SUPREME COURT OF INDIA

Tek Bahadur Bhujil

Vs.

Debi Singh Bhujil

C.A.No.882 of 1962

(P. B. Gajendragadkar, C.J.I., M. Hidayatullah, Raghubar Dayal and V. Ramaswami, JJ.)

26.02.1965

JUDGEMENT

RAGHUBAR DAYAL, J.:

1. This appeal, on certificate issued by the Assam High Court, is by Tek Bahadur Bhujil, brother of Dhanbir Bhujil, respondent No. 2, and uterine brother of Debi Singh Bhujil, respondent No. 1. Their mother was Beli Bhujilini, respondent No. 3, since deceased.

2. Respondent No. 1 instituted a suit on September 3, 1946, against the other three aforesaid persons, in the Court of the Assistant Political Officer, Khasi States, Shillong, for partition of his half-share in the property mentioned in Schedule A to the plaint, as well as his half-share of the business known as Gurkha Dairy at Mawprem, for separate possession of his such half-share by metes and bounds and for his half-share in the income of profits of the business since January, 1, 1943 to the date of the decree. He alleged in the plaint that he, Tek Bahadur and Dhanbir Bhujil were brothers and belonged to the same joint family centering round their common mother, defendant No. 3, who had come from Nepal about 26 years earlier. It was further alleged that the property in suit and the dairy business were acquired by the family in the name of Tek Bahadur, the eldest brother. Two other business were subsequently started. They were the Indian Sweet-meat House and the Dilkhosh Cabin, at Police Bazaar, Shillong. These businesses were in the name of Dhanbir Bhujil. It was stated that on December 31, 1942, the brothers decided with the consent of the mother to enjoy the properties and the businesses in a certain specified manner. The plaintiff and Tek Bahadur were to enjoy half and half the landed property and the dairy business, while Dhanbir was to enjoy the other two businesses. The mother was to enjoy the house property in Shillong Cantonment which had been purchased in her name. It may be mentioned that Dhanbir Bhujil and Beli Bhujilini were pro forma defendants and the real relief was claimed against Tek Bahadur, appellant.

3. The appellant contested the suit on various grounds, including the one that all the properties were self-acquired properties of his and that nobody else had any right, title or claim in them. The allegations in the plaint were not admitted and it was specifically stated:

".....the mother was never or is the head of the family as alleged nor were the properties acquired by the family in the name of the defendant No. 1 as alleged in para 2 of the plaint."

Of the issues framed, two issues were:

"(1) Whether the properties in suit are joint properties of the plaintiff and defendant 1, to the suit, or the self-acquired property of defendant 1 alone?

(2) Whether there was any division of the properties with separate possession and enjoyment as alleged?"

The trial Court decreed the suit against defendant No. 1 holding that the properties in suit were joint properties of the plaintiff and defendant No. 1 and that there had been a division of the family properties with separate possession and enjoyment by the parties as alleged by the plaintiff.

4. Tek Bahadur, appellant, preferred an appeal to the Deputy Commissioner of United Khasi Jaintia Hills at Shillong. The appeal was dismissed. Tek Bahadur then went up in revision to the High Court of Judicature in Assam, under R. 36 of the Rules for the Administration of Justice and Police in the Khasi and Jaintia Hills, as adopted and modified by the Assam Autonomous Districts (Administration of Justice) Regulation, 1952, as applied to the Administered Areas of Shillong. The High Court rejected the petition stating that it had no force.

5. In support of the alleged division of properties in 1942, the plaintiff-respondent relied on the agreement, Exhibit 3, which incorporates the statements of the three brothers and concludes with the expression:

"We the three brothers having agreed over the above statement and having made our own statements in the presence of the Punch called by us and signed and kept a copy of each of this document as proof of it. The witnesses in this matter as scheduled are true."

6. The two questions urged in this appeal on behalf of the appellant are (i) that the agreement Exhibit 3 does not amount to a family arrangement: (ii) that if it does amount to a family arrangement, it required registration.

7. The contention of the appellant about the agreement, Exhibit 3, being does not a record of a family arrangement is based on several grounds. Debi Singh, respondent 1, was a uterine brother of the appellant and respondent 2 and therefore could not be a member of their family. There could not be a family arrangement between members of the family and a non-member. The landed property, according to the evidence, was purchased from the money of their mother. There was therefore no dispute about the title to this property. Similarly, there was no dispute that the two businesses belonged to respondent No. 2. It is urged that it is essential for the validity of a family arrangement that the parties to it amicably arranged some existing dispute. When there was no dispute there could be no family arrangement. Another attack on the validity of the family arrangement is that the mother was not party to it. It is urged that all the members of the family should join in a family arrangement.

8. The first contention that respondent No. 1 was not member of the family was not raised in the Courts below. There was no such plea in the written statement filed by the appellant, and consequently, there was no such issue. The appellant, his brother and mother migrated to this country from Nepal. We do not know whether Hindu law, as recognized in this country, obtains in Nepal. It appears that some differences do exist. The plaintiff alleged in the plaint that he, along with the appellant and respondent No. 2, were brothers and belonged to the same joint family centering round their common mother. There was no specific denial that the brothers did not form a joint family. What was specifically denied was that the mother was the head of the family as alleged

or that the properties were acquired by the family in the name of the defendant. The plaintiff, in cross-examination, stated:

"It is not a fact that according to Hindu law and according to Nepali Hindu customs, in the absence of the father, mother cannot be the head of the family when there are sons. It is not a fact that my mother was not the head of the family of Dhanbir and Tek Bahadur."

In view of the absence of any such specific pleas, issues and evidence, we are not prepared to accept the contentions for the appellant that respondent No. 1 could not have been a member of the family consisting of the appellant, his brother and mother merely on the ground that he was the appellant's uterine brother.

9. It is not an admitted case for the parties that the landed property in Mawprem had been acquired from the money of the mother of the appellant and respondents Nos. 1 and 2. The appellant claimed the properties to be his self-acquired properties. It is obvious therefore that he must have made such a claim in 1942 when the family arrangement is alleged to have taken place. Respondent No. 1 claimed a share in this property. Possibly, respondent No. 2 also claimed a share, though he possibly also claimed individual rights in the two businesses. There did, therefore, exist disputes about the properties with respect to which the brothers came to certain agreement.

10. There is nothing in the agreement, Exhibit 3, with respect to the property the mother was to keep with herself. It is however alleged in the plaint and deposed to by respondent No. 1 that the agreement was arrived at with the consent of the mother and that she alone was to own and enjoy the house property in Shillong Cantonment bearing No. 5 Jalupara Bazaar. The mother was therefore a party to the family arrangement. The fact that her statement was not recorded in the agreement, Exhibit 3, does not invalidate the family arrangement which can be arrived at orally. We are therefore of opinion that the Courts below rightly held that there had been a family arrangement between the appellant and respondents Nos. 1 and 2 on December 31, 1942 and that the agreement Exhibit 3 is a record of that family arrangement.

11. The next contention for the appellant is that the agreement Exhibit 3 required registration and is of no effect as it was not registered under the Indian Registration Act. The trial Court and the first appellate Court held that the Registration Act was not in force in the area where the agreement was executed at the time of its execution in 1942. The High Court, on the basis of fresh evidence, was of opinion that the matter required further elucidation and that it was not necessary to remand the case for a finding on the point as in its opinion this agreement did not require registration even if the Registration Act was in force in that area at the time of its execution. We need not say therefore anything further about the applicability of the Registration Act in that area, but we have, however, still to consider the contention for the appellant that the agreement Exhibit 3 did require registration. If we agree with him on this point, it would be necessary for the final disposal of the case that a clear-cut finding on the question of the applicability of the Registration Act in the area be recorded by the trial Court or the first appellate Court. We, however, do not agree with the contention of the appellant that the agreement Exhibit 3 required registration.

12. Family arrangement as such can be arrived at orally. Its terms may be recorded in writing as a memorandum of what had been agreed upon between the parties. The memorandum need not be prepared for the purpose of being used as a document on which future title of the parties be founded. It is usually prepared as a record of what had been agreed upon so that there be no hazy notions about it in future. It is only when the parties reduce the family arrangement in writing with

the purpose of using that writing as proof of what they had arranged and, where the arrangement is brought about by the document as such, that the document would require registration as it is then that it would be a document of title declaring for future what rights in what properties the parties possess. The document Exhibit 3 does not appear to be of such a nature. It merely records the statements which the three brothers made, each referring to others as brothers and referring to the properties as joint property. In fact the appellant, in his statement, referred to respondents 1 and 2 as two brother co-partners; and the last paragraph said:

"We, the three brothers, having agreed over the above statement and having made our own statements in the presence of the Panch called by us, and signed and kept a copy of each of this document as proof of it."

The document would serve the purpose of proof or evidence of what had been decided between the brothers. It was not the basis of their rights in any form over the property which each brother had agreed to enjoy to the exclusion of the others. In substance it records what had already been decided by the parties. We may mention that the appellant and respondent No. 1, even under this arrangement, were to enjoy the property in suit jointly and it is this agreement of theirs at the time which has later given rise to the present litigation between the two. The document, to our mind, is nothing but a memorandum of what had taken place and, therefore, is not a document which would require compulsory registration under S. 17 of the Registration Act.

13. Learned counsel for the appellant laid great stress on what this Court said in Sahu Madho Das v. Mukhand Ram, 1955-2 SCR 22 of pp. 42-43: ((S) AIR 1955 SC 481 at pp. 490-491). Reliance is placed on the following in support of the contention that the brothers, having no right in the property purchased by the mother's money, could not have legally entered into a family arrangement. The observations are:

"It is well settled that a compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognizing the right of the others, as they had previously asserted it, to the portions allotted to them respectively. That explains why no conveyance is required in these cases to pass the title from the one in whom it resides to the person receiving it under the family arrangement. It is assumed that the title claimed by the person receiving the property under the arrangement had always resided in him or her so far as the property falling to his or her share is concerned and therefore no conveyance is necessary."

These observations do not mean that some title must exist as a fact in the persons entering into a family arrangement. They simply mean that it is to be assumed that the parties to the arrangement had an antecedent title of some sort and that the agreement clinches and defines what that title is. Similar assumption can be made in the present case even on the basis that the property was purchased with the moneys of the mother. How they got some antecedent title in the property is not for us to determine. The plaintiff (respondent No. 1) alleged that the property belonged to the family. The appellant did not allege that it could not have belonged to the family as it was purchased with the moneys of the mother but claimed that it was his self-acquired property. In the circumstances, it can be assumed that the parties recognized the existence of such antecedent title to the parties to the property as was recognized by them under the family arrangement. It is not so much an actually existing right as a claim to such a right that matters.

14. The observations further indicate that by family arrangement no title passes from one in whom it resides to the person receiving it and as no title passes no conveyance is necessary.

15. In support of the contention that the agreement Exhibit 3 requires registration, reliance is placed on what was said further in Madho Das's case, 1955-1 SCR 22: ((S) AIR 1955 SC 481), which reads:

"But, in our opinion, the principle can be carried further....we have no hesitation in taking the next step (fraud apart) and upholding an arrangement under which one set of members abandons all claim to all title and interest, in all the properties in dispute and acknowledges, that the sole and absolute title to all the properties resides in only one of their number (provided he or she had claimed the whole and made such an assertion of title) and are content to take such properties as are assigned to their shares as gifts pure and simple from him or her, or as a conveyance for consideration when consideration is present.

The legal position in such a case would be this. The arrangement of compromise would set out and define that the title claimed by A to all the properties in dispute was his absolute title as claimed and asserted by him and that it had always resided in him. Next, it would effect a transfer by A to B, C and D (the other members to the arrangement) of properties X, Y and Z; and thereafter B, C, and D would hold their respective titles under the title derived from A. But in that event, the formalities of law about the passing of title by transfer would have to be observed, and now either registration or twelve years adverse possession would be necessary."

This Court extended the principle behind the family arrangement to other cases which were not covered by the earlier observations. It is urged, on the basis of these further observations, that registration is necessary for a document recording a family arrangement regarding properties to which the parties had no prior title. These observations apply to a case where one of the parties claimed the entire property and such claim was admitted by the others and the others obtained property from that recognized owner by way of gift or by way of conveyance. In the context of the document stating these facts this Court held the real position to be that the persons obtaining the property from the sole owner derived title to the property from the recognized sole owner and such a document would have to satisfy the various formalities of law about the passing of title by transfer. The facts of the present case are different. The agreement Ex. 3, does not recognize that any of the brothers had the sole and absolute title to any of the properties dealt with by them. On the other hand the recitals in the document indicate that the three brothers considered the property to be joint property of all of them. The fact that in the present proceedings the evidence shows that the landed property at Mawprem was purchased from the moneys of the mother does not affect the nature of the arrangement arrived at between the three brothers.

16. We are, therefore, of opinion that this case does not help in any way the appellant in his contentions.

17. The result is that the appeal fails and is dismissed with costs.

Appeal dismissed.