

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Second Appeal No.47 of 2011

[Against the judgment and decree dated 19.02.2011, decree signed on 25.02.2011 passed in Title (P) Appeal No.27 of 2009 by learned District Judge, Sahibganj whereby and whereunder the judgment and decree passed by learned trial court in T.S. No.34 of 2006 has been confirmed]

1 Devendra Nath Pramanick (Thakur) son of late Chhatu Thakur, resident of Pokharia, P.S.-Borio (Jirwabari, P.O. Borio, Sub-division & District-Sahibganj

.... Plaintiff/ Appellant

Versus

1. Ramesh Chandra Pramanick, son of Chhatu Lal Pramanick Thakur, resident of village-Pokharia, P.O.-Borio, P.S.-Borio (Jirwabari), Sub-division & District-Sahibganj

.... Defendant/ Respondent

2. Shankar Mandal, son of Mandal, resident of Kishan Prasad, P.O.-Makhmalpur, P.S.-Sahibganj(M), District-Sahibganj

3. Sakaldip Mandal, son of late Mahendra Prasad Mandal, resident of-Pokharia, P.O. Borio, P.S.-Borio (J), District-Sahibganj

4. Bigan Ram son of late Rambriksh Ram, resident of-Pokharia, P.O.-Borio, P.S.-Borio (J), District-Sahibganj

5. Ramkhelawan Sah, son of late Sukar Sah, resident of-Borio (J), P.O. Borio, P.S.-Borio, District-Sahibganj

6. Awadesh Yadav, son of late Rammillan Yadav, resident of-Pokharia, P.O.-Borio, P.S. Borio(J), District-Sahibganj

7. Manti Devi wife of Ramprit Yadav, resident of-Pokharia, P.O.-Borio, P.S.-Borio(J), District-Sahibganj

8.Suwendra Prasad Mandal @ Suwendra Pd. Mandal, son of late Basudeo Prasad Mandal, resident of Petarwar, Ranchi, P.O. & P.S.-Petarwar, posted as Range Officer, Dist. Ranchi

9. Rasbehari Yadav, son of – Rupnarayan Yadav, resident of – Mahadeo Thakur, P.O.-Sadipur, P.S.-Pirpainti colony, Bhagalpur Performa Defendants/ Respondents

PRESENT

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA
JUDGMENT

For the Appellant : Mr. Rajeeva Sharma, Sr. Advocate
Mr. Om Prakash, Advocate
Mr. Sunil Kumar Mahto, Advocate
Mr. Ritesh Kumar, Advocate
Ms. M. Khatoon, Advocate
For Resp. Nos.1, 2, 4 & 5 : Mr. Birendra Kumar, Advocate
Mr. Swami Nath Pd. Roy, Advocate
For Resp. Nos.6 & 7 : Mr. Aman Shekhar, Advocate

CAV On 02/07/2025

Pronounced On 11/07/2025

1. Heard the arguments of learned counsel for the appellant and learned counsel for the respondents.
2. The instant second appeal is preferred against the judgment and decree dated 19.02.2011 and decree signed on 25.02.2011 passed by learned District Judge, Sahibganj in Title (P) Appeal No.27 of 2009 confirming the judgment dated 25.11.2008 and decree dated 17.12.2008 passed by learned Subordinate Judge-III, Sahibganj in Title Partition Suit No.34 of 2006, whereby and whereunder the partition suit of the plaintiff was decreed partly and the learned trial court as well as learned appellate court did not found the

land pertaining to Jamabandi Nos.43, 60, 114, 117 and 124 to be joint property of the plaintiff and defendant No.1 inherited from their father, Chhatu Lal Thakur.

3. The appellant/plaintiff instituted the partition suit against his own brother (the principal defendant No.1) and others for partition of the joint family properties mentioned in Scheduled A to the plaint comprising Jamabandi Nos.43, 45, 60, 92, 114, 117, 124, 180, 257 and 280 situated at Mauza Pokharia within P.S. Borio(J), District-Sahibganj. Learned trial court after discussing in detail the entire oral as well as documentary evidence i.e. record of rights(khatiyani) arrived at conclusion that the land pertaining to J.B. Nos. 43, 60, 114, 117 and 124 has not been proved to be owned by Chhatu Lal Thakur, the father of the plaintiff and principal defendant and cannot be subject matter of partition.

The appellate court in Title (P) Appeal No.27 of 2009 also concurred with the findings of the trial court and concluded that the aforesaid land does not belong to the joint property between the plaintiff and principal defendant. It was further held that properties pertaining to J.B. No.114, Plot Nos.172 and 177 are Khasmahal property, which cannot be sublet or transferred or partitioned without sanction/permission of concerned

Deputy Commissioner of the District. Moreover, no documentary evidence was adduced showing the above lands to be joint property of the plaintiff and principal defendant. Accordingly, the appeal was also dismissed.

4. The present appeal was admitted for hearing vide order dated 01.07.2019 on following substantial questions of law:

(i) *Whether the trial court as well as appellate court have committed illegality in not partitioning the land as contained in Jamabandi No.114 when the defendants themselves had admitted in written statements that the land of Jamabandi No.114 belongs to the plaintiff and defendants and half of the land which falls under the share of the defendants has been sold by him.*

5. Learned counsel for the appellant pressing the above substantial question of law contended that after preparation of preliminary decree, he has filed an application before the concerned trial court under section 152 of C.P.C. for adding the land pertaining to J.B. No.114, which was rejected on the ground that the findings have been recorded on merits showing that the land to be not a joint property. It is further submitted that the principal

defendant in his written statement as well as oral evidence before the court has categorically admitted that the land pertaining to J.B. No.114, Plot Nos.172 and 177 are also joint property inherited from the father and defendant No.1 has sold out his half share, therefore, the remaining half share belongs to the plaintiff/appellant. Therefore, the impugned judgement and decree passed by both the courts below is fit to be set aside allowing this appeal.

6. On the other hand, learned counsel for the respondents has submitted that no documentary evidence has been adduced even the sale deed executed by principal defendant has not been brought on record. Therefore, the concrete findings of both the courts do not require any interference and this appeal is fit to be dismissed.
7. I have gone through the judgment of learned trial court as well as learned first appellate court and found that the both the courts below have recorded reason findings on the basis of evidence adduced by the parties that the land pertaining to J.B. No.114 and some others were not belonging to Chhatu Lal Thakur i.e. the father of the plaintiff and principal defendant No.1. Before the appellate court, the matter was agitated by the appellant in respect of the properties, which has been left from partition due

to not being joint ancestral property of the parties. The appellate court on the basis of re-appreciation of evidence adduced by the parties dismissed the appeal filed by the plaintiff/appellant.

8. It appears that the plaintiff/appellant insists on inclusion of the land pertaining to J.B. No.114, Plot Nos.172 and 177 only on the basis of admission of his brother that he has sold $\frac{1}{2}$ of the share. It is also admitted that the said property belonging to Khasmahal (government land) and the alleged sale deed executed by the brother of the plaintiff/appellant has also not been brought on record. It further appears that mere admission of the principal defendant that he has sold $\frac{1}{2}$ of the share property, which was a joint family property cannot form basis of decree in the suit in respect of the said land for partition.

Learned counsel for the appellant has relied upon a judgment passed by Hon'ble Orissa High Court, Cuttack in *Nirmal Chandra Panigrahi & Ors. Vs. State of Odisha and Ors.*, passed in *W.P.(C) No.15300 of 2019* dated 17.05.2021 regarding sublease and partition of Khasmahal, (government property) but has failed to produce the manual governing Khasmahal Property in the State of Jharkhand. It is not disputed that any transaction in respect of Khasmahal property by the lessee, permission has

to be obtained from the concerned Deputy Commissioner of the district.

9. In view of the above discussion and reasons, I do not find any substance in the arguments raised by learned counsel for the appellant as well as no merits in the substantial question of law formulated in this second appeal. This appeal appears to be devoid of merits. Accordingly, this appeal is **dismissed**.
10. Pending I.A(s), if any, is also disposed of accordingly.
11. Let the copy of this judgment along with Trial Court Records be sent back to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

High Court of Jharkhand, Ranchi

Date: 11/ 07/2025

Pappu/- A.F.R.