

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.456 of 2014

1. Ashok Kumar Singh, Son of Late Nand Kishore Singh, Resident of Village Akuchak, Police Station Taraiya, District- Saran (Chapra).
2. Chandra Shekhar Prasad Singh @ Chandra Shekhar Singh, Son of Late Nand Kishore Singh. Resident of Village Akuchak, Police Station Taraiya, District- Saran (Chapra).
3. Prem Shankar Singh, Son of Late Nand Kishore Singh, Resident of Village Akuchak, Police Station Taraiya, District- Saran (Chapra).

... .. Appellant/s

Versus

1. Sri Chandraketu Narain Singh s/o Late Sri Harendra Singh
2. Sri Sachidanand Prasad Singh Son of Late Sri Harendra Singh
3. Manoranjan Singh
4. Priya Ranjan Singh
5. Shashi Ranjan Singh
6. Ajeet Ranjan Singh
7. Ajay Ranjan Singh
8. Abhay Ranjan Singh
9. Rajeev Ranjan Singh
10. Sanjay Ranjan Singh @ Muhan Jee Singh
11. Ankaj Kumar Singh @ Munchun Singh All are minor represented by father and guardian Sri Chandraketu Narayan Singh
12. Vivek Singh Son of Sri Manoranjan Singh
13. Sarvesh Singh Son of Sri Sachidanand Singh All are residents of Village - Akuchak, Post Office - Taraiya, Police Station -Taraiya, District – Chapra.
-----defendant 1st Set.
14. (i) Lalita Devi Wife of Dr. Maheshwar Singh resident of Village - Bisunpura, Post Office - Goura, Police Station - Marhowrah, District - Chapra.
(ii) Manju Devi Wife of Dr. Vijay Pratap Singh Resident of Village - Bishunpura, Post - Goura, Police Station - Marhowrah, District - Chapra.
(iii) Renu Devi Wife of Raghunath Singh Resident of Village - Basih Govandri, Post Office - Madarpur, Police Station - Bheldi, District - Saran.
15. Smt. Chandrakala Devi Wife of Late Sri Nand Kishore Singh
16. Smt. Sulla @ Subha Devi Wife of Sri Sachidanand Prasad Singh
17. Smt. Sangeeta Devi Wife of Sri Manoranjan Singh
18. Smt. Kundan Devi Wife of Priya Ranjan Singh
All are residents of Village - Akuchak, Post Office - Taraiya, Police Station -Taraiya, District – Chapra.



-----defendant-respondent 2nd set

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.S.S. Dwivedi, Sr. Adv & Mr. Ranjan Kumar Dubey, Adv
For the Respondent no. 3 to 12, 17 & 18	:	Mr.K.N. Chaubey, Sr. Adv
For the Respondent no. 2	:	Mr. J.S. Arora, Sr. Adv & Mr.Mrigank Mauli, Adv & Mr. Sanket, Adv
For the respondent no. 13	:	Mr. Sarvesh Singh (in person)

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 14-11-2019

Heard learned counsel for the parties.

2. This miscellaneous appeal has been filed under Section 39 of the Arbitration and Conciliation Act, 1940 for setting aside the judgment and order dated 17.09.2009 passed by 5th Subordinate Judge, Chapra, in Partition Suit No. 158 of 1983 by which the learned court has rejected the objection filed by plaintiff and made the Award Rule of the court.

3. Plaintiff had filed a suit for partition and to carve out his 1/4th share in the joint family property as contained in Schedule-II, V and VI of the plaint by a survey knowing Pleader Commissioner and thereafter to deliver possession of his allotted share.

4. According to plaint Chhatu Singh was common ancestor of the parties who had three sons namely, 1. Suraj Singh, 2. Saryug Singh and 3. Rajendra Singh. There was separation in all the three branches and present dispute is



confined among the heirs of Saryug Singh who had one son namely, Harendra Singh who is Defendant No. 1 in the partition suit. In the partition among Suraj Singh, Saryug Singh and Rajendra Singh Schedule-II property was allotted to Saryug Singh and Harendra Singh (defendant no. 1) succeeded to same and which is subject matter of present partition.

5. Harendra Singh (defendant no.1) has three sons namely Chandraketu Narayan Singh (defendant no.2), Nand Kishore Singh (plaintiff) and Sachidanand Singh (defendant no. 3).

6. It is stated in the plaint that Harendra Singh (defendant no. 1) and Nand Kishore Singh (plaintiff) were karta of the joint family and there were savings from income from agriculture and business and from said savings immovable properties were purchased in the name of various members of the joint family which are Schedule-V of the plaint and joint movable properties have been detailed in Schedule-VI of the plaint which are liable for partition.

7. It is alleged in the plaint that Harendra Singh (defendant no. 1) was in police service and after retirement he settled in his village and due to some differences among members in the joint family it was not possible for the plaintiff



to remain joint as such demanded partition of joint family property and on refusal filed suit for partition in which defendants appeared and filed their written statements.

8. The properties detailed in Schedule-II, V and VI were joint family properties which were liable for partition in which plaintiff claimed 1/4th share, however, during pendency of suit Harendra Singh (defendant no. 1) father of the parties, died leaving behind his three sons Nand Kishore Singh (plaintiff) Chandra Ketu Narayan Singh (defendant no. 2) and Sachidanand Singh (defendant no. 3), each having 1/3rd share in the joint family property.

9. During pendency of suit for partition on joint request and consent of the parties, vide order dated 19.06.1989 Sri Krishna Dev Narayan Singh, Awadhesh Singh and Kashi Nath Srivastava were appointed as Arbitrators and case record was sent to them vide letter no. 14 dated 26.07.1989.

10. Arbitrators who were appointed by the consent of the parties heard the matter in presence of parties on several dates and consensus was arrived among the parties that joint family property will be divided in the ratio of 40% to be allotted to Defendant No. 2 Chandraketu Narayan Singh and his branch, 30% to be allotted to Defendant No. 3 Sachidanand Singh and



his branch and 30% to be allotted to plaintiff-Nand Kishore Prasad Singh and his branch and same was accepted by all the parties before the Arbitrators.

11. All movable and immovable properties were divided into six schedules in which Schedule-II was allotted to Chandraketu Narayan Singh (defendant no. 2) and his branch. Schedule-III was allotted to Sachidanand Prasad Singh(defendant no. 3) and his branch, and Schedule-IV was allotted to plaintiff-Nand Kishore Prasad Singh and his branch. Schedule-VI property was left joint to be partitioned in future in same ratio.

12. Schedule-V properties were divided into three parts. Schedule-V(ka) consisted 60% per cent of schedule-V property and same was allotted to defendant no. 2 Chandraketu Narayan Singh and his branch. This was done to make his share in the joint family property to the extent of 40%. Schedule-V(kha) consisted 20% of Schedule-V property which was allotted to Nand Kishore Prasad Singh (plaintiff) to make his share in joint family property to the extent of 30%. Schedule-V(ga) consisted 20% of Schedule-V properties which was allotted to Defendant No. 3 Sachidanand Singh to make his share in joint family property to the extent of 30%.



13. Ancestral house was also partitioned and map was prepared which was enclosed with the Award. Accepting the Award of Arbitrators all the parties put their signature on Award and it was admitted by them that they are in possession over their allotted share in terms of Award. It was accepted that no dispute survives among the parties.

14. Arbitrator submitted their Award on 15.01.2001 and thereafter a supplementary Award was submitted on 15.02.2002.

15. Objection petition dated 07.02.2001 was filed by plaintiff stating therein that the land pertaining to Mauza Sadha, Pargana-Baal, P.S.-chapra, District-Saran, Plot NO. 1656 Khata No. 267 measuring 36 decimals out of which 10 decimals was acquired by the Govt. of Bihar as such Award should be prepared after excluding 10 decimals but same was prepared including 10 decimals and plaintiff was allotted 5 decimals of land from West which was acquired land.

16. First supplementary objection petition dated 16.03.2001 was filed by plaintiff stating therein that while preparing the Award of the residential lands only valuation of the lands were taken into consideration and not the constructions made thereon.

17. Objection petition dated 18.05.2001 was filed by



defendant no. 2 stating therein that Award has been prepared in handwriting of Anil Kumar Singh @ Chandra Shekhar who is son of plaintiff and in connivance with plaintiff, he was allotted lands of lesser value in Schedule-V property.

18. Second supplementary objection dated 20.02.2002 was filed by plaintiff stating therein that he has been granted 30% of share in joint family property whereas he is entitled for $33\frac{1}{3}\%$ and some objections were in respect of residential plots, however, it was further stated that Award prepared be accepted with some modification.

19. Learned court after granting several opportunities to parties to press the objection petitions but the objectors failed to turn up to press the objection petitions and the learned court dismissed all the aforesaid objection petitions dated 18.05.2001, 07.11.2001 and 20.02.2002 as not pressed by order dated 16.06.2007.

20. When no progress was made in the case, Defendant No. 3 approached the District Judge, who also directed by order dated 29.07.2009 the trial court to conclude the proceeding at the earliest without giving unnecessary adjournment to the parties. Defendant No. 3 thereafter filed an application dated 20.08.2009 under Section 17 of the Arbitration and Conciliation



Act, 1940 before the Court that since all the objection petitions have been dismissed by the Court as such Award may be accepted and made rule of the Court. &However, several opportunities were given to plaintiff-defendant to file their rejoinder as prayed by them to the petition of defendant no. 3 but every time they filed a time petition and sought adjournment and lastly on 09.09.2009 the time petition filed by plaintiff-defendant was rejected and petition filed by defendant no. 3 was allowed and by judgment and order dated 17.09.2009, the award was made rule of the Court and subsequently a decree was also drawn which has been impugned by the plaintiff in this appeal.

21. At the time of argument, the learned senior counsel appearing for plaintiff-appellant and Defendant No. 2/respondent confined their objection with respect to objection petition dated 07.02.2001 filed by plaintiff regarding part of Award with respect to Plot No. 1656 Khata No. 267 Area 9 Kathas 3 Dhurs (36 decimals) situated at Mauza-Saradha P.S-Chapra Muffasil, District-Saran, which was allotted in the share of Sachidanand Singh (defendant no. 3) in the Award which was prepared by the Arbitrators, which formed part of Schedule-III property of the Award. In their rejoinder to counter affidavit filed in I.A. No. 6676 of 2018 appellants have accepted it to be



the only dispute left between the parties.

22. It is submitted on behalf of Appellant that objection petition dated 07.02.2001 filed by plaintiff was never decided by the trial court and by order dated 16.06.2007 petitions dated 18.05.2011, 07.11.2001 and 20.02.2002, were rejected and objection petition dated 07.02.2001 remained pending and no order was passed on said petition. On the other hand, it has been submitted by counsel appearing for defendant no. 3 that in the order dated 16.06.2007 the date '07.11.2001' has been wrongly recorded in place of '07.02.2001'. It is submitted that there is no petition dated 07.11.2001 on record and case was never listed on 07.11.2001 nor any petition was filed on such date. The case was heard on 28.09.2001 and thereafter it was heard on 26.11.2001 and on both the dates there is no mentioning of any petition being filed and as such, petition dated 07.11.2001 has been inadvertently mentioned in place of 07.02.2001.

23. The submission on behalf of Appellant that objection petition dated 07.02.2001 was not dismissed but petition dated 07.11.2001 was dismissed cannot be accepted as from the records of the case it transpires that case was never listed on 07.11.2001 nor any petition dated 07.11.2001 was filed. Petition dated 07.11.2001 is neither on record nor same



has been brought on record on behalf of plaintiff-appellant, as such the contention made on behalf of defendant no. 3 is more convincing that the trial court wrongly recorded petition dated 07.11.2001 in place of '07.02.2001'.

24. Petitions were dismissed by the trial court on 16.06.2007, however, in spite of several adjournments of the case, plaintiff never filed a petition for recall of order dated 16.06.2007 by which petitions were dismissed as not pressed so that those petitions could be heard and decided on merit.

25. Defendant no. 3 was allotted 26 decimals of land in said plot whereas, plaintiff was allotted 5 decimals of land which were non existent being acquired by the State Government. However, it was within the knowledge of the plaintiff that out of 36 decimals of land only 26 decimals were available for partition as such he ought to have not included 36 decimals of land in Schedule of the plaint and same was also never brought to the notice of Arbitrators. 26 decimals of aforesaid land was released in favour of Defendant No. 3 by the State Government Letter No. 2644 dated 26.12.1979 on representation and persuasion of Defendant No. 3 being an Army Personnel. Plaintiff has not challenged allotment of 26 decimals of land to defendant no. 3 in his objection petition dated 07.02.2001 but his objection is with respect to 5 decimals of



non existent land allotted to him.

26. After Award was prepared and accepted by all the parties and pursuant thereto parties came in possession over their allotted share plaintiff as well as defendant no. 2 have sold their land which were allotted to them after submission of Award before the trial court and have also raised construction over their allotted share as such they have acted upon the Award and have enjoyed the usufruct of the properties of their share and as such they are estopped by their conduct to challenge the correctness of Award. Defendant No. 2 never filed any objection with respect to allotment of 5 decimals of land in said plot as such cannot be permitted to raise any objection in appeal. Even otherwise 5 decimals of land is a small fraction of land for which no interference is required to be made in this appeal.

There is no merit in this appeal and, accordingly, same is dismissed.

LCR of this case be returned to the court concerned forthwith.

(S. Kumar, J)

ranjan/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	04.05.2020
Transmission Date	NA

