SUPREME COURT OF INDIA

Wali Singh

Vs.

Sohan Singh

C.A.No.207 of 1952

(Mehr Chand Mahajan, B. K. Mukherjea and B. Jagannadhadas, JJ.)

26.10.1953

JUDGEMENT

JAGANNADHADAS, J.:

1. This appeal arises out of a suit for declaration that the property, details of which are given in the plaint, are jointly possessed and owned by the plaintiff and the defendant the plaintiff owning 3/4 the share and defendant 1/4th share. The suit was decreed by the trial Court. But on appeal, the High Court of Punjab reversed the decree. Hence the appeal to this Court. The facts out of which this litigation arises are as follows:

2. The suit properties admittedly belonged to one Kahan Singh who is the common ancestor of both the parties. The following pedigree shows the relationship :

The plaintiff, Wali Singh, son of Shiv Singh was admittedly adopted by Kirpal Singh. The dates of birth and adoption of Wali Singh were both matters in dispute in the suit. But it was found by the trial Court that Wali Singh was born on 2-3-1904, during the lifetime of Kahan Singh and that he was adopted on 24-8-1918, long after Kahan Singh's death which occurred on 12-11-1906. These findings have been accepted by the appellate Court and are no longer in dispute before us. Kahan Singh left him surviving only one of his sons, Kirpal Singh and two great-grandsons, Wali Singh and Pritam Singh, sons of Shiv Singh. Both Mohar Singh and Shiv Singh predeceased him.

On Kahan Singh's death there was mutation regarding his properties in the Revenue Records. Ex. P.-11 dated 28-3-1907, shows that the mutation was made in favour of Kirpal Singh for one half share and Wali Singh and Pritam Singh together for the other half share. The family appears to have properties in three villages Mahalpur, Bahuwal and Wasuwal. Ex. P-11 relates only to mouza Mahalpur. But it is not disputed that similar mutations were then made in respect of properties in the other two villages.

3. Pritam Singh died on 19-5-1920, leaving the defendant, Sohan Singh, as his sole heir. It is to be noticed that about two years prior thereto, Wali Singh, the plaintiff, had been adopted by Kirpal Singh. In view of these two events, Kinpal Singh brought about mutations in the Revenue registers in respect of the properties in the three villages. The mutations in respect of mouza Bahawal are to be gathered from Exs. D-9 and D-4, dated 1-6-1920 and Ex. D-8 dated 15-6-1920. By Ex. D-9, Wali Singh was mutated for Kirpal Singh. By Ex. D-4 , Wali Singh's name was removed from the register as a cosharer with Pritam Singh in respect of Shiv Singh's half share.

Having thus brought about the entry showing Pritam Singh as the sole sharer of Shiv Singh's half share, Sohan Singh's name was thereafter substituted for that of Pritam Singh by Ex. D-8 dated 15-6-1920. The net result of these mutations was finally to show in respect of the lands in mouza Bahuwal the plaintiff, Wali Singh, as owning the half share of Kirpal Singh and the defendant, Sohan Singh, as the owner of the half share of Pritam Singh. It will be seen that this result was brought about by means of three steps in the order specified above. As regards the other two villages namely Mahalpur and Wasuwal, the entries in Exs. D-3 and D-7 both dated 15-6-1920, which correspond only to the second step have been exhibited.

But it is not disputed that the mutations in respect of these two villages also went through the same course bringing about finally the entries in the Revenue Records in the name of Wali Singh and Sohan Singh as equal half-sharers. The case of the plaintiff is that these mutations were made during his minority completely ignoring his rights and that they are ineffectual to alter his lawful share in the properties. He points out that by the date of Kahan Singh's death he was born but not adopted and therefore he was rightly mutated in 1907 under Ex. P-11 as being entitled jointly with Pritam Singh to the half share of Shiv Singh and that his subsequent adoption by Kirpal Singh entitled him to get Kirpal Singh's half share in addition.

He says that adoption could not divest him of the other 1/4th share which he had become already entitled to as the son of Shiv Singh. His case is that though the Revenue records show his interest in the landed properties only as half and not as 3/4ths, his legal rights have not in any way become altered thereby since both the parties have been in joint possession throughout until the date of suit. The main defence is that the enjoyment of parties since 1920 was on the basis that, each was entitled to a half share and that the plaintiff not only did not take steps to get the Revenue records rectified but consciously acquiesced in it and admitted it and that the suit is barred by limitation.

The trial Court held that the suit was not barred under Art. 44, Limitation Act. In the view of the High Court, the mutations effected in the year 1920 in respect of three villages amounted to a transfer of the pre-existing 1/4th share of Wali Singh by Kirpal Singh as his guardian. It was accordingly held that it was incumbent upon Wali Singh to get that transfer set aside within three years after attaining majority notwithstanding that the parties may have continued in joint possession. In this view they dismissed the suit.

4. Learned counsel for the plaintiff-appellant urges that the mutation proceedings did not purport to be based on any transfer by Kirpal Singh as guardian of Wali Singh and that there is no basis for invoking the application of Article 44 against the plaintiff. The inference of the High Court that the mutation proceedings in 1920 constitute a transfer is based on the narrations therein. It is necessary, therefore, to examine them. The first was the mutation entry No. 167 shown by Ex. D-9 dated 1-6-1920. This entry shows that the mutation was made on certain statements made by Kirpal Singh and Wali Singh.

Kirpal Singh's statement is as follows:

"I Kirpal Singh have adopted Wali Singh, the grandson of my real brother, as my son, under a registered deed. Pritam Singh his other brother also died. His (Pritam Singh's) son is alive. I wish that during my lifetime my entire movable and immovable property might be entered in the name of Wali Singh and accordingly Wali Singh shall have so concern with the property of Shib Singh. The son of Pritam Singh is a minor. His rights are not affected thereby." Wali Singh's statement is as follows:

"My name may be removed from the heritage, of Shib Singh. It may be entered in the name of the son of Pritam Singh. A separate mutation be entered in respect thereof."

Mutation No. 174 in Ex. D-4 which was also made on the same date shows the following statement by Wali Singh.

"My name may be removed from my parental heritage, because Kirpal Singh had adopted me as his son. I now relinquish my right in the heritage of my father."

Mutation entry No. 175 shown by Ex. D-8 dated 15-6-1920, was merely the resultant of mutation entries Nos. 167 and 174. These statements relate to Bahuwal. It may be taken that similar statements were made in respect of the villages Mahalpur and Wasuwal. The learned \Judges were inclined to treat these statements as showing a transfer by Kirpal Singh of Wali Singh's pre-adoption 1/4th share. It appears to us, however, that they cannot really bear any such interpretation. It is true that the various mutations were brought about by Kirpal Singh and that Wali Singh was a minor at the time to the knowledge of everybody concerned. It is also true that Kirpal Singh intended that Wali Singh should not have any share in his natural father's property.

But in terms, what appears to have been done was to get Wali Singh to make a declaration of relinquishment of his share in Shiv Singh's heritage. The recitals do not purport to be based on any transfer or relinquishment by Kirpal Singh as the guardian of Wali Singh. The purported release by the minor Wali Singh was absolutely infructuous in law. There being nothing by way of release by Kirpal Singh on behalf of Wali Singh, no case for the application of Article 44 of the Limitation Act arose. We are, therefore, of the opinion that the learned Judges of the High Court were in error in thinking that the plaintiffs suit was barred by virtue of Art. 44, Limitation Act.

5. Learned counsel for the respondent, however, urges that in view of the course of events appearing on the record the plaintiff is not entitled to any declaratory relief and that the same is barred by limitation under Art. 120, Limitation Act. He urges that even if knowledge of the wrong entries in the revenue records of the year 1920 did not furnish the plaintiff a cause of action since he was then a minor, there are a number of subsequent proceedings which indicate not only that he was perfectly well aware of his situation from at least the year 1928 but also that he throughout conducted himself in his relations with the respondent as an equal sharer and went so far as to become a party to a joint application for partition of the family properties in equal shares between himself and the defendant so late as in the year 1943.

Exs. D-10 and D-12 dated 7-12-1928 Ex. D-1 dated 15-7-1937, Exs. A and B dated 26-2-1943, and Exs. D-5, D-6 and D-11 of the year 1944 have been relied on in support of the above contention. It is also pointed out that the averments made by the plaintiff in paras 5 and 6 of the plaint as to when the right to sue accrued and cause of action arose have not been substantiated in the evidence at the trial. It is urged, therefore, that whatever cause of action the plaintiff had or a declaratory relief, it was much more than six years prior to suit and that no fresh cause of action has been made out and that, therefore, the present suit is barred on this ground.

6. But we notice that the above aspect has not at all been raised in the Courts below. There is no mention of it in the grounds of appeal to the High Court or in the case filed for the respondent in this court. The above mentioned facts were relied on in the courts below only to make out pleas of acquiescee, estoppel or ratification which have been found against. Besides, it appears from the record that when the issues were framed by the trial Court, it was expressly recorded as follows in a

statement signed by counsel for both the parties.

"There is no other point in dispute or any issue to be framed. We give it up if a mention of it is made in the pleadings."

In these circumstances it is too late to allow this point to be raised at this state.

Besides, the plaintiff has a subsisting title and his legal right as three-fourth sharer has been denied at least in these proceedings. There is, therefore, no purpose served by dismissing this suit and by driving the parties to another litigation.

7. In the result the appeal is allowed and the declaration granted by the trial Court restored. In the circumstances the parties will bear their own costs throughout.

Appeal allowed.

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