

**(2006) 09 JH CK 0019**

**Jharkhand High Court**

**Case No:** F.A. No's. 18 and 20 of 1999 (R) and 73 and 74 of 2001

Smt. Saraswati Singh @  
Saraswati Sinha and Anil Kumar  
Singh

APPELLANT

Vs

Brij Shantimani and Others

RESPONDENT

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**Date of Decision:** Sept. 14, 2006

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 8 Rule 3

**Citation:** AIR 2007 Jhar 49 : (2007) 1 JCR 208

**Hon'ble Judges:** Narendra Nath Tiwari, J

**Bench:** Single Bench

**Advocate:** S.K. Mazumdar, for the Appellant; Manjul Prasad, for the Respondent

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**Judgement**

Narendra Nath Tiwari, J.

These four appeals arise out of the Judgment and decree passed by learned Trial Court In Partition Suit No. 153/1972. Two appeals, i.e. First Appeal No. 18 of 1999 (R) filed by Smt. Saraswati Singh (defendant No. 3 In the suit) and First Appeal No. 20 of 1999 (R) filed by Anil Kumar Singh (the defendant No. I In the suit) are against the judgment and preliminary decree dated 28.11.1998 passed by learned Sub-Judge-VII, Ranchi in the said suit whereas First Appeal No. 73 of 2001 filed by Smt. Saraswati Singh (defendant No. 3 in the suit) and First Appeal No. - 74 of 2001 filed by Anil Kumar Singh ( said defendant No. I) are against the final decree dated 26.07.2001 passed in the said Partition Suit No. 153 of 197.2.

2. Since all the appeals are based on the same facts, evidences and material and the parties are also common, the same were heard together and are being disposed of by this judgment.

3. The original plaintiff Surendra Sinha had filed the said partition suit, praying decree for partition of 3/4<sup>th</sup> share In item Nos. 1 and 2 and 1/4<sup>th</sup> share in item Nos. 3,

4, 5, 6, 7, 8, 9 and 10 of the Schedule appended to the plaint and also for a decree for rendition of account of item Nos. 5, 6, 7 and 9 of the schedule of the plaint against the defendant No. 1, cost of the suit and for any other reliefs. The suit properties were described in the Schedule of the plaint as follows:

#### SCHEDULE

(1) Land, building In M.S. Plot No. 550 and 551, Holding No. 253, Ward No. I, Circle No. 3, Patna Municipal Corporation, Area 24 Kathas 12 dhurs situated at Bank Road, Patna.

(2) Land being portion of R.S. Plot No. 155, M.S. Plot No. 127, Ward No. I, Ranchi Municipality measuring an area of 2 bighas 4 kathas 9 chhataks situated at Morabadi, Ranchi.

(3) Land at Srikrishnapur, Patna.

(4) Land and building in New Delhi, Defence Colony.

(5) Transport business (passenger buses)

(6) Binod Ashram Residential Hotel at a tenanted premises at Ranchi

(7) Bank Account standing In the name of Janardan Singh and Ram Binod Singh, Janardan Singh and one or other of the female and/or junior members of the family, Smt, Manmati Devi and one or other female members of the family.

(8) Land and building at Village Malkhachak, P.S. Dighwada, District Saran.

(9) Jewellery, ornaments, silver wares

(10) Fiat and the Deseto Car 1 H

4. It is relevant to mention here that there was no proper description for identification of the property of item No. 3, i.e. (land of Srikrishnapur, Patna) and of item No. 4 (land and building at Defence Colony, New Delhi). By an amendment, item No. 6 of the said Schedule i.e., Binod Ashram residential hotel at a tenanted premises at Ranchi was deleted from the plaint vide order dated 06.07.1976 of the Trial Court.

5. Plaintiffs Case: The plaintiffs case is that parties are Hindus and are governed by Mitakshara School of Hindu Law read with Hindu Succession Act, 1956. The plaintiff and defendant No. 1 are brothers. Defendant Nos. 2 and 3 are their sisters. Their late father Ram Binod Singh at the relevant time was the Karta of the Joint family. He had acquired considerable properties and had extensive business of stage coaches, private and public lorries, transport and hotel at Ranchi and elsewhere. He had earned and accumulated considerable wealth. As desired by the Indian National Congress, Ram Binod Singh, who was then an M.L.A. converted the joint family business in the name and style of Singh Brothers (Pvt.) Ltd. Before that the family

had a hotel business in the name and style of "Binod Ashram" at Ranchi. After some time, the business in the name and style of Singh Brothers (Pvt.) Ltd. was dosed and was renamed in the name and style of "Singh Brothers", purported to be a partnership concern with the wife of the defendant No. I as a partner. The same was intended for saving tax, but having failed in the attempt, the said business remained the business of H.U.F. Ram Binod Singh had opened a number of accounts in various banks jointly or otherwise. Deposits were made in the said accounts out of the earning of joint family business. Janardan Sinha (defendant No. I) was the eldest brother. He joined bar at the High Court, Patna in or about the year 1950-51, but he could not establish his practice and had no income from profession. For a long period, he was dependent on the joint family income. Defendant No. I used to devote most of his time in the management of the joint family business even during the life time of their father and used to actively handle the joint family affairs including the accounts in the various banks. The plaintiff, after obtaining his M.B.B.S. degree from Patna University had gone abroad for higher studies in the year 1953. After obtaining MRCP Degree, he returned to India in the year 1956 and immediately joined service. He had handsome income. While in abroad, he was engaged in a Job and earned and saved ₹400 which he brought with him to India. The plaintiff was married to the daughter of late Bhagwati Narayan Singh of Chandragarh Estate one of the richest agriculturist of Bihar. The plaintiff was given Rs. 30,000/- by his mother-in-law in January/February 1957 for purchasing property in Patna. The petitioner was subsequently married in June, 1957 as there was no auspicious date earlier. After the death of Bhagwati Narayan Singh, his widow and the only daughter (the plaintiff's wife) inherited and came in possession of the sufficient agricultural property. After the death of mother-in-law of the plaintiff, his wife, who was the only child of her parents, inherited the entire property of Chandragarh Estate. In the year 1957, the land and building was purchased at Bank Road, Patna. The plaintiff had contributed half of the consideration money out of the fund received from his mother-in-law and out of his own earning and the remaining half was contributed out of the joint family fund. The acquisition was made in the joint names of the plaintiff and the defendant No. I. There was an understanding among the members of the family including the parents of the parties that the plaintiff would have exclusive 1/2 share in the said property, in addition to his share in the other 1/2, acquired out of joint family fund in the names of the plaintiff and defendant No. I. In 1960 a vacant piece of land was purchased at Morabadi, Ranchi in the joint names of plaintiff and the defendant No. I. In the said acquisition also, the plaintiff had contributed half of the consideration money and the other half was paid out of the joint-family fund, with the same understanding that the plaintiff would get half share exclusively in addition to his due share in the other half, acquired out of the joint family fund. The plaintiff's mother died in the year 1962. She left behind a good deal of ornaments, jewellery and silver wares. The plaintiff's father was quite old and was physically and mentally depressed. The defendant No. I was in complete charge and control of all the joint family properties including the

business, bank account, ornaments, jewellery and silver wares. Taking undue advantage of the condition of the father, after the mother's death, the defendant No. 1 began to act Improperly and selfishly and managed to acquire a plot of land at Patna and a property at Defence Colony, New Delhi out of the joint family fund in the name of his wife/himself/son. Plaintiffs father died in the year 1967. The defendant No. 1 became the Karta of the joint family and continued to be so. In the year 1969-70, the plaintiff constructed a building in a portion of the land at Ranchi with the consent of the defendant No. 1 by investing the money of his wife, which she had got by selling her land and over the years saved by her. The defendant No. 1, as a Karta, has been managing the joint family property including the hotel business In the name of "Binod Ashram" and also the transport business and had control over the Income and expenditure and was the custodian of the huge surplus earning of the family business. The defendant No. 1 never furnished any account nor has given any share to the plaintiff and defendants No. 2 and 3 and fraudulently and improperly appropriated the entire joint family income and converted the same into assets in the form of Immovable property and bank account. The defendant No. 1 is, thus, liable to render account of the joint family business, bank deposits, ornaments, jewellery, silver wares and to disclose the family properties available for partition. The plaintiff and the defendants No. 1 to 3 are in joint possession of the family properties and there has been no partition of the suit properties. The plaintiff is also entitled to get exclusive allotment of the vacant land at Ranchi on which he has constructed the residential building out of his own fund and excess land, if any, may be adjusted against the Bank Road Property at Patna.

Defendants" Case

6. The suit was contested by Janardan Singh (defendant No. 1) and Smt. Saraswati Sinha (defendant No. 3), The defendant No. 1 denied the claim of the plaintiff and stated, inter alia, that the plaintiff has filed the suit for declaration of title and recovery of possession in the garb of partition suit without paying ad valorem Court fee. There Is no unity of title and possession between the parties. The suit is bad for non-joinder of necessary parties. The plaintiff has also not included all the properties acquired by Ram Vinod Singh father of the plaintiff and the defendant No. 1. Late Ram Vinod Singh had acquired several Items out of his own earning, but before his death he had made separate allotments of his properties In favour of the members of the family by way of settlement and the parties are in possession of their respective share allotted to them. The plaintiff was given higher education in the country and abroad by the family, but he disappointed the father and others by his improper behaviours and caused annoyance to Ram Vinod Singh who In order to avoid any future litigation made the settlement, allotting the plaintiff and other members separate shares. The plaintiff was given lands at Chandragrah, Jamindari Bonds, liquid cash and ornaments worth more than 4 lacs and was allowed to live In Ranchi house which was settled to the minor son of the defendant. Subsequently, the plaintiff fraudulently got his name mutated In respect of half of the land. All the

Items of the properties were acquired by late father at the time when the plaintiff had nothing to depend on. He had no means to even maintain himself. Any acquisition by his earning was out of question. When the plaintiff raised dispute, the matter was referred to the arbitrators and the parties appeared before the arbitrator and the plaintiff admitted before them that the properties were partitioned and there was no cause for repartition. The suit is thus barred and no relief can be granted in this partition suit. Denying the statements made In the plaint the defendant stated that there was no joint family and the daughter of Ram Vinod Singh was married In 1949. All the properties were acquired by Sri Ram Vinod Singh. He had no business of stage coach or private or public transport. The alleged hotel at Ranchi was on monthly tenancy and the same was given to Rajeshwar Singh. There was no business in the joint family much less the transport business in the name and style of "Singh Transport". It was a partnership business and was noticed, as such, in the Court of the District Judge, High Court, Income Tax Department, Transport Department etc. There is no such bank account as alleged by the plaintiff. This defendant joined the High Court in the year 1950 as an advocate and within a very short time picked up a good practice by dint of his labour and sincerity. He separated from his father and others In the year 1952 and was completely involved in his profession. Ram Vinod Singh had executed a will in favour of the grand son namely Anil Kr. Singh, son of this defendant, voluntarily bequeathing the land and building of M.S. Plot No. 550-551, Ward No. I, Holding No. 253, Ward No. 3 of Patna Municipal Corporation, area 24 Kathas & 12 Dhurs; situated at Bank Road, Patna, and also portion of R.S. Plot No. 155, M.S Plot No. 123, Ward No. I, Ranchi Municipal, area 2 Bighas 9 Chhataks; situated at Morhabadi Road, Ranchi, which was also an item of the self acquired property of Ram Vinod Singh. The said legatee Anil Kumar Sinha has filed a probate case with respect to the said will being Test Suit No. 1/87 which is still pending in the Patna High Court. In the year 1957, the plaintiff was himself dependent on the father and there was no question of his contributing any amount for purchasing the land of Bank Road, Patna and land of Morabadi, Ranchi and the contrary statement Is false and concocted. There was also no question of Inheritance of her father"s properties before the death of his mother In 1961. The lands of Bank road Patna was purchased by the efforts of this defendant as far back as on 15.4.1957. The said property of Bank Road Patna and property at Morhabadi, Ranchi have been bequeathed by Ram Vinod Singh in favour of his grandson Anil Kr. Singh by a registered deed of will dated 7.11.64. The plaintiff was posted In Medical College at Ranchi and he was allowed to reside in this house, at Ranchi, after its construction out of the fund supplied by this defendant. Subsequently the plaintiff got his name mutated fraudulently in respect of half of the Morabadi property. This defendant had no concern with the jewellery, accounts, ornaments, silverwares or anything else and he Is also not aware as to whether his mother possessed any such thing. To the knowledge of the defendant, whatever the mother possessed she distributed to all her children and she had no custody of ornaments of the plaintiff"s wife. The

defendant denied that he had got any property at New Delhi or any property was acquired by him at Patna. It was stated that the property at Malkhachak was self acquired property of their father and he had constructed house in 1949 and subsequently made a gift by virtue of a registered document dated 9.12.64. The said property was of sentimental value as it was the centre of freedom movement since 1920 and the great leaders of the country, including Mahatma Gandhi, had visited the place from time to time. However, in economic value it was more a liability which is being carried out by the defendant. The defendant denied any sort of joint account, unity of possession or any liability or rendition of account or disclosing anything to anybody, much less to the plaintiff. This defendant denied and disputed the other allegations made in the plaint and also denied the alleged cause of action for the suit and prayed for dismissal of the suit.

7. The defendant No. 2 filed her written statement supporting the plaintiff's case, inter alia, stated that the family is still Joint and the plaintiffs and this defendant are entitled to get their share in the ancestral properties.

8. The defendant No. 3, on the other hand, contested the suit and supported the defendant No. 1. In her written statement she, inter alia, stated that there is no unity of title and possession among the parties. This defendant, who is daughter of late Ram Vinod Singh, married long ago in 1949 and has got no concern with the suit property. She denied the plaintiffs plea that the suit property is Joint and Rambinod Singh was the Karta of the family at the relevant time. She stated that Ram Vinod Singh, father of the parties, had made settlement of every item of the properties and nothing is left for further division. She also stated that the hotel business at Ranchi was on rent and was not giving any profit. The plaintiff had never contributed anything in acquisition of any item of the property neither had any capacity to contribute; and that the claims made in the plaint are false and baseless and the suit is liable to be dismissed.

#### Issues

9. On the basis of the said pleadings learned Trial Court framed the following issues:

- (i) Has the plaintiff any cause of action for the suit?
- (ii) Is the suit maintainable in its present form?
- (iii) Have the parties got unity of title and possession over the suit property?
- (iv) Are the suit properties self acquired or were acquired by late Ram Vinod Singh?
- (v) Had late Ram Vinod Singh made a legal and valid family settlement and the same is legal and valid?
- (vi) Is the plaintiff entitled to the decree for partition as claimed for?
- (vii) Is the plaintiff entitled for any other relief?

(viii) Has the Court got jurisdiction to hear the case?

10. During the pendency of the suit the plaintiff Surendra Singh died and his widow, sons and daughters were substituted in his place. The defendant No. 1 also died and in his place his only son Anil Kumar Singh was substituted.

11. Both the parties led their respective documentary and oral evidences. On behalf of the plaintiff, 10 witnesses were examined. The defendant No. 2 examined herself as lone witness in support of her case. The defendant No. 1 examined 10 witnesses. Defendant No. 3 examined herself and supported the defendant No. 1. Number of documents were also proved and marked as exhibits on behalf of the plaintiffs. Ext. 1 series are the signature of different persons. Ext. 2 series are the rent receipts. Ext. 3 is the declaration deed dated 6.1.66, Ext. 4 series are various Challans relating to transports, Exts. 5-5/D are road permits, Ext. 6 is the income tax return, Ext. 7 series are the Certified copies of the order of Income Tax Department. Ext. 8 is the notice issued by the Income Tax Office, Ext. 9 is the application of Indira Devi dated 8.6.82, Ext. 10 is the entry in the register of Vinod Ashram Hotel, Ext. 11 is the book of Ram Vinod Singh (life history), Ext. 12 is a registered deed dated 14.11.60, Ext. 12/A is the certified copy of the deed dated 20.3.57, Ext. 12/B is the certified copy of the deed dated 9.12.66, Ext. 13 is the power of attorney dated 10.6.66 and Ext. 14 series are the Jamindari Bonds.

12. The defendant produced and proved the following documents. Ext. 1 is the signature of Janardan Singh on written statement, Ext. B series are the counter foils of cheques, Ext. C to C/7 are various letters, Ext. D is the Bihar Gazette Notification issued by the Election Commission of India. Findings of the Trial Court

13. Learned Trial Court discussed the facts, evidences and materials on record and recorded its finding issue wise. While deciding the Issue No. 7 learned Court below held that the Court has got jurisdiction to decide the partition suit. Learned Court below decided Issue Nos. 1 & 2 in favour of the plaintiff and held that the suit is not bad for mis-Joiner of party and the same is maintainable in its present form. Learned Trial Court decided Issue No. 4 in favour of the plaintiff and held that late Ram Vinod Singh had acquired the suit property out of the earnings of the joint family properly. Issue Nos. 3 & 5 were also decided in favour of the plaintiff holding that there was nothing on record to show that the family property was partitioned by way of settlement in the life time of late Ram Vinod Singh. Taking notice of the Testamentary Suit No. 1/87 filed by Anil Kr. Singh seeking grant of probate of the will stated to be made in his favour by his grand father Ram Binod Singh, learned Court below held that it is not within his jurisdiction to enter into such questions as the said suit is subjudice before the Patna High Court and final decision passed therein shall be binding on all concerned. Learned Court below while deciding Issue No. 6 held that, though the plaintiff had not given full description of the properties yet the description of the land of Sri Krishnapuri, Patna as mentioned in Ext. 12/B being Plot No. 25 of Mohalla Sri Krishna Puri Type B, area 778.87 yard, Thana No. 7

Phulwari P.S-Digha, Ward No. 34 Municipal Corporation, Patna can be included for partition. Regarding Issue No. 7, learned Court below held that the property of Bank Road, Sri Krishna Puri, Patna and that of Morhabadi, Ranchi were acquired out of the joint family earnings and the plaintiff and the defendant each has got equal share and the suit properties are available for partition and the plaintiff is entitled to 1/4<sup>th</sup> share therein. Learned Trial Court thus held that the plaintiff is entitled to get 1/4<sup>th</sup> share (25%) in item Nos. 1, 2 & 3 of the properties described in Schedule of the plaint which were held to be acquired out of joint family fund and decreed the suit in part only with respect to the said properties.

#### Grounds of the appeal

14. Aggrieved by the said findings of the learned Trial Court, the appellants of First Appeal No. 18/99(R) and in First Appeal No. 20/1999(R) have assailed the judgment and decree of learned Trial Court mainly on the following grounds:- (i) the only property mentioned in paragraph 2 of the plaint as the ancestral property Is land of village Malkhachak. The plaintiff specifically pleaded that all the properties were acquired by Ram Vinod Singh who had extensive business and who earned and accumulated considerable amount, but learned Court below held that Item Nos. 1, 2 & 3 were acquired out of joint family fund without giving any finding as to what was the earning of the ancestral property of village Malkhachak. Even the existence of the property of Malkhachak belonging to the parties has not been proved and for that reason no decree has been passed for partition of Malkhachak property. It has come in the evidence of PW-5 Sri Nath Singh and others that there are large number of co-sharers in the Malkhachak property and there was no partition of the said land and some land is under the water of river Ganga and some land and orchard only are in existence, (ii) Ext. B which is the counter foil of the cheque for Rs. 75,000/- clearly proves that the same was issued for acquisition of the property of Bank Road, Patna and another cheque Ext. B/7 for Rs. 25,000 was issued for purchase of Ranchi property. Both the said cheques were issued by Ram Vinod Sigh, (iii) There is no evidence to prove that the plaintiff had contributed in the consideration money for acquiring the said properties. Learned Trial Court has recorded its finding in Paragraph 19 of the judgment that Morhabadi property was purchased by a registered deed dated 14.11.60 for Rs. 23,840.94 and that the payments were made through the cheques by Ram Vinod Singh for purchasing the property of Bank Road, Patna and property at Morhabadi, Ranchi in the name of Janardan Singh and Surendra Sinha jointly. Learned Court below having recorded the said finding should have held that the plaintiff failed to prove the alleged payment of consideration amount of Rs. 30,000/- for Bank Road property and payment of half of the consideration amount for Morhabadi property and should have held that the property was acquired out of the said earnings of Ram Vinod Singh (iv) The finding of the Trial Court that those properties were acquired out of the earnings of the joint family business is based on no evidence and is perverse, (v) PW-3 in paragraph 13 has clearly stated that the properties were self acquired property of Ram Vinod



Singh and demolished the plaintiffs case; but the said evidence has not been noticed and properly discussed by learned Trial Court. (vi) Learned Trial Court also failed to take into consideration that the plaintiff had gone abroad in connection with his studies and had come back to India at the end of 1956 and was married in June 1957. The property of Bank Road, Patna was acquired on 15.2.1957, but in the plaint he has stated that his mother-in-law had given Rs. 30,000/- for acquisition of the property of Bank Road. The Trial Court further failed to take into consideration that the plaintiff had himself deleted Vinoda Ashram Hotel business, i.e. Item No. 6, of the Schedule of the plaint and was no longer an item of the joint family, yet teamed Court below has erroneously based his finding that the suit properties were acquired from the income of the hotel business which is wholly baseless and perverse, (vii) There is absolutely no description of the property of Sri Krishna Puri, Patna and it was vaguely mentioned as "land at Sri Krishna Puri -15,000" and the said property has not been described by giving Plot No. Khata No., boundary, area, Road No. etc, yet the property which stands in the name of Indira Devi, wife of Janardan Singh, who is not a party to the suit, has been illegally included and decreed for partition, (viii) The property belonging to Smt. Indira Singh, who is not a party, can not be included in the partition suit and the decree to that extent is wholly illegal and invalid. There being no proper description of the said property, the suit should have not been dismissed in view of the provisions contained In Order VII Rule 3 of the C.P.C. (ix) The Trial Court itself observed that the plaintiff failed to give any description of S.K. Puri, Patna property and even did not amend the plaint, yet on the basis of Ext. 12/1, which is a settlement deed of 1966 in favour of Smt. Indira Devi, the said property has, been included for partition and the plaintiff and the defendants have been given 174<sup>th</sup> share each, also in the said property. The relief can be granted on the basis of the pleadings and the proof of the plaintiff and onus was on the plaintiff to properly describe the suit property, but he either supplied any description for definite identity of the property of Sri Krishna Puri nor brought any evidence to prove the same, (x) Sri Krishna Puri Property was settled by Patna Improvement Trust in favour of Smt. Indica Devi for Rs. 14,000/-, a lump sum payment of Rs. 3,000-4,000 was made at the time of settlement and rest was paid by instalment of Rs. 123/- per month by her. (xi) Learned Court below failed to take into consideration that even earlier in 1968 when the plaintiff raised dispute which was subsequently referred for arbitration by a registered agreement before the arbitrators Sri Sarandhar Singh, Ex. V.C, Sri Sardar Harihar Singh, Ex. C.M, Bihar, Mr. Justice Kanhaiya Singh, Judge, Patna High Court and Sri Rajdeo Singh, I.P.S, D.I.G. In the said registered agreement Sri Krishna Puri property was not mentioned as an item of the joint property and no share was claimed therein. Ext. 3 which was purportedly brought as a declaration by Indira Devi is a Sada document dated 6.1.66 and has got no evidentiary value, yet the same has been considered by learned Court below. There is no evidence on record to prove that S.K Puri property was purchased out of the earnings of the joint family business. Even if the same is treated as an admission of Smt. Indira Devi, the same can not be used against her

interest without confronting her and giving any opportunity to explain the alleged document.

15. In view of the grounds taken by the appellants against the judgment and decree of learned Trial Court, the following points arise for determination by this Court, VIZ:

#### Points For Determination

(i) Whether the suit properties Item Nos. 1 & 2 of the Schedule acquired in the names of Janardan Singh and Surendra Singh (original defendant No. 1 & the plaintiff) were acquired out of the earnings of the joint family or were the self acquisition of Ram Vinod Singh out of his own earnings?

(ii) Whether there was a previous family settlement during the life time of Ram Vinod Singh in which the properties acquired by him were divided and allotted to the parties?

(iii) Whether the plaintiff is entitled to get share in the suit properties as decreed by learned Trial Court?

(iv) Whether in Item No. 3 in the Schedule of the plaint, vaguely mentioned as "land at Sri Krishna Puri, Patna" without any Plot No., Khata No., boundary, area or any description sufficient to locate and identify the same, the land and building standing in the name of Smt. Indira Singh wife of Janardan Singh can be included and made available for partition among the parties to the suit even without impleading Smt. Indira Singh a party to the suit?

#### FINDINGS

16. Point No. 1 - The plaintiffs case is that the suit properties are joint family property and were acquired out of the joint family fund. The contesting defendant, on the other hand, pleaded that the properties were acquired by Ram Vinod Singh out of his self earning. The Trial Court while deciding Issue No. 4 has come to the finding that the property was acquired out of the joint family fund and that the plaintiff has got 174<sup>th</sup> share and another son defendant No. 1 and two daughters defendant Nos. 2 & 3 each got 174<sup>th</sup> share. The plaintiff has not assailed the said finding at the Court below. The plaintiff in paragraph 2 of the plaint has stated that Ram Vinod Singh late father of the plaintiff and the defendants was the Karta of the joint family constituted of himself, his wife, his sons and daughters. He had acquired considerable properties for the joint family and had floated extensive business of private and public lorries, transport and a hotel at Ranch) and out of the said business he earned and accumulated considerable amount of money. Further in paragraph 9 of the plaint he has stated that in 1957 an item of property being the land and building at Bank Road, Patna was purchased in the name of the plaintiff and defendant No. 1 and the plaintiff had contributed half of the consideration amount whereas remaining half was paid out of Joint family fund/According to the plaintiff, he had received some amount from his mother-in-law and some amount

was saved by him out of his earning. He further stated that there was an understanding among the members of the family that the plaintiff would exclusively get half share in the said properties besides his share in the other half acquired out of the joint family fund. Similarly, in the year 1960, a vacant piece of land situated at Morhabadi, Ranchi was purchased in the name of the plaintiff and the defendant No. 1 by virtue of a registered sale deed dated 14.11.60 (Ext.12). In that acquisition also the plaintiff had contributed half of the consideration money out of his personal fund and the remaining half was contributed out of the joint family fund with the same understanding among the family members including the appellants, that the plaintiff would get half share exclusively over and above his share in the other half of the said properties acquired out of the joint family fund. The defendant No. 1, on the other hand, denied the said plea and averred that the properties of Bank Road, Patna and that of Morhabadi, Ranchi were acquired by Ram Vinod Singh out of his own earning and fund in the name of his two sons. Learned Trial Court came to hold that the said properties were acquired by the joint family fund constituted out of the income of joint family properties at village Malkhachak, income of Janardan Singh, income of Surendra Singh, income out of the transport business running in the name of "Singh Brothers" and income from Vinoda Ashram Hotel at Ranchi. Conversely there is no pleading in the plaint that the properties of Bank Road, Patna and Morhabadi, Ranchi were acquired also out of the earnings of the property of Malkhachak or any other ancestral property. There is no evidence on record to prove the area and extent of Malkhachak property or income out of the said property. Learned Trial Court has held that the joint family fund consisted of the earning from Malkhachak property, but learned Court below has not passed any decree for partition in respect of the property of Malkhachak. Obviously, he could not ascertain any joint property at Malkachak. In absence of any clear pleading and the evidence, there was no material before learned Trial Court for holding that there was any earning from any ancestral property of Malkachak out of the oral evidence of the plaintiff, PW-2 in paragraph 11 of his deposition stated that he can not say about Malkhachak property. PW-3 in paragraph 7 has stated that Ram Vinod Singh had sufficient property at Malkhachak, but he can not say the area of the land. This witness was a resident of Gadikhana, Ranchi but claimed to have visited Malkhachak several times. PW-5 who stated himself as the driver of Ram Vinod Singh and visited Malkhachak with him stated in Paragraph 15 of his deposition that the father of Ram Vinod Singh namely Jai Kisun Singh had three houses, orchard and cultivable tends, but he could not say the area of the land. PW-10, who is the widow of the original plaintiff and was substituted as plaintiff No. 1, examined herself as PW-10 has also not given any description of the land of Malkhachak, but in paragraph 3 of her deposition she has quoted the earnings from "Bag-Baglcha" and the land of Malkhachak at Rs. 30,000/-per annum without any basis on record. PW-5 in paragraph 16 of his deposition has stated that some land of Malkhachak is, under the water of river Ganga and some lands and orchards are still there. Thus there is no cogent material on record to establish the kind, area and the extent of the

ancestral property or the earning fetched out of the same. Learned Trial Court failed to even locate the existence of any such property at Malkhachak and granted no relief for partition in respect of the said item mentioned in the Schedule as suit property. Witnesses were also examined to prove the earning of Ram Vinod Singh. PW-1, Vinayak Out Mishra is the Income tax practitioner of Ranchi and is the lawyer of the plaintiff. He has deposed about the income tax receipts. PW-2 Mokhtar Baraik is the compounder of the plaintiff who has stated that Ram Vinod Babu had bus and hotel business. PW-3, who is said to be well acquainted with the family of the original plaintiff, has stated in paragraph 13 of his deposition that all the properties were self acquired property of Ram Vinod Singh. In Paragraph 13 he has stated that the family of the original plaintiff and the defendant No. 1 are not joint and whatever the property was acquired by Ram Vinod Singh was his self acquired property. PW-4 who was the driver of Ram Vinod Singh, and as per the suggestion he was dismissed by Ram Vinod Singh for theft, has only stated that some lands and orchards are still there at Malkhachak but can not say about the earnings out of the same. PW-7 Ram Raj Singh was examined to prove payment of Rs. 30,000/- for purchase of Bank Road property. He stated that he was not present at the time of execution of the sale deed nor had seen the payment of consideration amount, but had heard about the same. PW-9 is a resident of Malkhachak who has stated that Ram Vinod Singh had two brothers who acquired some property at Malkhachak. PW-10 is the wife of the original plaintiff who in paragraph 3 of his deposition has stated that her father-in-law had transport business, hotel business and houses and property at Malkhachak and that he was the sole owner of "Singh Brothers" The defendant No. 1 had specifically pleaded in the written statement that the suit properties were acquired out of the own earnings of Ram Vinod Singh and the entire consideration amount was paid by him for purchasing the property at Bank Road, Patna and property of Morhabadi, Ranchi. In order to prove the same, the defendants have brought on record, the counter foil of the cheques, Ext. B which was issued by Ram Vinod Singh for acquisition of the property of Bank Road, Patna. Similarly Ext. B/7 was issued for Rs. 25,000/- is another cheque which was issued by Ram Vinod Singh for acquisition of the property of Morhabadi, Ranchi. Learned Trial Court has also found that the said cheques, Exts. B & B/7, were issued by Ram Vinod Singh to purchase the property of Bank Road, Patna and property of Morhabadi, Ranchi respectively in the name of the plaintiff and the defendant No. 1, his two sons. Thus from the thorough perusal of the facts and the documentary and oral evidences on record, I come to the finding that the properties of Bank Road, Patna and Morabadi, Ranchi i.e. Item Nos. 1 & 2 of the Schedule of the plaint, were the self acquired property of Ram Vinod Singh purchased in the name of his two sons Janardan Singh (original defendant No. 1) and Surendra Singh (original plaintiff). The point No. 1 is decided accordingly.

17. Point Nos. 2 & 3 - The plaintiff has stated that the properties described in the Schedule of the plaint are the joint family properties of the parties and there had

been no partition in the family and the parties are in joint possession of the same. The defendant No. 1 in his written statement denied the same and has stated that their father late Ram Vinod Singh had made family settlement in his life time and no property remained to be petitioned. In order to prove his case the plaintiff has adduced documentary as well as oral evidences. Out of the several witnesses examined on his behalf, PW-2 Mukhtar Goraik, who claims to be acquainted with the family affairs of the plaintiff, has stated that there had been no partition, much less any family settlement in the life time of Ram Vinod Singh. PW-9 Raj Narayan Singh, who is one of the agnates of the parties, has specifically stated that there was no partition or family settlement in the life time of Ram Vinod Singh. In paragraph 6 of his deposition he has denied the suggestion that the plaintiff Dr. Surendra Singh was allotted his share., PW-10 plaintiff No. 1 (widow of the original plaintiff) has also stated that there had been no partition of the joint property. The defendant No. 2 is the sister, who has supported the plaintiff in her written statement, examined herself as DW-1 for defendant No. 2 has denied partition or any sort of settlement in the life time of Ram Vinod Singh. Out of the witnesses examined on behalf of the defendant No. 1, DW-5 Kedar Nath and DW-7 Devendra Kr. Singh in their depositions have stated that the family was not joint and they used to earn separately, but there was no partition by metes and bounds in respect of the joint property. DW-8 Rajendra Pd. in paragraph 5 of his deposition has stated that the sons and daughters of Ram Vinod Singh were not joint but he also stated that Ram Vinod Singh was the head of the family. DW-10 Suresh Chandra Singh in paragraph 10 of his deposition has stated that he does not know as to whether the family of Ram Vinod Singh was joint or not. He also could not say that there was family settlement in the life time of Ram Vinod Singh. DW-11 in his deposition supported the defendant's case and in paragraph-5 has stated that Janardan Singh (original defendant No. 1) had got constructed a building at Morhabadi, Ranchi and had given the same to the plaintiff. DW-2 Anil Kr. Singh, the only son of the original defendant No. 1 and has been substituted in his place has stated that his father had invested money in constructing the house at Morhabadi and the plaintiff was allowed to reside.

18. The plaintiff has also brought on record some documents in support of his case. Exts. 2, 6, 7 & 9 are the income tax papers relating to the business in the name of M/S Singh Brothers. Registered sale deed dated 14.11.60 (Ext. 12) and a registered sale deed dated 15.2.57 (Ext. 12/A) are in the joint names of the original plaintiff and the original defendant No. 1 whereby the properties of Bank Road, Patna and Morabadi, Ranchi were respectively purchased in the names of the said two brothers.

19. The defendant claimed that the suit properties described in the Schedule of the plaint were all out of his own earning and in his life time he has made settlement of his properties in the names of his family members. He had executed a registered Will dated 21.9.1964 in favour of his grand son Anil Kumar Singh bequeathing all his

remaining in favour of his said grand son and the matter of probate is pending in the Patna High Court being Testamentary Suit No. 1 of 1987.

20. Learned Trial Court after appraising the evidences and discussing the same has come to the finding that there is no dear evidence on the basis of which it could be held that the suit property was partitioned among the parties by way of family settlement in the life time of late Ram Vinod Singh. Learned Court below has further held that so far as the probate of will is concerned, that case is still pending in the Patna High Court and the decision of the said Court shall bind the parties to the said case.

21. After a careful scrutiny and consideration of the facts, evidences and material on record, I see no illegality or infirmity in the said finding of learned Trial Court. Admittedly, the parties are the sons and daughters of Ram Vinod Singh and there is strong presumption of jointness among the parties who are the members of a Hindu family. Onus was on the contesting defendant to establish his plea of previous partition by metes and bounds. I find no cogent evidence on record to prove the alleged family settlement allotting properties to the parties or their predecessor to their share(s) in the properties of Bank Road, Patna and Morhabadi, Ranchi which were proved and found to be acquired by late Ram Vinod Singh, father of the original plaintiff and the defendants of the suit.

22. Learned Trial Court after appraisal of evidences has come to the finding that the plaintiff is entitled to get 1/4<sup>th</sup> share (25%) in the said Items as also in the property of S.K Puri, Patna. So far as the plaintiff's claim regarding the property of S.K. Puri is concerned, the same is to be separately dealt with and decided hereinafter as point No. 4. With regard to the items of the suit property of Bank Road, Patna and Morhabadi, Ranchi, learned Trial Court has found that the plaintiff is entitled to only 1/4<sup>th</sup> share and to that extent he is entitled to part decree. The said finding has not been assailed by the plaintiff. Neither any appeal has been filed nor there is any cross-objection of the plaintiff-respondent challenging the said finding and as such the said finding is final and binding on the plaintiff. Considering all the relevant aspects and evidences on record, it is held that there had been no previous partition among the parties. The Item Nos. 1 & 2 of the suit property in Schedule i.e. the properties of Bank Road, Patna and that of Morhabadi, Ranchi are still joint and there had been no previous family settlement dividing the properties and that the plaintiff is entitled to get share in the said properties to the extent of 1/4<sup>th</sup> as rightly decreed by learned Trial Court. The defendant Nos. 1, 2 & 3 are also accordingly entitled to 1/4<sup>th</sup> share each in the said properties. The Point Nos. 2 & 3 are decided, accordingly.

23. Point No. 4 - The item of S.K. Puri, Patna property is the most contentious issue in these appeals which has been hotly contested by the parties. According to the plaintiff, the said property of S.K. Puri has been shown as one of the items of the Joint family property of the parties. There is no description of the said property in

the plaint in terms of Khata No., Plot No., boundary, Road No., area etc. Item No. 3 in the Schedule is simply mentioned as "Land at Sri S.K. Puri, Patna". In the body of the plaint in paragraph 12, it has been pleaded that the defendant No. I began to act improperly and selfishly and the plaintiff later on came to know that the defendant No. I managed to acquire land at Patna and a property at Defence Colony, New Delhi in the name of his wife/himself/son obviously with an intention to screen the said property from the joint family property. Though there was no description to identify the land of S.K. Puri, Patna, learned Trial Court besides Item Nos. 1 and 2 i.e. the properties of Bank Road, Patna and Morhabadi, Ranchi has also held that the property of S.K. Puri, Patna mentioned as Item No. 3 in the Schedule of the plaint can be identified from the description given in the registered deed of settlement made in the name of Smt. Indira Singh, wife of the respondent No. I. Learned Trial Court has found that neither the defendant No. I nor his son Anil Kr. Singh (DW-1) has filed any document to show that the said land was acquired out of their own earnings in the name of Smt. Indira Singh and as such has held that the Item No. 3 identified as Plot No. 25, area 778.87 Sq. Yard, Holding No. 34, Patna Municipal Corporation acquired by Ext. 12/B, is the joint property of the parties and the plaintiff is entitled to get share also in the said property.

24. Mr. S.K. Mazumdar, learned Sr. counsel appearing on behalf of the appellants, submitted that the Ext. 12/B is a registered deed of settlement exclusively in the name of Smt. Indira Singh wife of Janardan Singh and Smt. Indira Singh having not been impleaded as a party to the suit, in her absence, the said property standing in her name can not be partitioned and the decree granting relief for partition in the said property is contrary to law and is liable to be set aside. Learned Counsel further submitted that when there was no identifiable description of the S.K. Puri property, the Trial Court can not assume the said property standing in the name of Indira Singh as Item No. 3 travelling beyond the pleading. Learned Trial Court on the one hand has himself observed that the plaintiff has not given any description of S.K. Puri property and in paragraph 15 of the judgment has stated that the plaintiff should have amended the plaint by giving description of Plot No. etc of S.K. Puri property and that the plaintiff failed to do the same and, on the other hand, has committed serious error in holding that the Pleader Commissioner will ascertain the description from the deed of settlement, Ext. 12/1. Learned Counsel further submitted that at no stretch of imagination, the property standing and acquired in the name of Indira Singh in the year 1996 can be included as an item of the joint family property. Learned Counsel elaborating his argument submitted that learned Court below while deciding Issue Nos. 1 & 2 in paragraph 5 of the judgment has come to the finding that the plaintiff had demanded partition from his father and brother many times. The plaintiff's father had fallen ill in 1964 and subsequently died in 1967. The plaintiff demanded partition in 1964 from his father which was a definite and unequivocal indication of his Intention to separate from the family and enjoy his share in severality. There was, thus, severance of the Joint status of the

family. Learned counsel referred to and relied upon Article 325 of the Mulla's Hindu Law and decisions of the Supreme Court in [Addagada Raghavamma and Another Vs. Addagada Chenchamma and Another](#), and in [Puttarangamma and Others Vs. M.S. Ranganna and Others](#), to fortify his said submissions. Learned Counsel submitted that when the property stands in the name of Indira Singh, there can not be any presumption that the said property is a joint family property. He also referred to and relied upon the decision of Patna High Court reported in 1962 B.L.J.R 580 . Learned Counsel submitted that there can not be any presumption that the said properties were purchased by the husband with joint family fund even though the deed stands in the name of Smt. Indira Singh. He cited a decision of Madras High Court in [Chittaluri Sitamma alias Sitabayamma and Another Vs. Saphar Sitapatirao and Others](#), in support of his contention. He submitted that there is no evidence on record to prove that the said property in the name of Indira Singh is a joint family property. PWs- 3, 5 & 10 and DW-1 (defendant No. 2) have simply stated that the properties of S.K. Puri, Patna and Defence Colony, Delhi were acquired out of the joint family fund by Janardan Sinha. The existence of joint family fund itself could not be proved and there is no witness on the point as to who paid the consideration amount of S.K. Puri property. DW-7 Devendra Kr., DW-9 Upendra Singh and DW-11 Dr. Surendra Bahadur Singh (husband of defendant No. 3) have stated that the S.K. Puri property was not the joint family property. DW-2 Anil Kr. Singh has also stated that the said property is not a joint family property. The plaintiff has filed Ext. 3 to prove that Indira Singh has declared that the properties acquired in future out of the earnings of "Singh Brothers" will be joint family property. The said declaration has been proved and marked as Ext. 3 which has also been relied upon by learned Trial Court as an admission of Indira Singh, but the same has been used in her absence and without giving her any opportunity to explain the same. More so, there is no evidence on record to show that S.K. Puri property was purchased from the earnings of the business "M/S Singh Brothers". Any such general statement made on a Sada paper can not bind Smt. Indira Singh and can not divest her vested title in her property. It is now well settled that title of the land can not pass on mere admission. Reference can be made to a decision of the Apex Court in *Ambika Pd. Thakur and Ors. v. Ram Ekbal Rai (dead) and Ors.* reported in AIR 1966 S.C 605. Indira Singh is not a party to the suit and behind her back Ext. 3 can not be used as her declaration and her property can not be partitioned. PW-3 in paragraph 16, PW-4 in paragraph 6 and PW-10 in paragraph 6 have only stated that the said property was purchased by Janardan Singh, but no witness was present at the time of execution of the deed or payment of consideration and the evidences of the said witnesses are hearsay and inadmissible in law.

25. Mr. Manjul Prasad, Learned Sr. counsel appearing on behalf of the respondents, on the other hand, submitted that the Ext. 3 is a clear declaration of Smt. Indira Devi dated 9.1.66 and the property of S.K. Puri, Patna was acquired by a deed of settlement dated 9.12.66 (Ext. 12/B). In view of the said declaration and admission of



Indira Singh, no further evidence is required for proving the S.K. Puri property as an item of joint family property and as such learned Trial Court has. not committed any error in granting relief for partition also in respect of that property standing in the name of Smt. Indira Singh. It has been submitted that Indira Singh is bound by her statement made in Ext. 3 and her absence in the suit does not in any way vitiate the judgment and decree of the Trial Court with respect to the S.K. Puri property.

26. On careful scrutiny of the facts, evidences, materials on record and the appreciation of the submissions and contentions made by learned Counsel for the parties, it is evident that in the plaint there is no required description to identify the property mentioned as Item No. 3 in the Schedule of the plaint. If the plaintiff at all meant the property of Sri Krishnapuri acquired by virtue of the settlement deed Annexure-12/A standing in the name of Smt. Indira Singh, he could have supplied the necessary description of the same in the plaint by way of amendment even after the said document Ext. 12/A was brought on record. He could have also made Smt. Indira Singh a party to the suit, but she was not impleaded as a party. Learned Court below on the basis of Ext. 3 which is said to be a declaration of Smt. Indira Singh and on the ground that neither Anil Kr. Singh nor Janardan Singh (son and husband of Indira Singh) has brought any document to show that it was not a joint family property has held the same as an item of the joint family property also available for partition in this suit and has decreed 1/4<sup>th</sup> share of the plaintiff in the said property too. In my considered view, the said finding of (earned Court below is not sustainable in law and the same is also perverse being not based on any legal evidence on record. Firstly, the plaintiff has failed to prove sufficient joint family nucleus for acquisition of the said property acquired in the name of Smt. Indira Singh. Secondly, even in a case of proved joint family nucleus, an acquisition standing in the name of a female member can not be presumed to be a joint family property. Reference in this connection can be made to the decisions of the Supreme Court in [Kanakarathanammal Vs. V.S. Loganatha Mudaliar and Another](#), , of Orissa High Court in [Smt. Manohari Devi and Others Vs. Choudhury Sibanava Das and Others](#), and in Santanu Kuamr Das v. Bairagi Charan Das, and of Patna High Court in [Yugal Kishore Sinha Vs. Nagendra Prasad Yadav](#), . Thirdly, the said property is covered by Ext. 12/A and the settlement deed is in the name of Smt. Indira Singh and in her absence the said property cannot be included or partitioned among the parties to the suit Fourthly, learned Trial Court has committed serious error in holding the said property as joint property on the basis of the so called declaration made by Indira Singh in Ext. 3 treating the same as her admission. It is a settled law that title in land can not pass on mere admission. The decision of the Supreme Court in Ambika Pd. Thakur and Ors. v. Ram Ekbal Rai (dead) and Ors. reported in AIR 1966 S.C 605 is an authority on the point. That apart it is also settled that an admission may be a good evidence, but not a conclusive one and the admission can be withdrawn if proved to be misconduct or untrue. There is difference between admission and estoppel. An estoppel can create, an absolute bar, but there can not

be any estoppel against the statute. An admission can not be normally used as a conclusive evidence against a person making the same unless he/she is given a chance to know about and explain the same particularly when the admission is used for denying/taking away any valuable right or title in an immovable property.

27. In view of the above discussions, it is held that (i) in absence of the proper description to identify the Item No. 3 of the Schedule of the plaint as required under Order VII Rule 3 C.P.C, the property standing in the name of Smt. Indira Singh, described in Ext. 12/1 can not be substituted to mean-Item No. 3. (ii) The said property standing in the name of a female member can not be presumed to be an item of joint family property, (iii) The onus was on the plaintiff to prove jointness of that property but he failed to establish the same, (iv) The alleged failure of Janardan Singh or his son Anil Kumar Singh (defendant No. 1) to prove that the said property was not a joint property can not affect the right, title and interest of Smt. Indira Singh in the property exclusively standing in her name, (v) The said property also can not be dealt with or partitioned in absence of Indira Devi. She was not a party to the suit and had no opportunity to defend herself, (vi) The Ext. 3 can not be treated as an admission of Indira Singh against her interest behind her back. The Ext. 3 is not a document capable of conferring/transferring any title to any or divesting Smt. Indira Singh of her title. The finding of learned Trial Court that the said property covered by Ext. 12/1 is a joint family property and that the plaintiff is entitled to 1/4<sup>th</sup> share and each defendant is entitled to 1/4<sup>th</sup> share is wholly perverse and illegal and is hereby set aside. The point No. 4 is answered accordingly.

28. In the result, it is held that the property standing in the name of Indira Singh by virtue of Ext. 12/A can not be partitioned between the parties and the judgment and decree of learned Trial Court to that extent is set aside. However, in view of the discussions made while dealing with point Nos. 1, 2 & 3, the judgment and decree of learned Trial Court is modified holding that the Item Nos. 1 & 2 of the Schedule of the suit property were self acquired properties of Ram Vinod Singh and the plaintiff is entitled to get 1/4<sup>th</sup> share as decreed by learned Trial Court. The judgment and decree of learned Trial Court to that extent is upheld. First Appeal Nos. 18 & 20 of 1999(R) are allowed in part to the extent indicated above.

29. Since the final decree made on the basis of the preliminary decree passed in Partition Suit No. 153 of 1972 has been assailed in First Appeal Nos. 73 & 74 of 2001 and the said preliminary decree has been partly set aside and modified, the final decree passed in Partition Suit No. 153/72 on the said basis does not sustain and is hereby set aside. The parties are at liberty to take steps for preparation of final decree in accordance with the modification made in the preliminary decree as indicated hereinabove. However, in the circumstances of the case, there is no order as to costs.