

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Appellate Jurisdiction)
S.A. No. 39 of 2005

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Md. Fakruddin & Others **Defendants/Respondents/Appellants**
Versus

Md. Tahir Mian & Others **Plaintiffs/Appellants/Respondents**

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CORAM: HON'BLE MR. JUSTICE KAILASH PRASAD DEO
(Through : Video Conferencing)

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For the Appellants : Mr. Lalit Kumar Lal, Advocate.
Mr. Amar Kumar Sinha, Advocate.
For the Respondent No. 10 : Mr. Rajesh Kumar, Advocate.

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16/Dated: 10/12/2020

Heard, learned counsel for the appellants, Mr. Lalit Kumar Lal assisted by learned counsel Mr. Amar Kumar Sinha.

2. Learned counsel for the appellants has submitted that the second appeal has been preferred against the reversal of judgment and decree passed by the court below.

3. Learned counsel for the appellants has submitted that the original plaintiff namely, Mosst. Jubeda, wife of Late Nazir Mian filed Partition Suit No. 06/1981, which was dismissed in terms of judgment dated 28.02.1995 and decree signed on 13.03.1995 by learned Sub-Judge-III, Gumla. The plaintiff, being the appellant, before the learned lower appellate court preferred an appeal before the District Judge, Gumla vide Title Appeal No. 21/1995, which was allowed by the learned Additional District & Sessions Judge, Fast Track Court No. -I, Gumla vide judgment dated 15.01.2005 and decree signed on 02.02.2005.

4. Learned counsel for the appellants has submitted that the facts of the case are as under:-

The plaintiff filed suit for half of the share in Plot No. 3038, which comprises of 47 decimals and Plot No. 3039, which comprises of 1.34 acres under Khata No. 123, total area of both the plots are 1.81 acres of Village and P.S. - Sisai, District – Gumla.

5. Learned counsel for the appellants has submitted that the land was recorded jointly in the name of Sheikh Alabux and Sheikh Karim, both sons of Sheikh Bahura in the revisional survey operation, but at that time, the land was cultivated by one Sheikh Nayamat as sikmidar and new Khata was opened in the name of Sikmidar as Sikmi Khata No. 8. Plaintiff – Mosst. Jubeda is the wife of Sheikh Nazir Mian, who is son of Sheikh Neyamat.

6. Learned counsel for the appellants has submitted that Sikmidar has no right of inheritance, as such, after death of Sikmidar Sheikh Nayamat, in the year 1963, the land never inherited by his three sons namely, Sheikh Kadir Mian, Sheikh Nazir and Sheikh Mahiuddin @ Haji Mahiuddin.

7. Learned counsel for the appellants has submitted that the right to claim partition by the plaintiff / appellant / respondent is not by way of inheritance, rather as per the fact of the case, Sheikh Alabux, alone transferred the joint property standing jointly in his name as well as in the name of his brother Sheikh Karim to one Sheikh Nazir Ali, son of Nayamat in the year 1962 with regard to Plot No. 3039, Area – 0.35 acres out of 1.34 acres.

8. Learned counsel for the appellants has further submitted that after sell of part of the land of Plot No. 3039 Area – 0.35 acres in the year 1962 to Sheikh Nazir Ali, son of Sheikh Nayamat, the family of Sheikh Alabux and Sheikh Karim remains with 47 decimals of land in Plot No. 3028 and 0.99 acres in Plot No. 3039, meaning thereby 1.46 acres remains with the family.

9. Learned counsel for the appellants has further submitted that Sheikh Alabux again sold entire left over land i.e. 1.46 acres (47 decimals of Plot No. 3038 and 0.99 acre of Plot No. 3039) to one Abdul Jabbar vide sale deed dated 26.05.1962. Abdul Jabbar again sold the property to Sk. Mohiuddin, third son of Sheikh Nayamat vide registered sale deed in the year 1972.

10. Learned counsel for the appellants has submitted that a suit was filed by Halima Khatoon, sister of Sheikh Nazir and Sheikh Mohiuddin for partition of property vide Partition Suit No. 126/1969. The suit was dismissed holding that the suit land belongs to personal property of

Mohiuddin, who is defendant no. 3 in the suit, but admittedly sons and the legal heirs of Sheikh Karim namely, Sheikh Rahamatulla, Sheikh Rahim and Sheikh Hakim were never impleaded as party in the Title Suit No. 126/1969.

11. Learned counsel for the appellants has submitted that now instead of sister of Sheikh Nazir, Sheikh Mohiuddin or Sheikh Kadir Mian, wife of Sheikh Nazir, Jubeda is plaintiff of original Partition Suit No. 06/1981 which was dismissed, where she claimed half of the share in Plot No. 3038 & 3039 of Khata No. 123, total area – 1.81 acres.

12. Learned counsel for the appellants has submitted that now wife of Sheikh Nazir, Most. Jubeda filed Partition Suit No. 06/1981 before the Court of Sub-Judge for having share of 87½ decimals in Plot No. 3038 & 3039 on the basis of sale deed executed by Sheikh Rahamatulla son of Sheikh Karim.

13. Learned counsel for the appellants has submitted that the learned Sub-Judge-III, Gumla dismissed the suit on the ground that Title Suit No. 126/1969 has already declared the suit property with respect to the area of 1.46 acres i.e. 45 decimals of Plot No. 3038 and 1.01 acres of Plot No. 3039 in favour of Sheikh Mohiuddin, as such subsequent claim by Most. Jubeda, wife of Sheikh Nazir on the basis of sale deed executed by son of Sheikh Karim namely, Sheikh Rahamatulla or Sheikh Rahim or Sheikh Hkum.

14. Learned counsel for the appellants has submitted that admittedly in none of the proceeding i.e. Title Suit No. 126/1969 and the present Partition Suit No. 06/1981 or its appeal, Sheikh Karim or his sons Sheikh Rahamatulla, Sheikh Rahim and Sheikh Hakim have never been impleaded as party nor Sheikh Alabux or its legal heirs have been impleaded as party, but a right has accrued in favour of the defendants of the Partition Suit No. 06/1981, who are appellants before this Court as they are claiming their right on the basis of sale deed which have never been challenged.

15. Learned counsel for the appellants has further submitted that the plaintiff namely, Most. Jubeda Khatoon sold part of her land of 13½ decimals of Plot No. 3038 and Plot No. 3039 of Khata No. 123 to the new

purchaser namely, Haji Afzal Hussain on 02.05.2002 and they have filed I.A. 2182/2005 for intervention which was allowed by Coordinate Bench of this Court in terms of Order No. 4 dated 09.03.2006, but admittedly the Intervener cannot claim more than what his vendor has legal right.

16. Learned counsel for the appellants has submitted that since it is a case of reversal, as such, the appeal may be admitted.

17. The appeal is admitted on the following substantial question of law:-

- (i) *Whether in absence of Sheikh Alabux or Sheikh Karim or their legal heirs namely, Sheikh Rahamatulla, Sheikh Rahim and Sheikh Hakim, the finding recorded by both the courts below can be accepted so far their land?*
- (ii) *Whether it is not a collusive title suit to grab the property of Sheikh Alabux and Sheikh Karim by the other persons who have no legal right, title and interest ?*
- (iii) *Whether the suit itself was fit to be dismissed for non-joinder of the necessary parties ?*
- (iv) *Whether the learned appellate court below erred in reversing the findings of the learned trial court on adverse possession and res judicata without meeting the reasonings of the trial court ?*
- (v) *Whether the sale deed in favour of Abdul Jabbar and Sheikh Mohiuddin, which was never challenged by the plaintiff till date, learned appellate court below erred in decreeing the partition suit in favour of the plaintiff Most. Jubeda ?*
- (vi) *Parties are at liberty to file any other substantial question of law at the time of hearing of the appeal.*

18. L.C.R. has already been received by this Court, as such, let notice be issued to all the respondents under both processes i.e. under registered cover with A/D as well as under ordinary process, for which requisites etc. must be filed within 30 days after the physical court starts.

Put up this case after service of notice.

(Kailash Prasad Deo, J.)