & B:**

16. Since, both these issues are cardinal issues, and interrelated, hence taken up for discussion. In the instant case genealogical table stated in plaint is an admitted fact. Law is well settled that parties governed by Mitakshra school of Hindu Law, there is presumption of jointness, and the burden to prove prior partition is on the person who asserts it. As per plaint Budhan Sudi was the ancestor of plaintiffs, and of the defendants 1st set. Soukhi Mahto was the ancestor of the defendants 2nd set. Meaning thereby that plaintiffs, and defendant 1st set belong to one family, and defendant 2nd set belong to other family. There is no legal

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presumption of jointness between members of different families. Even among members of the same larger Hindu family, only the entire family or an entire branch can constitute a corporate unit under Hindu Law. Mere relationship or joint acquisition by persons from different branches does not create a joint Hindu family, or joint family property. The burden lies on the party asserting such jointness. Meaning thereby that it is plaintiff who had to prove jointness, and onus to prove jointness of schedule I property lies on plaintiffs. These proposition can be seen in the light of order passed in **Appalaswami V/s Suryanarayanamurti(AIR 1947 PC 189)**, **Bahgwan Dayal(dead) by Lrs V/S Mst. Reoti Devi (AIR 1962 SC 287)**, and others. Here it is also an admitted fact that in cadestral survey Khatiyani two shares in name of Musharu Sudi and Jhingur Sudi (plaintiff & defendant 1st set), and 1/3rd share in the name of Ganeshi, Ramji, and Shiva, ie sons of Soukhi Mahto. So clearly the khatiyani had depicted share as per their purchase of the suit land, or the consideration money paid for purchase of the suit land. It can also be said that khatiyani showing share is based on actual possession by the parties in the suit. Here the plaintiffs evidence is taken up for discussion. Plaintiffs witnesses ie PW1 to PW3 had corroborated the case of plaintiffs, and had stated that all the properties in schedule-I of plaint are in jointness between plaintiffs, defendant 1st set, and defendant 2nd set. But there is no explanation for jointness of properties between two families having different ancestors. Even PW2 and PW3 in para-9 and 4 of their respective deposition had stated that between parties in the suit, partition has not taken place in right way. Meaning thereby that partition has taken place, but the same is not in correct way. Further, plaintiffs on their behalf have adduced certified copy of

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"Raj kagjat' issued from the office of Maharaj Darbhanga, which is exhibit-1. It also shows 2 share in name of ancestors of plaintiffs, and defendant 1st set, and one share of defendant 1st share. Meaning thereby that partition of share in total land in the said document is mentioned. On the other hand defendant 2nd set had adduced Yaadast kewala, and rent receipts, which are exhibit-A, B series, and C series. Here it is also important to mention that plaintiffs have denied Yadast batwara which is exhibit-A. Onus was on plaintiffs to prove the document as not genuine. But plaintiffs have failed to do so. That yadaast batwaara and rent receipts are corroborative piece of evidence regarding partition. It shows possession of parties on land as per share allotted to them in partition. Hon'ble Apex Court in **Roshan Singh V/S Zile Singh AIR 1988 SC 881** had held that a partition can be oral. If the Yaadast Batwara merely records an earlier oral partition, it is only a memorandum and does not require registration. It is admissible in evidence to prove the earlier partition. Further, B series, and C series, adduced on behalf of defendant 2nd set shows exclusive possession on basis of partition. Even exhibit-D which is khatiyani shows 2/3rd share of plaintiffs, and 1/3rd share of defendant 2nd set. There is presumption of correctness of final publication of khatiyani. This is an admitted fact by both the parties. From this document also share allotted to each parties can be derived. Here rent receipts exhibited on behalf of defendant 2nd set shows different khesras in name of different persons. Meaning thereby raising serious question regarding the jointness of property. Defendant 2nd set had pleaded in their written statement regarding the alleged exchange, and sale of the lands mentioned in schedule of lands in plaint, and incorrect kheseras being mentioned in the

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schedule. Further, had stated that purchasers like Birendra Kumar, Vinay kr. Pathak, Chhedi Singh and Laxmi, were not made party in the suit, as they were necessary parties in the suit. Here onus was on defendant 2nd set to prove the same. But defendant 2nd set have failed to produce any document to raise any primary presumption regarding their pleading. In Civil cases burden to prove its case lies on plaintiff, and the plaintiff cannot take the benefit of weaknesses in defendant case. Also, civil cases are decided on basis of preponderance of probability. But evidence on record shows there is no probability of jointness. So plaintiffs have failed to show unity of title or unity of possession regarding the land mentioned in schedule-I of land. Hence, plaintiffs are not entitled for 1/3rd share in schedule-1 of the plaint.

17. Hence, points in determination in instant appeal is decided against the plaintiffs/respondent no-1.

18. From the facts and circumstances of the suit, as well evidences on record, and in terms of provisions of law, it is apparent that impugned judgment and decree deserved to be set aside. Point A, and B in contention are decided against the respondents. So I do find perversity or arbitrariness in the decision arrived at by the learned court below. The judgment and decree passed by Ld. Lower Court, is set aside, as there is illegality in decreeing of suit.

Accordingly, it is hereby ordered that,

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ORDER

In view of the conclusions arrived above while deciding the points raised in this appeal, this instant appeal is hereby allowed with contest, and impugned judgment dated 12.06.2015, and decree dated 24.06.2015 passed by Ld. Sub Judge-II, Jhanjharpur, in Partition Suit No. 20 of 1998, is set aside. But in the circumstances of this case, there is no order as to cost. Let the decree be prepared, accordingly.

Send back the L.C.R. along with a copy of the judgment to the learned trial Court.

Corrected and pronounced by me in open court.

(Abhishek Ranjan)

District Judge-II

Jhanjharpur

Date-03/07/2026

(Abhishek Ranjan)

District Judge-II

Jhanjharpur

Dated-03/07/2026