Baikuntha Nath Paramanik (Dead) By His Lrs. and Heirs

Vs

Sashi Bhusan Pramanik (Dead) By His Lrs and Others

Civil Appeal No. 356 of 1967

A. N. Grover, D. G. Plekr, K. S. Hegde JJ)

09.08.1972

JUDGMENT

HEDGE, J. -

1. This is an appeal by certificate. The deceased 1st defendant was the appellant. He as well as the plaintiff died during the pendency of this appeal. Thereafter the Appellants 1 to 7 were impleaded as the legal representatives of the deceased appellant. Respondents are the legal representatives of the deceased plaintiff. The appeal was dismissed for want of prosecution as regards Appellants 1 and 3 to 7 as per order of this Court, dated September 11, 1970. At present the appeal has been pressed only by the supplemental appellant No. 2 who was defendant No. 3 in the suit. The respondents did not contest the appeal.

2. This appeal arises from a suit for partition. Plaintiff and Defendants 1 and 2 were brothers. Defendants 3 and 4 are the sons of defendant No. 1. Defendants 5 and 6 are the sons of the plaintiff. The plaintiff was the eldest brother.

3. The case put forward on behalf of the plaintiff was that the family was divided in status in 1351 B.S. but no actual partition by metes and bounds had taken place. Hence he prayed for a partition of the family properties detailed in the plaint-schedule by metes and bounds. He further claimed that the properties standing in the names of Defendants 1 to 4 were acquired out of joint family funds and as such were liable to be partitioned.

4. Defendants 1, 2 and 3 contested the suit on various grounds. They pleaded that there was actual partition in the family in Magh 1349 B.S. and as such there was no question of again partitioning the family properties. They further contended that the properties standing in the names of Defendants 1 to 4 were their individual properties and not liable to be partitioned. In their turn they claimed that certain properties standing in the name of the plaintiff and his sons were acquired from out of the joint family funds and as such in the event of a partition those properties are also liable to be partitioned.

5. According to the plaintiff, defendant No. 1, though younger to him was managing the family properties as he was the most intelligent member in the family. This allegation was denied by defendant No. 1.

6. The trial court did not uphold the contention of the plaintiff that there was a disruption of status of the family only in the year 1351 B.S. It opined that the division of status took place in 1349 B.S. At the same time it did not uphold the contention of Defendants 1 and 2 that there was a division of

the family properties by metes and bounds in 1349 B.S. It held that in that year there was only a division of status of the family but the family properties remained to be divided by metes and bounds. It did not accept the plaintiff's case that the 1st defendant was the manager of the family. But at the same time it came to the conclusion that all acquisitions made in the names of various members of the family till the division of status took place in 1349 B.S. were joint family properties and were liable to be partitioned.

7. Aggrieved by the decision of the trial court, the plaintiff appealed to the High Court of Calcutta. The defendants filed cross-objections. It came to the conclusion that the family properties were neither actually divided nor was there any division of status of the family in 1349 B.S. It accepted the contention of the plaintiff that the division of status took place only in the year 1351 B.S. It further opined that the 1st defendant had an important hand in the management of the family properties. But it opined that all the three brothers participated in the management of the family properties. It came to the conclusion that all acquisitions made in the names of all three brothers before the division of status took place in 1351 B.S. were family properties and consequently were liable to be partitioned. But it held that the properties standing in the names of defendants 3, 4, 5 and 6 are not family acquisitions.

8. In this appeal only two contentions were advanced before us, viz., (1) that the High Court erred incoming to the conclusion that the family was not divided in status in Magh 1349 B.S. and (2) it erred in holding that acquisitions made in the name of defendant No. 1 after Magh 1349 B.S. were family acquisitions.

9. The above-mentioned two contentions are inter-related. The most important question for decision is whether the family was divided in status in Magh 1349 B.S. In support of the contention that the family became divided in status in Magh 1349 B.S. the contesting respondents adduced only oral evidence. That evidence had not commended itself to the High Court. It may be noted that the case for defendants 1 and 2 was that there was a division by metes and bounds in Magh 1349 B.S. and not that there was merely a division of status at that time. All the witnesses examined on behalf of Defendants 1 and 2 speak to the division by metes and bounds and not about any division of status. This evidence has been disbelieved both by the trial court as well as by the High Court. It is rather surprising that the trial court even after rejecting the testimony of these witnesses as regards the division by metes and bounds should have relied on that testimony for finding that the family became divided in status in Magh 1349 B.S. The High Court very rightly was unable to place any reliance on the testimony of those witnesses. In support of its conclusion that the family was divided in status only in 1351 B.S. the High Court relied on several documentary evidences. Ex. 14 series are letters that passed between the three brothers. They cover a period ending with 1351 B.S. From these letters, it is clear that the 1st defendant was instructing the second defendant as to the management of the family properties. These letters indicate that till 1351 B.S., the family was joint family. Ex. 14-K is a letter written by defendant No. 1 jointly to defendant No. 2 and Bejoy son of plaintiff containing instruction and advice on family matters. Then there is Ex. X, a statement filed by the plaintiff in the office of the A.R.C.P. in 1351 B.S. showing the lands in his possession. Exs. 2 - 2-C are Kobalas of 1350 B.S. Under the documents the three brothers purchased certain properties jointly. This could not have happened if the family properties had been divided by metes and bounds by that time. Some evidence as to when division of status took place is also afforded by Exs. 7 and 7-A, the Union Board assessment lists of 1350 and 1351 B.S. Hence we see no reason to differ from the conclusion reached by the High Court on the question of the division of status of the family.

10. We next come to the question of acquisitions standing in the names of the plaintiff and

Defendants 1 and 2. Admittedly the family of the plaintiff and Defendants 1 and 2 owned extensive properties. There is no dispute that that family owned as much as 138 standard Bighas. The 1st defendant admitted in his written statement that with the aid of the usufruct of the lands belonging to his family several acquisitions had been made. Even on the basis of the admitted evidence the nucleus afforded by the family income was sufficient to acquire all the properties that stood in the names of the plaintiff and Defendants 1 and 2. The High Court came to the conclusion that all the three brothers were participating in the management of the family properties. In reaching that conclusion it relied on Ex. 14 series as well as other evidence. The family account-books have not been produced. The 1st defendant who says that he had his own income has also not cared to produce his own account-books. Under these circumstances the finding of the High Court that the acquisitions standing in the names of the three brothers made prior to 1351 B.S. are family acquisitions is unassailable. When a joint family is found to be in possession of nucelus sufficient to make the impugned acquisitions then a presumption arises that the acquisitions standing in the names of the persons who were in the management of the family properties are family acquisitions.

11. For the reasons mentioned above, we are no merit in this appeal. It is accordingly dismissed. As the respondents did not contest the appeal, there will be no order as to costs in this appeal.

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