

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 5375 OF 2005

MARTIN KUJUR AND ORS. Appellant (s)

VERSUS

KOKA @ RAMU ORAON AND ORS. Respondent(s)

Date: 16/11/2010 This Appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE MARKANDEY KATJU
HON'BLE MRS. JUSTICE GYAN SUDHA MISRA

For Appellant(s) Mr. Jayesh Gaurav, Adv.
Mr. Param Kr. Mishra, Adv.for
Ms. Sharmila Upadhyay,Adv.

For Respondent(s) Mr. Jaideep Gupta, Sr. Adv.
Mr. Shashi Nath Mishra, Adv.
Mr. Prem Sunder Jha,Adv.
Mr. Charan Singh, Adv.

UPON hearing counsel the Court made the following
O R D E R

The Appeal is disposed of in terms of the signed
order. Parties shall bear their own costs.

(Parveen Kr. Chawla) (Indu Satija)
Court Master Court Master
[signed order is placed on the file]
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5375 OF 2005

Martin Kujur & Others ..Appellants

versus

Koka @ Ramu Oraon & Others ..Respondents

O R D E R

This Appeal, by special leave, has been filed by the
defendants-appellants challenging the order passed by the
High Court of Jharkhand at Ranchi, whereby the revision

application filed by the appellants herein was dismissed holding therein that there was no illegality or error of jurisdiction committed by the lower appellate Court by which the respondents-plaintiffs were allowed to withdraw the suit bearing Partition Suit No. 236 of 1987 which they had filed and had been decreed in their favour by the trial court.

To explain the controversy, it may be relevant to state in a nutshell that the plaintiffs-respondents herein had filed the aforesaid suit on the plea that a decree passed in a previous suit bearing Partition Suit No. 25 of 1975 filed at the instance of one of the co-sharers of the plaintiffs-respondents was not binding on them and the same ought to have been set aside since it had been decreed without impleading the necessary parties including the plaintiffs-respondents. The plaintiffs-respondents

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succeeded in establishing their plea and that suit was decreed in their favour since the earlier suit had been decreed without impleading the necessary parties including the plaintiffs-respondents herein.

One of the co-sharers, who were the defendant in the suit, preferred an appeal before the first appellate Court wherein the judgment and decree passed in the second suit was assailed. However, during pendency of the appeal before the first appellate Court, a settlement took place between the contesting parties in which it was agreed by the parties that the respondents herein will be entitled to their share in the suit property and, therefore, the decree passed in the earlier partition suit should be revived on condition that the plaintiffs-respondents would withdraw the second suit which had already been decreed in their favour.

The appellants herein who are purchasers from one of

the co-sharers who were parties in the previous suit, felt aggrieved with this order as they claimed to have purchased some property from one of the co-sharers who had bonafide title and, therefore, they filed a revision before the High Court assailing the order passed by the lower appellate Court by which the second suit was allowed to be withdrawn. By the impugned order, the High Court has dismissed the revision. Hence, this appeal.

It was substantially contended by learned counsel for the defendants-appellants that once the second suit was

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contested and decreed in favour of the plaintiffs-respondents herein, they had surrendered their right to withdraw the suit at the appellate stage and it was not within their legal domain to withdraw the suit before the lower appellate court after it was decreed.

In support of

this submission, learned counsel for the appellants relied upon a decision of this Court in the case of R.Rathinavel Chettiar & Another vs. V. Sivaraman & others (1999) 4 SCC 89, wherein it was held that the withdrawal cannot take

place once the suit has been decreed. However, the contention was repelled by learned counsel for the respondents stating that the appeal also is a continuation of the suit and, therefore, once the settlement took place between the contesting parties, the suit could have been allowed to be withdrawn even at the stage of appeal.

In

addition, it was submitted that once the compromise between the co-sharers took place and the plaintiff in the earlier suit agreed for allotment of the share to the plaintiffs in the second suit, who are the contesting respondents herein, there was no need for them to contest the second suit or

appeal arising out of the same since in view of the settlement between the parties, the same was rightly accepted by the lower appellate Court and the suit was allowed to be withdrawn.

It was still further contended

that the defendants-appellants herein are not a co-sharer of the joint property of the plaintiffs-respondents and other co-sharers and they are simply purchaser of some

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portion of the suit property which might have been executed in their favour by the vendor/one of the co-sharers of the property. It was, therefore, submitted that the appeal is liable to be dismissed as it has no merit.

We have heard learned counsel for the parties at some length and have deliberated over the submissions advanced. We are of the view that the defendants-appellants were not a necessary party in the partition suit either in the earlier partition suit or in the subsequent partition suit as admittedly they are not co-sharers. At

the most, they have stepped into the shoes of their vendor who was a co-sharer in the property by virtue of the decree passed in the earlier partition suit and hence they can claim their right only through their vendor.

Nevertheless, they are entitled to the share of the vendor in whose favour a decree had been passed in the first suit for partition which decree has been revived by virtue of the settlement which took place in the second suit.

We, therefore, dispose of this appeal leaving liberty to the appellants to establish their plea/share before the executing court through their vendor who was a party in both the partition suits and had executed a sale deed in their favour for some portion of his (vendor's) share in the suit property. If the same is prima facie found to be correct, then, obviously, they would be entitled to the share to the extent for which the sale deed had been executed in their favour by their vendor/co-sharer in whose favour also the

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decree had been passed in the earlier partition suit which

admittedly stands revived. It needs no elaboration and explanation that the respondents herein who were the plaintiffs in the subsequent suit will have no right to claim the share of such property which had fallen into the share of the vendor of the appellants by virtue of the decree passed in the earlier partition suit for the obvious reason that they have accepted the decree passed in the earlier partition suit by virtue of settlement which is binding on them, in view of which, they had withdrawn the subsequent partition suit.

Considering the aforesaid position, this appeal be treated as finally disposed of. Parties shall bear their own costs.

.....J.
[MARKANDEY KATJU]

NEW DELHI;J.
NOVEMBER 16, 2010 [GYAN SUDHA MISRA]