

Krishna Beharilal

Vs

Gulabchand and Others

Civil Appeal Nos. 74 and 75 of 1967

(K. S. Hegde, P. Jagmohan Reddy JJ)

16.03.1971

JUDGMENT

HEGDE, J. -

In these appeal by special leave identical questions of fact and law arise for decision. It would be convenient to set out the material facts before formulating the questions arising for decision. In the State of Gwalior there was a firm known as Chhedilal Chaturbhuj. Chhedilal, the owner of the firm had two sons and one daughter. The genealogy of the family of Chhedilal is as follows :

Chhedilal | ----- || Baldev Prasad || Chhaturbhuj
ParvatiBulakichand | (daughter) || married to | ----- ManorthilalMst. Pattobai |
|| (widow) Jwalaprasad Suta Rajabetti |died in (daughter) |1953 || Kanialal | |-----
----- || |Karnimal Hiralal alias Raggamal Pannalalalias |Kannimal Hariji | |
Ganeshilal Lakshmichand- | Saraswatibai ----- (widow) || | |
|Balkishan | | | (minor) Krishanlal Phoolchand Poonamchand |(Res. 8) (Res. 7) (Res. 9) | |-----
----- || | | Gulabchand Jagdish Chandra Mahavir KamlaAlias Rambabu
(Res. 2) (minor) (daughter) (Res. 1) (Res. 3) (minor) (Res. 4)###

After the death of Chhedilal, it appears the firm in question came into the possession of some of the children of Parvati. In 1926, Bulakichand, grandson of Chhedilal filed a suit against Jwalaprasad (his first cousin), Karnimal, Raggamal and Pannalal seeking possession of the firm. Therein he appears to have alleged that Jwalaprasad who had a half share in the suit properties had been colluding with the other defendants. Bulakichand died during the pendency of the suit. Thereafter his widow Pattobai was impleaded as his legal representative. During the pendency of the suit Jwalaprasad, Karnimal, Raggamal and Pannalal also died. Neither Jwalaprasad nor Karnimal left any successors. Raggamal was succeeded by his son Ganeshilal and Pannalal by his son Lakshmichand. They were duly impleaded in the suit. On June 7, 1941, the parties to the suit compromised their disputes. I may be noted that to that compromise the minor sons of Lakshmichand as well as of Ganeshilal were also parties. Before compromising the suit the parties had obtained the leave of the Court as the minor defendants had joined the compromise. Under the compromise, a portion of the suit properties was given to Pattobai and the remaining portion to the defendants in that suit. Pattobai alienated the properties given to her under, three different sale deeds, i.e., one on July 15, 1941 and the other two on July 24, 1941. The first sale deed was for a sum of Rs. 1,000/- and the other two for Rs. 9,000/- and Rs. 20,500/- respectively. The appellant is the alienee under all these sale deeds. In 1953, Lakshmichand and his sons and Ganeshilal and his sons instituted three suits seeking declarations that the alienations referred to above are not valid and binding against them, the presumptive reversioners to the estate of Bulakichand. One of those suits

is still pending trial. These appeals arise from the other two suits. During the pendency of those suits Pattobai died. Thereafter the suits were contested only by the appellant, the alienee (he will be hereinafter referred to as the defendant). The Trial Court dismissed the two suits holding that in view of the compromise in the earlier suit, the parties are estopped from challenging the validity of the sale deeds as under that compromise the estate given to Pattobai is an absolute one. In appeal the first appellant Court confirmed the judgment of the Trial Court on the ground that as the plaintiffs had not amended the plaint seeking possession of the suit properties after the death of Pattobai, the suits were not maintainable. On further appeals being taken by the plaintiffs, the High Court set aside the first appellant Court's judgment. It came to the conclusion that the first appellant Court should have taken into consideration the change in the circumstances that had taken place pending the trial of the suits and moulded the relief according to law. It, accordingly remanded the cases to the first appellant Court again affirmed the decision of the Trial Court on two grounds, viz. : (1) that the plaintiffs were estopped from claiming any right in the suit properties as an absolute estate had been given to Pattobai in respect of those properties, and (2) that under any circumstances the compromise in question should be considered as a family arrangement and as such is not liable to be reopened. This decision was affirmed by a single Judge of the High Court in second appeal. Thereafter the plaintiffs took up the matter in appeal to the Letters Patent Bench. The Letters Patent Bench reversed the judgment of the Courts below. It held that the compromise entered into in 1941, was in illegal compromise and as such the same cannot be used to non-suit the plaintiffs. It also disagreed with the conclusion of the learned single Judge that the compromise recorded amounted to a family settlement. These appeal are directed against that judgment.

2. The first question that falls for consideration is whether on a true construction of the compromise decree it can be held that Pattobai had been given an absolute estate ? According to the plaintiffs Pattobai having been impleaded to the suit as a legal representative of her husband, in law she could not take an absolute estate; she could only have a widow's estate and therefore in construing the compromise decree, we must bear in mind the principles of Hindu Law and if we do, the only possible conclusion is that the intention of the parties was only to give her a life estate. On the other hand it is contended on behalf of the defendant that under law Pattobai was entitled to enjoy all the properties included in the plaint in the earlier suit during her lifetime but she agreed to give up her right in bulk of the properties in consideration of her getting an absolute estate in a small portion of the properties involved in that suit. It was further urged on his behalf that the compromise deed specifically says that the properties given to Pattobai are to be enjoyed by her as "Malik Mustakil" which means absolutely and hence there is no basis for the contention that she took a widow's estate.

3. The ordinary rule of constructions of a document is to give effect to the normal and natural meaning of the words employed in the document. The compromise deed specifically says that the properties given to Pattobai were to be enjoyed by her as "Malik Mustakil". The meaning of the expression "Malik Mustakil" an Urdu word, has come up for consideration before this Court in some cases. In *Dhyan Singh and Another v. Jugal Kishore and Another*, ((1952) SCR 478 : AIR 1952 SC 145 : 1952 SCJ 142 : 1952 All LJ 324.) this Court ruled that the words "Malik Mustakil" were strong, clear and unambiguous and if those words are not qualified by other words and circumstances appearing in the same document, the courts hold that the estate given is an absolute one. A similar view was taken by the Judicial Committee in *Bishunath Prasad Singh v. Chandika Prasad Kumari*. The circumstances under which the compromise was entered into as well as the language used in the deed do not in any manner go to indicate that the estate given to Pattobai was anything other than an absolute estate.

4. The Letters Patent Bench of the High Court held that the compromise entered into was an illegal

compromise. It came to that conclusion on the basis that a Hindu widow cannot enlarge her own rights by entering into a compromise in a suit. But the High Court overlooked the fact that this was not a compromise entered into with third parties. It was a compromise entered into with the presumptive reversioners. Further at no stage the plaintiffs had pleaded that the compromise entered into in 1941 was an illegal compromise. The plaintiffs took no such plea in the plaint. There was no issue relating to the validity of the compromise. Hence the High Court was not justified in going into the validity of the compromise. Further even if the compromise was an invalid one, the parties to the compromise are estopped from challenging the impugned alienations-see Dhyan Singh's case (supra).

5. This takes us to the question of estoppel. As seen earlier, the Trial Court, the first appellate Court as well as the learned single Judge of the High Court have concurrently come to the conclusion that the plaintiffs are estopped from challenging the impugned alienations. But the Letters Patent Bench took a different view. Its conclusion, as mentioned earlier, proceeded on the basis that a Hindu widow cannot enlarge her own estate by entering into a compromise with others. It is well-settled that a Hindu widow cannot enlarge her estate by entering into a compromise with third parties to the prejudice to the ultimate reversioners. But the same will not be true if the compromise is entered into with persons who ultimately become the reversioners. It was urged on behalf of the respondent that Pattobai was impleaded in the earlier suit only as a legal representative of her deceased husband; therefore she could only represent his estate and not carve out an estate for herself. But this argument overlooks the fact that according to Pattobai she was entitled to enjoy the entire properties included in the earlier suit during her lifetime; but under the compromise a fraction of those properties were given to her absolutely; that being so that plaintiffs are estopped from backing out of that compromise. It was urged on behalf of the plaintiffs that the representative made by the defendants in the earlier suit is at best a representation as regards the true legal position and such a representation cannot estop them; before there can be an estoppel, the representation must be about some fact, the opposite side must rely on the representation and must suffer some detriment by acting on the basis of that representation. It was urged on their behalf that in this case the only representation that the plaintiffs are said to have made is that Pattobai had an absolute estate in a portion of the suit properties; this cannot form any basis for invoking the rule of estoppel. We are unable to accept this contention. From the facts set out earlier, it is clear that Bulakichand claimed the entire estate for himself after the death of Jwalaprasad. If the contention of Bulakichand is correct, as we must assume for the purpose of this case, the Pattobai would have been entitled to enjoy the entire properties during her lifetime. But she gave up her right in a substantial portion of those properties on the representation by the defendants that she can take and not of law. The representation is that the defendants were willing to confer on Pattobai an absolute right in a portion of the suit properties if she gave up her right in the remaining properties. Pattobai relied on the representation and gave up her claim in respect of a substantial portion of the properties included in the earlier suit. Hence the plaintiffs particularly Lakshmichand and Ganeshilal who alone were the reversioners to the estate of Bulakichand on the date of the death of Pattobai, are estopped from contending that they are entitled to succeed to the properties given to Pattobai. The other plaintiffs have no independent right of their own in the properties with which we are concerned. In Dhyan Singh's case (supra) this Court ruled that even if an award made is invalid, the persons who were parties to that award are estopped from challenging the validity of the award or from going behind the award in a subsequent litigation. In *T.V.R. Subbu Chetty's Family Charities v. M. Raghava Mudaliar and Others*, this Court ruled that if a person having full knowledge of his rights as a possible reversioner enters into a transaction which settles his claim as well as the claim of the opponent at the relevant time, he cannot be permitted to go back on that arrangement when

reversion actually opens. At the time of the compromise Lakshnichand and Ganeshilal were the nearest presumptive reversioners. They must be deemed to have know their rights under law. Under the compromise they purported to give a portion of the suit properties absolutely to Pattobai, evidently in consideration of her giving up her claim in respect of the other properties. They cannot be now permitted to resile from the compromise and claim a right inconsistent with the one embodied in the compromise. They cannot advance their case by impleading their sons as co-plaintiffs. Their sons can only claim through them.

6. For the first time in this Court it was urged that the plea of estoppel was not available to the defendant as no such plea had been taken in the pleadings. It is true that no specific plea of estoppel had been taken in the written statement filed by the defendant. But he had definitely stated in Paragraph 14 of his written statement that the plaintiffs are bound by the compromise and have no right to deny the right of Pattobai over the whole of the properties sole to him. One of the issues raised in the suit (Issue No. 4) is :

"Are the plaintiffs Nos. 1 and 2 bound by the terms of compromise filed in Civil Original Suit No. 3 of S.Y. 1991 of the High Court ? If so, what is its effect ?"

This issue is broad enough to cover the plea of estoppel. The plea of estoppel had been urged and considered by all the courts without any objection from the plaintiffs. They cannot be now permitted to contend that the defendant had not taken any specific plea of estoppel.

7. The next question that we have to consider is whether the compromise in question can be considered as a settlement of family disputes. It may be noted that Lakshnichand and Ganeshilal who alongwith Pattobai were the principal parties to the compromise were the grand-children of Parvati who was the aunt of Bulakichand. The parties to the earlier suit were near relations. The dispute between the parties was in respect of a certain property which was originally owner by their common ancestor namely Chhedilal. To consider a settlement as a family arrangement, it is not necessary that the parties to the compromise should all belong to one family. As observed by this Court in Ram Charan Das v. Girjanandini Devi and Others, the word "family" in the context of a family arrangement is not to be understood in a narrow sense of being a group of persons who are recognised in law as having a right of succession or having a claim to a share in the property in dispute. If the dispute which is settled is one between near relations then the settlement of such a dispute can be considered as a family arrangement-see Ramcharan Das's case (supra).

8. The Courts lean strongly in favour of the family arrangements to bring about harmony in a family and do justice to its various members and avoid in anticipation future disputes which might ruin them all-see Sahu Madho Das and Others v. Pandit Mukand Ram and Another.

9. For the reasons mentioned above we are of the opinion that in view of the compromise entered into between the parties in 1941, the suits from which these appeals arise are not maintainable. In that view, it is not necessary to go into the question whether the alienations were effected for valid necessity, a question that has not been gone into finally.

10. In the result these appeals are allowed and the suits from which these appeals arise dismissed with costs throughout.

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