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Court of the Sub Judge Dhamdaha, Purnea
Title Suit No.- 95/2009
Majijul Haque & Others Vrs. Mostt. Sajida Khatoon & Others

Majijul Haque and others----- Plaintiffs

Versus

Mostt. Sajida Khatoon and others----- Defendants.

Ld. Advocate for plaintiff: - Sri Mani Bhushan Kumar

Ld. Advocate for defendant: - Sri Navin Kumar Thakur

Date:-14-02-2023

JUDGMENT

1. Plaintiffs have been filed this suit for partition for declaration of $\frac{1}{2}$ share of the plaintiffs in the suit land.
2. The case of the plaintiff is that the genealogical table mentioned at the foot of the plaint shows the relationship between the parties. And Late Sk. Fakir Mohammad, S/o- Late Noor Mohammad and Late Syed Abdul Sahid, S/o- Late Abdul Jabbar had acquired the landed properties measuring an area of 18.60 acres situated at Mouza- Rangpura, and orally they had separated their landed properties half an area of 9.30 acre out of an area 18.60 and rest area 9.30 acres had been fallen into the share of the late Syed Abdul Sahid and Syed Wazul Haque which is the subject matter of this suit in the survey operation record of right has been prepared jointly although the late Sk. Fakir Mohammad was separated in all respect with the plaintiff's ancestors & hence his legal heirs have not been made parties in this suit. The present plaintiffs and defendants are the legal heirs of Late Syed Abdul Sahid & Syed Wazul Haque. And Sk. Jabbar died leaving behind his two sons namely Syed Sahid and Syed Wazul. And Syed Sahid is being a elder son, he started is mismanaged the produce of the joint family properties and hence they separated in cultivation for the sake of cultivation but the properties were never partitioned by metes and bounds. And in the survey operation, record of right has been prepared jointly in the name of Abdul Sahid and Syed Wazul with separate kabjabari in the R.S. khatian. And much after survey operation both brothers namely Syed Sahid and Syed Wazul died in joint possession leaving behind their legal heirs as plaintiffs and



defendants. And the present plaintiffs and defendants have inherited the properties in respect to $\frac{1}{2}$ and $\frac{1}{2}$ share plaintiffs and defendants of their father's share. And the plaintiffs demanded partition by metes and bounds from the defendants to partition the suit lands by metes and bounds on the ground that the defendants came in possession of more lands then plaintiffs on the basis of kabjabari. And on the refusal of the partition by defendants the serious cloud has been caste upon the plaintiffs share and hence the plaintiffs have no alternative than to file the suit for partition. And the plaintiffs filed a partition before the permanent Lok Adalat to partition the suit lands vide pre-litigation case no. 3/05 but same has been dismissed by the chairman of the Lok Adalat with a direction to file in the proper court vide order Dt. 18-03-2009. And the cause of action arose within the jurisdiction of this court on several dates of demands lastly on 15-11-2005 when the defendants have flatly refused to partition the suit land and also directed by the Lok Adalat Dt. 18-03-2009. And the plaintiffs value the suit properties Rs. 84,600/- and Rs. 100/- for injunction purpose for/of the jurisdiction and court fee, but the suit is purely a partition suit a fixed court fee of Rs 250/- is being paid and seek judgement and decree for the following. Plaintiffs have been filed this suit for following reliefs:-



- A. That a preliminary decree of the plaintiff's share $\frac{1}{2}$ in the properties be passed in favour of the plaintiffs as against the defendants
- B. That after passing the preliminary decree, defendants may be directed to partition the suit properties by metes and bounds within the fixed period by the court failing which a pleader commissioner may be appointed to prepare separate Takhta with respect to $\frac{1}{2}$ share in favour of the plaintiffs as against the defendants.
- C. That a decree for cost may be awarded in favour of the plaintiffs.
- D. That any other relief or reliefs to which the plaintiffs be found entitled in the opinion of the court.

3. The defendant Sadar Ali filed his written statement and stated that all lands sought for partition in prelitigation suit No. 3 of 2005 are not noted in the present partition suit. And the suit as framed is not maintainable. And the plaintiffs have no cause of action to file suit since father of both parties are separate since 1940, by oral amicable partition between named Abdul Sahid and Sayed Wazul Haue father of the plaintiffs. And the suit suffers from the defect of parties as daughter of late Wazul Haque, are not parties. That the plaintiffs have already sold their respective share to the different persons, who are not made parties. And the suit is time barred as late Abdul Sahid and Wazul Haque were separate in mess and properties since 1940 and in revisional survey 1958 khatian noted share of all the three persons in column no. 7 and all the parties abided by the entries of share in the khatian, After survey late Wazul Haque filed a Title suit no.- 370 of 1965 disposed on 21-11-1970. Name of Parties- Sayad Wazul Haue, S/o- Abdul Zabbar Verses Sayad Sahid Ali father of defendant khata no. 517, plot no. 3415/4481 are of 18 dec. which was decreed in favour of Wazul Haque as his deficit share. And this suit is therefore barred by the doctrine of resjudicate also after 1970 title suit no. 370 of 1965. That Wazul Haque was satisfied with his share as entered Kabajabari in 1958 R.S. khatian except 0.18 decimals for which he obtained a decree vide Title suit no. 370 of 1965 against Sahid in 1970. And in the Dynastical Chart the daughter of Late Wazul Haque named sums area, and Nargis Ara are not made parties in the column of the plaintiff and therefore the suit cannot proceed. And it is admitted in Para no. 3 of the plaint that the parties were separate since before survey 1958, but the year of separation is not mentioned which is 1940. And the defendants submit that late Wazul Haque and Abdul Sahid were separate in mess properties, since 1940 and in token of separation the Revisional authorities record the share of each sharer in accordance with their proper share which is under peaceful enjoyment of both parties. And the land acquisition officer, Purnia case no. 15 of 1966 Kosi project for canal purpose acquired lands in Mouja- Rangpura, Ps.-



Dhamdaha, Thana No.- 13, Dist- Purnia and paid compensation to Abdul Sahid without objection Wazul Haque. And the plaintiffs have sought for partition of land in suit sold by them, as noted above and therefore as framed are not maintainable without making the purchaser as party. Therefore that the suit may be dismissed.

4. Defendant No.-1 and 1(a) Most. Sajida and Bibi Amiruddin Nisha @ Lukia filed written statement and stated that the instant suit as framed and filed by the plaintiffs is not maintainable both in facts and law. And the plaintiffs have got absolutely no cause of action to file this suit for partition against these defendants. And the suit is bad for defects of necessary parties. That the daughters of Late Syed Wazul Haque are necessary party to this suit. And the grand father of these defendants and father of the present plaintiffs were separate since 1940 with all respect by way of amicable oral settlement (partition) reached between Abdul Sahid and Syed Wazul Haque. That the aforesaid ancestor of the plaintiffs and defendants were in exclusive possession over their respective share of land. That there was not joint family nor any joint family property. And in the revisional survey kahtian which was published in the year 1958 separate kabjabari of all the co-sharers was recorded in the column no 7 according to their respective share without any objection. However, Syed Wazul Haque being dis-satisfied with the kabjabari so recorded in R.S. Khatian filed a T.S. No. 370/1965 u/s 108 of B.T. Act against the Syed Abdul Sahid with regard to the land of khata no. 517 bearing plot no. 3415/4484 Area 18 dec. and Wazul Haque got his deficit share corrected in khatian vide order Dt. 21-11-1970. Thus Wazul Hque was satisfied with his share as recorded by way of kabjabari in the R.S. khatian except 18 dec. for which Wazul Haque obtained a decree in T.S. 370/1965 against Syed Abdul Sahid hence the present suit for partition against the said kabjabari in R.S. Khatian is hit by constructive resjudicata. And the land of Mouza- Rangpura appertains to khata no. 942 bearing plot no. 2217 measuring an area 1.38 acre was the absolute property of Late Sadir Ali and Late Sadir Ali was absolute owner of the said property and after his



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demise these defendants and legal heirs of Late Sadir Ali inherited the same and they are in exclusive possession over the same but the plaintiffs have wrongly made the said land the subject matter of suit. And the allegations made in Para 8 and 9 of the plaint are all false, baseless and concocted and made purposely to make out a false case. That as there is no joint family property hence question of demand of partition by the plaintiffs from the defendants with respect to the suit land does not arise. And the allegation made by the plaintiffs in Para 10 of the plaint are substantially correct hence not denied. However, it is hereby stated that all the lands involved in pre-litigation case the subject matter of this suit. And the cause of action as given in Para 11 of the plaint is myth. And the plaintiffs are not entitled to get any reliefs. And save and except what has been expressly admitted by these defendants no other statements of the plaintiffs in the plaint are admitted and the plaintiffs are put to the strictest proof of the same. And the suit of the plaintiffs is fit to be dismissed with compensatory cost to these defendants.

5. Defendant No.-8 Shamsara Khatoon and defendant no.-9 Nargis Khatoon filed written statement and stated that the suit as framed and filed by the plaintiffs is not maintainable both in law as well as on fact. And the plaintiffs have got no cause of action to file this suit. And the value of the suit land not properly given in this instant suit. And the G.T. given in the plaint after relief is not correct as these defendants not shown as heirs of Wazul Haque. And the fact given in Para no. 2 is fully admitted by these defendants. And the suit land never partitioned in between the plaintiffs and defendant no. 1 to 7 and the these defendant no. 8 and 9 sold their shared interest from the suit land and no shared of the suit land and no shared of the to these defendants remained in the suit land as their brothers (Plaintiff) and defendant no. 1 to 7 interest is involved in this suit land. And the relief demanded by the plaintiffs about their half share in the suit land is just and proper and there is need of partition in between the plaintiffs and defendant no. 1 to 7 as these defendants no. 8 and 9 previously sold their shared as no share is remained in this suit land.



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6. There are following issues have been settled by the court i.e
- Whether the suit as frame is maintainable?
 - Whether the plaintiffs have valid cause of action to file the suit?
 - Whether the suit suffers from the defects of non-joinder and mis-joinder of necessary parties?
 - Whether the suit is barred by law of limitation and principle of res judicata?
 - Whether the suit plaintiffs are entitled for $\frac{1}{2}$ in the suit property?
 - Whether the suit land is the joint family property of plaintiffs and defendants or the suit land has been partitioned by metes and bounds between the plaintiffs and defendants?
 - Whether the plaintiffs are entitled for relief or reliefs or other relief or reliefs?

7. The plaintiffs have been adduced altogether 5 witnesses i.e

P.W-1:- Shamshul Mansuri,

P.W-2:- Imajul Haque,

P.W-3:- Junaid Alam,

P.W-4:- Md. Mahurram, and

P.W-5:- Shamim Ahmad.

8. The defendants have been adduced altogether 9 witnesses i.e

D.W-1:- Amir Alam,

D.W-2:- Saiyyad Faridul Haque,

D.W-3:- Saiyyad Kalimuddin,

D.W-4:- Saiyyad Parwej Alam,

D.W-5:- Md. Anjar,

D.W-6:- Shabbir Ahmad,

D.W-7:- Amirrun Nisha,

D.W-8:- Md. Kallimuddin, and

D.W-9:- Safar Aazad

9. The plaintiffs have been produced following documentary evidence for establishment of his case i.e

Exbt-1:- Certified Copy of Khatiyan of Khata No.517

Exbt-2:- Certified Copy of Khatiyan of khata No.-942



10. The defendants have been produced following documentary evidence i.e

Exbt.-A:- Rent Receipt bearing no. 3365250 dated 31-03-2003

Exbt.-A/1:- Rent Receipt No.-3365251 dated 31-03-2003

Exbt.-B:- Certified Copy of R.S Khatian of khata No.- 515 and 516

Exbt.-B/1:- Certified Copy of Khatian of khata No.-462

Exbt.-C:- Certified Copy of Order of case No.-370/58 passed from Settlement office Purnea.

Exbt.-D:- Certified Copy of order dated 31-08-2001 Case No.1073/1993 Court of Munsif Sadar Purnea.

Exbt.-E:- Certified Copy of Sale Deed No.-2954/1991

Decision with Reason

11. Issue No.-5 & 6:-

In this case issue no. 5 and 6 are interrelated and these two issues are the main issues to decide the fate of this case. Therefore I take these issue no. 5 and 6 together for consideration. In support of its case the plaintiff has adduced the certified copy of khatian of khata no. 517 and khata no. 942 which are marked as exhibit 1 and 1/a. On perusal of both exhibit

1 and 2, I find that the suit property mentioned in schedule of the plaint exist in the name of Wazul Haque and Saiyyad Abdul Sahid.

In support of its case the plaintiffs have adduced altogether 5 witnesses in which P.W. 1 has supported the fact of plaintiff. P.W.-

2 (plaintiff no. 5) Emajul Haque has supported the case of plaintiff.

During cross examination he stated that his father and his uncle sold the part of suit properties as per their need. P.W. 3 Junaid Alam, he is an independent witness. P.W. 4 Md. Muharram, during cross examination he did not disclose the description of suit properties. P.W. 5 Samim Ahamad (Plaintiff No.-2) has supported the case of plaintiffs, although during cross examination he has fully described the description of suit property. During cross examination he also denied the oral partition of the suit property. Although he has admitted that both his father and his uncle sold the part of suit property as per their need. On the other hand by



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filing rent receipts Dt. 31-03-2003 claimed the suit property to be defendants. But on rebuttal of Exhibit 1 and 1/a, defendants did not file any cheat of paper which shows that the suit property mentioned. In the plaint as well as in Exhibit 1 and 1/a have been separately recorded in the name of plaintiffs and defendants. Although Exhibit C and D does not create any affect to this suit. However to claim the suit property defendants have adduced altogether 9 witnesses in which D.W.- 1 stated that the suit property belongs to both the parties to the suit and he also submitted that the suit property is still in jointness as he did not file any written statement in this case as a party to the suit.

D.W. 2 Saiyad Faridul Haque submitted that after survey the father of plaintiffs and uncle of plaintiffs have partitioned the suit properties. Although during cross examination in Para 8 he admitted that there was oral partition between the ancestors of parties to the suit and written partition never took place. Although in Para 11 he admitted that both parties to the suit sold the part of suit property.

D.W.-3 Saiyyad Kalimmuddin, who is defendant no. 3 has submitted that before 1940 the ancestor of plaintiff and defendant have partitioned the suit property. Although he also admitted that several transaction have been taken place as per need of plaintiffs and defendants. During cross examination he admitted that over the suit property there are joint shares of the legal heirs of Wazul Haque and Md. Sahid, although he is party to the suit but did not file any written statement in his claim. D.W. 4 has denied the claim of plaintiff, although during his cross examination in Para 18 he stated that the rest 9 Acre land is still in the name of Abdul Sahid and Wazul Haque. During cross examination in Para 19 he admitted that there was never written partition between the parties to the suit. D.W. 5 Md. Anjar during examination in chief supported the case of defendants. Although During cross examination in Para 17 submitted that he did not see any cheat of paper regarding the suit properties. Again in Para 18, he stated that he got no knowledge about the



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partition. D.W. 6 Sabbir Ahmad has supported the case of defendants. Although during cross examination he stated that before survey partition has took place between Abdul Sahid and Wazul Haque in Para 23 has stated that there was written partition between the parties. D.W. 7 Amirun Nisha, who is defendant no. 1 of the case during examination in chief in Para 10 she has stated that before survey partition took place between Abdul Sahid and Wazul Haque. In Para 17 in her cross examination she admitted that the khatian of suit properties is still in the name of Wazul Haque and Shahid Ali, she also admitted that both parties to the suit have sold the suit property as per there need. D.W. 8 Kalimuddin, during cross examination he refused to disclose the description of suit property. D.W.- 9, who was a formal witness.

On perusal of whole evidence as well as the pleading of both the parties it is claimed by the defendants that there was a partitioned between Abdul Sahid and Wazul Haque before survey while going through Exbt.- 1 and 1/a, which still stands in the name of Wazul Haque and Abdul Sahid. The document filed by defendants does not show that any written partition took place between the ancestor of plaintiffs and defendants. Although both parties have sold the part of suit property to different reason as per their need and this property has been excluded from the suit property mentioned in the plaint by way of amendment. Considering above fact and circumstances the suit property mentioned in the plaint is still in jointness and plaintiff are entitle for a ½ share in the suit property.

Accordingly issue no. 5 and 6 is decided in favour of plaintiffs.

12. Issue No.-1 & 2:-

In this case the main issue has already been decided in favour of plaintiffs so this suit is maintainable as well as plaintiffs have valid cause of action to file the suit accordingly this issues no. 1 and 2 is decided in favour of plaintiffs.



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13. Issue no. 3:-

In this case defendants have raised this issue that the purchasers have not been made parties to the suit. In this regard it is admitted fact that ancestors of both the parties to the suit have sold part of suit property to different parties to this suit as per there need but the suit properties mentioned in the plaint is still in jointness and the purchasers need not to be added as parties to the suit as this is a suit for partition. According this issue is decided in favour of plaintiff.

14. Issue no. 7

This issue is not pressed by both the parties.

Accordingly it is declared that plaintiffs have got half share in the suit property mentioned in the schedule of the plaint and the suit property is still in jointness.

Order

The suit is decreed on contest but without cost.



Shyamal Kumar
(Shyamal Kumar)

Sub Judge,
Dhamdaha, Purnea
Dated: 14-02-2023

The Judgement has been written (typed), corrected, dated, signed, sealed and pronounced by me in open court today i.e 14th February of 2023.



Shyamal Kumar
(Shyamal Kumar)

Sub Judge,
Dhamdaha, Purnea
Dated: 14-02-2023