

(2002) 08 JH CK 0053

Jharkhand High Court

Case No: Appeal from Original Decree No. 31 of 1987 (R)

Mukhlal Singh and Others

APPELLANT

Vs

Sita Ram Munda and Others

RESPONDENT

Date of Decision: Aug. 1, 2002

Hon'ble Judges: Gurusharan Sharma, J

Bench: Single Bench

Advocate: V. Shivnath, for the Appellant; Anoop Kumar Mehta, for respondents 1 and 2, for the Respondent

Final Decision: Dismissed

Judgement

Gurusharan Sharma, J.

This appeal has been filed by defendants against final Decree passed in Partition Suit No. 61 of 1951.

2. Bishun Singh Babu had two sons, namely, Sohan Singh Babu and Sitaram Singh Babu, Sohan Singh Babu left behind five sons, Mukhlal, Banbihari, Jairam, defendant No. 3, Madan, defendant No. 4 and Bishun, defendant No. 5, Mukhlal died issueless. Banbihari had two sons. Sohanbabu, defendant No. 1 and Mukhlal Babu, defendant No. 2. Sitaram Singh Babu left behind two sons, Sahdeo Babu, plaintiff No. 1 and Ruplal, plaintiff No. 2.

3. Plaintiffs claimed half share in the properties (8.03 acres land), detailed in Schedule at the foot of the plain.

4. Defendants contested the suit, inter alia, on the ground that parties are governed by rule of lineal primogeniture. There is no unity of title and possession between the parties and plaintiffs have no right to demand partition. Plaintiffs belonged to junior branch and, therefore, they were only entitled to maintenance for which lands were already given to them.

5. Trial Court decreed the suit holding that property in suit was partible. Plaintiffs were not maintenance holders and they are their father never got any separate land for maintenance. A preliminary decree for partition of plaintiffs' half share in the suit properties was passed.

6. Thereafter in course of preparation of final decree, the Court appointed Pleader Commissioner, who prepared patti and allotted the properties to both parties and submitted his report on 3.7.1953.

7. In the meantime, defendants preferred First Appeal No. 411 of 1952 in the High Court of Judicature at Patna against the preliminary decree.

8. Before confirmation of the Commissioner's report the trial Court asked the parties to file objection, if any, to the said report. On 25.7.1953 defendants took time to file objection. On 20.8.1953 defendants filed petition for time to bring stay order from the High Court. On 12.9.1953 defendants did not take any step and the case was adjourned to 28.9.1953. However, the court directed to take step for confirmation of Commissioner's report.

9. By order dated 10.9.1953 the High Court stayed signing of the final decree. On 18.9.1953, trial Court observed that no objection to the Commissioner's report has been filed till date, though several chances were allowed. The Commissioner's report was accordingly. Confirmed.

10. Defendants were well within knowledge of the fact that Pleader Commissioner had already filed his report and inspite of several adjournments allowed for filing objection, if any, thereto, they failed to file any objection and, as such, the said report was confirmed.

11. By order dated 11.11.1986, trial Court directed preparation of final decree on filing non-judicial stamps by the plaintiffs. On 14.11.1986 non-judicial stamps were filed as per Seristedar's report and on the same date final decree was prepared and notified and thereafter on 20.11.1986 it was sealed and signed.

12. In the present appeal defendants have raised only one objection that equitable distribution of the suit land was not made and more fertile lands having better situation have been allotted to the plaintiffs.

13. In my opinion, this objection is quite vague and nothing was brought on record to substantiate it.

14. I find no reason to interfere with the impugned final decree. There is no merit in this appeal. It is, accordingly, dismissed, but without costs.