Amritsagar Gupta and Others

Vs

Sudesh Beharilal and Others

Civil Appeal No. 349 of 1966,

(S.M. Sikri, R.S. Bachawat, K.S. Hegde JJ)

13.03.1969

JUDGMENT

HEGDE, J. -

1. The only question that arises for decision in this appeal by special leave is whether the suit from which this appeal has arisen is barred by res judicata in view of the decision in Civil Suit No. 15 of 1943. The trial court answered that question in the affirmative but the High Court has taken a contrary view. Hence this appeal.

2. The facts of the case leading up to this appeal, briefly stated, are as follows :

3. One Krishna Gopal had lease-hold rights in the suit properties. After the death of the aforesaid Krishna Gopal dispute arose between Jawala Prasad, the father of the appellants and Banwari Lal Verma, the father of the respondent as to the title of the suit properties. Each one of them claimed that those properties had been gifted to him by Krishna Gopal. As a result of this dispute Jawala Prasad instituted on January 20, 1943, Civil Suit No. 15 of 1943 against Banwari Lal Verma claiming possession of the suit properties on the strength of the alleged gift in his favour. In defence Banwari Lal Verma pleaded that those properties had been gifted to him by Krishan Gopal. The principal issue that arose for decision in that suit was whether the suit properties had been gifted to Jawala Prasad or Banwari Lal Verma. The trial court dismissed the suit but in appeal the decree of the trial court was reversed and the suit was decreed as prayed for. That decision was confirmed by the High Court and thereafter by this Court in Civil Appeal No. 164 of 1953. After the decision of this Court Banwari Lal Verma made various applications to this Court asking for reliefs which if they had been granted, would have practically nullified the effect of the decree but those applications were rejected by this Court. Thereafter efforts appear to have been made to obstruct the execution of the decree in diverse ways. When every one of those efforts failed Rangi Lal Verma, the eldest son of Banwari Lal Verma, filed a suit praying for declaration that the suit properties belonged to his joint family consisting of Banwari Lal Verma and his sons. This suit was dismissed for non-prosecution. It is only thereafter the present suit has been filed by one of the sons of Banwari Lal Verma claiming partition in the suit properties on the allegation that the same had been gifted by Krishan Gopal to his joint family.

4. The gift put forward by the plaintiff is said to have been made in 1928. Admittedly at that time all the sons of Banwari Lal Verma were minors (see the affidavit filed in this Court by Rangi Lal on behalf of the Plaintiff on February 26, 1968). Therefore naturally the gift, if true could have been accepted only by Banwari Lal Verma who was the Karta of the family at that time. It was not even urged that Banwari Lal Verma did not safeguard the interest of his family while contesting the

previous suit. Further it is not the case of the respondents that there was any conflict of interest between Banwari Lal Verma and his sons. The facts disclosed make it obvious that Banwari Lal Verma and after his death his sons are availing themselves of every possible loophole in our judicial system to delay, if not defeat the course of justice. The efforts is one and continuous. The suit from which this appeal has arisen is a clear abuse of judicial process. It is in this setting that we have to see whether the decision in Civil Suit No. 15 of 1943 operates as res judicata in the present case.

5. In the Civil Suit No. 15 of 1943, there was no room for controversy as to whether the alleged gift was in favour of Banwari Lal Verma in his individual capacity or in his favour as the Karta of his family. Therein the controversy was whether the suit properties had been gifted to Jawala Prasad or Banwari Lal Verma. As seen earlier Banwari Lal Verma pleaded that they had been gifted in his favour. He did not make it clear not was it necessary for him to do so in that suit as to whether they were gifted to him as the Karta of the family or in his individual capacity. The properties that were in dispute in the former suit as well as in the present suit are identical properties. It cannot be disputed that Banwari Lal Verma by himself could have represented his family in that suit. That suit must be deemed to have been instituted against Banwari Lal Verma in that capacity in which he claimed title to it. If his claim in that suit is understood to have been made on behalf of his family then he must be deemed to have been sued therein as the Karta of his family. It was for Banwari Lal Verma to make clear the capacity in which he was defending the suit. That being so we fail to appreciate the conclusion of the High Court that the decision in the prevention suit does not operate as res judicata in the present suit.

6. It is not necessary in order that a decree against the manager may operate as res judicata against coparceners who were not parties to the suit that the plaint or written statement should state in express terms that he is suing as manager or is being sued as a manager. It is sufficient if the manager was in the fact suing or being sued as representing the whole family, see Lalchand v. Sheogovind; Ram Krishan v. Ganga Ram; Prithipal v. Rameshwar; Surendarnath v. Sambhunath.

7. The suit by or against the manager will be deemed to be one brought by him or against him as representing the family if the circumstances of the case show that he is the manager of the family if the circumstances of the case show that he is the manager of the family and the property involved in the suit is family property, see Mulgound Co-operative Credit Society v. Shidlingappa Ishwarppa. See also Venkatanarayana v. Somaraju. It is not necessary, where the manager is the plaintiff, that the plaint should state in distinct terms that he is suing as manager or where he is the defendant that he is being sued as manager. A Karta can represent the family effectively in a proceeding though he is not named as such, see Mani Sehoo v. Lokanath.

8. For the reasons mentioned above this appeal is allowed and the judgment and decree of the High Court is set aside and that of the trial court restored. The respondent shall pay the costs of the appellants in all the courts.

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