

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.424 of 2019

1. Deonandan Yadav @ Deonarayan Yadav, Son of Late Jatuni Gope @ Ramjatan Yadav, Resident of Village-Parariya, Post Office-Duggal, Police Station-Kasma, District-Aurangabad.
2. Mahendra Yadav, Son of Late Jatuni Gope @ Ramjatan Yadav, Resident of Village-Parariya, Post Office-Duggal, Police Station-Kasma, District-Aurangabad.
3. Ganesh Yadav, Son of Late Jatuni Gope @ Ramjatan Yadav, Resident of Village-Parariya, Post Office-Duggal, Police Station-Kasma, District-Aurangabad.
4. Mahesh Yadav, Son of Late Jatuni Gope @ Ramjatan Yadav, Resident of Village-Parariya, Post Office-Duggal, Police Station-Kasma, District-Aurangabad.
5. Ramesh Yadav, Son of Late Jatuni Gope @ Ramjatan Yadav, Resident of Village-Parariya, Post Office-Duggal, Police Station-Kasma, District-Aurangabad.
6. Chandra Devi @ Chandrama Devi, D/o Late Jatuni Gope @ Ramjatan Yadav, Resident of Village-Parariya, Post Office-Duggal, Police Station-Kasma, District-Aurangabad.
7. Muniya Devi, D/o Late Jatuni Gope @ Ramjatan Yadav, Resident of Village-Parariya, Post Office-Duggal, Police Station-Kasma, District-Aurangabad.
8. Most. Gauri Kunwar, Wife of Late Jatuni Gope @ Ram Jatan Yadav, Resident of Village-Parariya, Post Office-Duggal, Police Station-Kasma, District-Aurangabad.

... ... Appellant/s

Versus

Baliram Gop, Son of Dewa Gope, Resident of Village-Parariya, Post Office-Duggal, Police Station-Kasma, District-Aurangabad.

... ... Respondent/s

Appearance :

For the Appellant/s : Mr. Narendra Kumar, Adv.
 Mr. Tej Narayan Singh, Adv.
 Mr. Akash Ambuj, Adv.



For the Respondent/s : Ms. Sunita Kumari, Adv.
Mr. Dharmendra Kr. Sinha, Adv.

**CORAM: HONOURABLE MR. JUSTICE KHATIM
REZA**

CAV JUDGMENT

Date : 15-05-2025

Heard learned counsel for the appellants and learned counsel for the respondent.

2. This Second Appeal has been filed by the defendant/appellants/appellants against the judgment and decree dated 20.06.2019 passed in Partition Title Appeal No. 18 of 2008/115 of 2018 by the Additional District Judge-III, Aurangabad, whereby, the learned Appellate Court has affirmed the judgment and decree dated 30.04.2008 passed by the Sub-Judge-I, Aurangabad in Partition Suit No. 172 of 2004, decreeing the suit of the plaintiff/respondent.

3. In this appeal, the following substantial questions of law have been formulated for determination:-

(I). Whether the learned Appellate Court passed the judgment in violation of mandatory provision of law under Order XLI Rule 31 of Code of Civil Procedure when it did not formulate any point of determination?



(II). Whether the decision of the learned Appellate Court is not supported by the independent reasons as while affirming the judgment and decree of the learned Trial Court, the learned Appellate Court has just copied the decision made by the learned Trial Court.?

4. In order to gauge the matter in its correct perspective, it is necessary to briefly re-state what the suit entails. The suit was filed by the plaintiff/respondent for partition of his 8 Annas (half share) in joint family property and for carrying out his share by appointing survey knowing Advocate Commissioner after drawing final decree and plaintiff be put in possession. The details of the land has been given in the plaint. The plaintiff has also given genealogical table at the foot of the plaint which shows the relationship between the plaintiff and the defendant. It is further pleaded that the land of Khata No. 25 of village Parariya, district-Aurangabad stands recorded in the C.S. Khatiyan in the name of Palit Gope, son of Pati Gope and land of Khata No. 31 of village-Parariya, district-Aurangabad stands recorded in C.S. Khatiyan in the name of Rangu Gope, son of Mangru Gope. It is further contended that Palit Gope and Rangu Gope although



they were recorded separately in C.S. Khatiyan but they were members of a joint Hindu family and were in joint possession of land of Khata Nos. 25 and 31 respectively. Rangu Gope died issueless in a state of jointness and hence, Palit Gope's interest devolved upon his nearest relation. After the death of Rangu Gope, Palit Gope became the sole owner of Khata No. 25 and 31 of village-Parariya the said Palit Gope died leaving behind his three sons Jhagaru Gope, Raudi Gope and Dewa Gope in a state of jointness and after the death of Palit Gope, Jhagaru Gope became the *Karta* and Manager of the joint family. Raudi Gope also died issueless leaving behind his surviving two full brothers, Jhagaru Gope and Dewa Gope in the state of jointness. Jagaru Gope died leaving behind his son Jatuni Gope (original defendant) and full brother, namely, Dewa Gope. Dewa Gope also died leaving behind Baliram Gope (plaintiff). After death of Jhagaru Gope and Dewa Gope, Jatuni Gope became *Karta* and the sole *Karta* of joint family of the plaintiff including the defendant. The suit property is the ancestral property or coparcener property in which plaintiff is a coparcener having equal interest with defendant Jatuni Gope. Hence, there is a unity of title and possession



amongst the plaintiff and defendant over the suit property. Up till now no partition has been affected either among the sons of Palit Gope or amongst the plaintiff and the defendant. The defendant with intention to deprive the plaintiff wanted to transfer the property without partition, hence, the plaintiff asked the defendant to partition the suit property by meets and bounds which was finally refused by the defendant.

5. On summon, the original defendant Jatuni Gope appeared and filed his written statement and raised objection with regard to the maintainability of the suit and also claimed that the plaintiff has no *locus standi* to bring the suit against the defendant. It is further contended that the plaintiff is not related to the family of the defendant/appellants and denied his genealogy given in the plaint and that Dewa Gope, father of the plaintiff was not the son of Late Palit Gope nor the member of undivided Hindu joint family and also gave a genealogical table in his written statement in respect of family of Ama Gope.

6. Further case of the plaintiff is that Rangu Gope sold his entire land of Khata No. 31 for his legal necessity in favour of Nagina Devi, wife of Jhagru Gope on 21.07.1926



for consideration amount of Rs. 75/- and delivered the possession to Nagina Devi over her purchased land. On the same date a memorandum of sale was reduced into writing over which Rangu Gope put his L.T.I and signed by Abdul Rahim, scribed by Nathuni Lal and it was attested by Abdul Rahim in presence of witnesses. Since then Nagina Devi came in possession of the purchased property and her name was mutated in the *Sarista* of ex-landlord. On her death, her husband and her son Jatuni Gope came in possession. On death of Jhagaru Gope, husband of Nagina Devi, Jatuni Gope became absolute owner and came in possession over the same as *Raiyat*. He is in possession and he is enjoying his usufruct. It is vehemently submitted that Jhagru Gope never died in the state of jointness with Palit Gope instead he died in a state of jointness with Raudi Gope. It is vehemently denied that the suit land is neither ancestral nor personal property of the plaintiff, therefore, the suit is fit to be dismissed.

7. On the basis of pleadings, the learned Trial Court had framed eight issues in which Issue Nos. 5, 6 and 7 were taken into consideration and other issues were formal in nature. The learned Trial Court after considering the pleadings



and evidence adduced by the parties as well as materials on record has held that plaintiff is entitled to half share and decreed the suit.

8. Being aggrieved by the judgment and decree dated 30.04.2008 passed in Partition Suit No. 172 of 2004 by the learned Sub-Judge-I, Aurangabad, the defendant/appellants preferred Partition Appeal No. 18 of 2008/115 of 2018.

9. After hearing the parties, the learned lower Appellate Court considered the Issue Nos. 5, 6 and 7 for consideration in the Title Appeal and copied the same finding of the Trial Court in its consideration and dismissed the appeal.

10. Learned counsel for the defendant/appellants/appellants has submitted that the learned lower Appellate Court has failed to apply its judicial mind while passing the impugned judgment and decree. Without considering the materials available on record and the documentary evidences of the appellants, the lower Appellate Court has dismissed Partition Appeal. It is further submitted that both the parties adduced their evidence i.e. oral as well as



documentary. The documents adduced by the plaintiff were exhibited as follows:-

Ext.-1 *Consolidation Khatiyan*

Ext.-2 *Cadstral Survey Khatiyan*

Panchnama marked as Ext.-X

The documentary evidences adduced on behalf of the defendant are as follows:-

Ext.-A *Vakalatnama*

Ext.-A1 Signature of the Advocate on the written statement

Ext.-B to B5 Rent receipts

Ext.-C to C2 *Zamindari* receipts

Ext.-D Unregistered sale deed

Both the parties adduced their oral evidences. Eight witnesses were examined by the plaintiff while 14 witnesses have been examined by the defendant.

11. It is vehemently submitted by the learned counsel for the appellants that learned lower appellate court did not consider the materials on record and there is non-consideration of documentary evidence as well as oral evidence of the parties independently by the learned lower



Appellate Court. Further, the learned Appellate Court did not formulate any point for determination of the appeal. The learned Appellate Court has copied the findings given by the learned Trial Court.

12. It is submitted that the appellants are in possession of the suit land, in question, on the basis of unregistered sale deed dated 21.07.1926 executed for the consideration amount of Rs. 75/- by Rangu Gope in favour of Nagina Devi, ancestor of the defendant and her name was mutated in the revenue records of ex-landlord. In this regard, *zamindari* receipts have also been filed vide Ext.-C to C2. After vesting of zamindari, ground-rent receipt of the same was issued by the State of Bihar which has been Exhibited as B/B5. It is well settled principle of law that Section 17 of the Indian Registration Act envisages that the sale deeds for less than Rs. 100/- is optional for its registration and it is not mandatory or compulsory for registration. Both the courts have held that Exhibit-D is the unregistered sale deed. On this ground, the claim of the appellants was disbelieved by both the courts below.



13. Learned counsel for the defendant/appellants further submits that the judgment and decree of the learned lower Appellate Court did not discuss or decide any question of facts and law involved in the case. The learned appellate court only copied the same as held by the learned Trial Court. The entire approach of the Appellate Court was vitiated by pre-conceived mind that the finding recorded by the Trial Court was simpliciter and affirmed the judgment and decree of the Trial Court. Reliance has been placed by the learned counsel for the appellants in the case of ***Janardhan Narasimha Nayak vs Balwant Venaktesh Kulkarni & Anr.*** reported in **(2007) 9 SCC 658.**

14. It is also submitted that the lower Appellate Court below failed to comply the mandatory provision of Order XLI Rule 31 C.P.C. The court of first appeal must record its finding only after dealing with all issues of law as well as facts and the evidence oral as well as documentary led by the parties. The first appellate court must display conscious application of mind and record findings supported by the reasons on all issues and contentions in view of the scope and powers conferred on it under Section 96 read with Order XLI



Rule 31 C.P.C., It is apparent from the Appellate Court's judgment that the appellate court has not discussed any issue thereby causing prejudice to the appellants whose valuable right to prosecute the first appeal on facts and law was adversely affected which, in turn, deprived for hearing in the appeal in accordance with law. Therefore, non-compliance of the requirement of Order XLI Rule 31 C.P.C. leads to infirmity in the judgment of the first appellate court.

15. On the other hand learned counsel for the plaintiff/respondent has submitted that the Appellate Court had considered and discussed the entire judgment of Trial Court as finding recorded by the Trial Court was comprehensive and it was not necessary for separate discussion on finding as judgment was passed on findings of facts. It is not necessary to record separate reasons on each point. Reliance has been placed in the case of **Parmanand Yadav & Anr. Vs Jagdeo Yadav & Ors.** reported in **(2014) 3 PLJR 827** and submitted that concurrent finding of facts, however, erroneous cannot be disturbed in the Second Appeal.

16. It is vehemently submitted by the learned counsel for the respondent that the Trial Court came to



conclusion that in support of genealogical table the witnesses produced by both the parties were neither family members nor neighbours or a person having special means of knowledge and, therefore, Trial Court had taken into consideration Exhibit-1, which is Chakbandi Khatiyan in which the plaintiff and defendant were shown from same branch having equal share. This document was neither disputed nor disbelieved by the defendant, therefore, on the basis of Exhibit-1, the Trial Court came to the conclusion that genealogical table given by the plaintiff was correct. This finding has been affirmed by the lower Appellate Court.

17. Learned Trial Court upon determination of Issue Nos. 6 and 7, held that there was no any document for earlier partition between the parties. The defendant had only stated that Rangu Gope had sold the land in favour of Nagina Devi having value of Rs. 75/- (Ext.-D). The defendant produced three zamindari receipts and all the three zamindari receipts were disbelieved on the basis of contradictory evidence by the defendant itself. This finding has also been affirmed by the lower Appellate Court.



18. Learned counsel for the plaintiff/respondent relied upon Section 54 of the Transfer of Property Act which envisaged that sale of immovable property of value less than Rs. 100/- could be made only either by registered instrument or by delivery of possession and in case of delivery of possession, delivery must be actual at the time of sale. Mere constructive delivery of possession is not sufficient for the purpose of this section. The factum of possession has not been proved by the defendant. The Trial Court has rightly came to the conclusion that the plaintiff is entitled for partition of his half share which was affirmed by the learned appellate court below.

19. *The object of Rule 31 of Order XLI C.P.C. is to afford the parties opportunity of knowing and understanding the ground of decision to enable the exercise the right of Second Appeal and to enable the High Court in Second Appeal to judge whether the lower Appellate Court properly appreciated and decided the case when the first appellate court agreed with the views of the Trial Court on evidence, it need not restate effect of evidence or reiterate the reasons given by the Trial Court.* This view has been taken by the



Hon'ble Gauhati High Court in the case of **Gopendra Goswami & Ors. vs. Haradhan Das & Ors.** reported in **AIR 2009 Guwahati 41.** It is submitted that the learned Appellate Court substantially complied with the provision of Order XLI Rule 11 C.P.C.. It is further submitted that both the courts have considered all the aspects of the matter and rightly decreed the suit of the plaintiff/respondent.

20. On analyzing the materials on record as well as impugned judgments, this Court finds that the learned Appellate Court below has given its finding in paragraph nos. 10, 11, 12 and 13. The discussion in the aforesaid paragraphs as well as discussions of the evidences adduced by the plaintiff/respondent and defendant/appellants are only copy-paste of the findings recorded by the Trial Court in paragraph nos. 8, 9, 10 and 11 of its judgment. There is no application of mind by the learned Appellate Court. The judgment of the first Appellate Court has to set out points for determination, record the decision thereon and give its own reasons. Even when the first Appellate Court affirms the judgment of Trial Court, it is required to comply with the requirement of Order XLI Rule 31 C.P.C. and non-observance of this requirement leads to



infirmity in the judgment of first appellate court. This view has been taken by the Apex Court in the case of **P.V. Nagesh & Anr. vs. H.V. Sreenivasa Murthy** reported in **(2010) 3 SCC 530**. The appeal before the lower appellate Court involved both disputed question of law and facts. The Appellate Court without examining of any of these aspects has dismissed the appeal by a cryptic order. The learned lower appellate court below has neither re-appreciated the evidence of the parties nor it has passed a reasoned judgment. The court of appeal below has failed to follow the provision of Order XLI Rule 31 C.P.C. while deciding the appeal. Moreover, the question of registration of unregistered sale deed less than value of Rs. 100/- is optional and is not mandatory for its registration and the same is prescribed in case of Section 54 of the Transfer of Property Act. Even this question has not been examined in its proper perspective. This Court has relied upon a decision of the Apex Court in the case of **Malluru Mallappa (Dead) Through Legal Representatives vs Kuruvathappa & Ors.** reported in **(2020) 4 SCC 313**, wherein the Hon'ble Apex Court in paragraph nos. 15 has held as follows:-



“15. Order 41CPC deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate court shall state:

(a) the points for determination;
(b) the decision thereon;
(c) the reasons for the decision; and
(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

4. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. Sitting as a court of first appeal, it was the duty of the High Court [H.V. Sreenivasa Murthy v. B.V. Nagesha, 2008 SCC OnLine Kar 837] to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and



the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings.”

21. In the light of the narrative and discussions (supra), there can be no doubt that the learned lower appellate court erred and was not justified in dismissing the appeal of the defendant.

22. In the aforesaid facts and circumstances of the case, the substantial questions of law formulated are answered in favour of the appellants. Consequently, the judgment of lower appellate court dated 20.06.2019 passed in Partition Title Appeal No. 18 of 2008/115 of 2018 by the Additional District Judge-III, Aurangabad is set aside and the appeal is remanded to the lower appellate court to decide the appeal afresh in accordance with law. Learned Appellate Court is directed to dispose of the appeal, preferably, within a period of six months from the date of receipt of a copy of this judgment.

23. In the result, the appeal succeeds and is accordingly, allowed.

24. All the contentions of the parties are left open. There will be no order as to costs.



25. Pending interlocutory applications, if any, shall stand disposed of.

(Khatim Reza, J)

prabhat/-

AFR/NAFR	AFR
CAV DATE	11.11.2024
Uploading Date	18.05.2025
Transmission Date	N/A

