

Binod Bihari Lal and Others

Vs

Rameshwar Prasad Sinha and Others

Civil Appeal No. 2163 of 1968

(N. L. Untwalia, P. S. Kailasam JJ)

02.02.1978

JUDGMENT

UNTWALIA, J. -

1. This appeal by certificate is by the defendants. It arises out of a suit for partition filed by the plaintiffs-respondents. The suit was declared in part by the trial court. The Patna High Court modified the decree of the trial court in some respects in favour of the plaintiffs. The defendants have come up to this Court.
2. Mr. S. N. Prasad appearing for the appellants pressed this appeal in regard to only two items of properties; (1) the house at Sadisopore, the ancestral village home of the parties; (2) certain bakasht lands which had become the kasht of the intermediary under Section 6 of the Bihar Land Reforms Act. Learned submitted that these two properties were the self acquired properties of the appellants' ancestors, the trial court was right in holding that the house at Sadisopore was such a property and both the courts below were wrong in holding that the bakasht lands were not the self acquired properties.
3. It appears from the judgments of the courts below that by and large both the properties and specially the house, leaving aside the land upon which it stood, were acquired by Sheosaran Lal who had a large amount of practice as a lawyer at Arrah and Patna. But the appellants were defeated on the ground that the properties had been blended together with the joint family properties and hence quite long before the institution of the partition suits they become joint family properties by blending. Mr. Prasad submitted that in absence of a specific pleading to that effect in the plaint, the two items of properties could not be held to be joint on the theory of blending. We do not accept this arguments as sound in this case. Having appreciated the entire facts and circumstances of the case we think that the pleading that the properties were the joint family properties was sufficient to enable the Court to look into the evidence of blending which was merely a historical aspect of the question as to how the properties had become joint family properties. The High Court has rightly held that the house at Sadisopore had become a joint family property because of blending in support of which there was ample evidence. We need not repeat what has been stated in the judgement of the High Court in this regard.
4. The judgement of the High Court was also attacked in regard to the orchard in village Semcera. But we find no substance in the argument and no justification for our interference with the finding of the High Court.
5. So far as the bakasht lands are concerned, apart from the fact that the findings of the two courts

below are concurrent and unassailable, there is a further insurmountable difficulty in the way of the appellants in that they had not filed any appeal or cross-objection in the High Court challenging the decision of the trial court which was adverse to them in regard to this property.

6. For the reasons stated above we dismiss this appeal but in the circumstances make no order as to costs.

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