

Munna Lal (Dead) By Lrs. and Others

Vs

Suraj Bhan and Others

Civil Appeals Nos. 1268 and 1269 of 1968

(Y. V. Chandrachud, R. S. Sarkaria, A. C. Gupta JJ)

04.03.1975

JUDGMENT

CHANDRACHUD, J. -

1. These appeals by special leave arise out of a suit filed by the first respondent, Suraj Bhan, for a declaration that he was the sole owner of certain houses and shops situated at Mouza Bikaner and at Rewari. The trial Court decreed the suit and that decree was affirmed in appeal by the High Court of Punjab and Chandigarh.
2. The scope of the dispute is narrow and we will only refer to such of the facts as are relevant for the purposes of these appeals. One Bansidhar had four sons, Sukhan Lal, Munna Lal, Prabhu Dayal and Chhanga Mal. The plaintiff Suraj Bhan is the son of the Sukhan Lal. Munna Lal is defendant No. 1 while his sons, Onkar Mal and Banarsi Dass are defendants Nos. 2 and 3 to the suit. Prabhu Dayal's son is defendant No. 4 and Chhanga Mal's are defendants Nos. 5 and 8. Shortly, the dispute is between the plaintiff on the one hand and his uncle and cousins on the other.
3. On July 6, 1943, defendant No. 4 Puran Mal and Chhanga Mal separated from the joint family and we are not concerned in these appeals either with defendant No. 4 or with defendants Nos. 5 and 8. They were impleaded to the suit as formal parties.
4. On April 1, 1948, plaintiff and his uncle defendant No. 1 purchased two shops. The joint family was already possessed of houses situated at Mouza Bikaner and Rewari as also of some ornaments. The ornaments were partitioned between the plaintiff and defendant No. 1 under a document, Ex. 'Z', dated August 14, 1948. The houses were partitioned under a document Ex. 'X' dated December 3, 1949. We are not concerned in these appeals with the partition of houses and the ornaments. On February 15, 1950 the two shops were partitioned as mentioned in a document Ex. 'Y'. Disputes arose between the parties as regards the right to the shops which led to proceedings under Sections 107 and 145 of the Criminal Procedure Code. A portion of the property was under the order of a magistrate put under lock and key. In 1959 the parties referred their disputes to arbitration but eventually the award was set aside on the ground that defendant No. 1, Munna Lal, had not signed the reference. The suit out of which these appeals arise was filed by the appellant on December 20, 1960 for a declaration that he is the owner of the properties which allotted to his share in the partitions.
5. Counsel appearing on behalf of the appellant has raised three contentions in these appeals : (1) Ex. 'Y' dated February 15, 1950 is not a mere memorandum of partition; the partition of the shops having been effected by and under that document, the document is inadmissible in evidence as it is

not registered. As the parties had reduced the terms of partition into writing, evidence apart from the document is inadmissible to prove the fact of partition. (2) Defendant No. 1, Munna Lal had not signed the document of partition Ex. 'Y' and therefore the partition is not binding on him. The shops must therefore be re-partitioned, and (3) the two shops were purchased out of partnership funds, the partnership consisting of the plaintiff, defendant No. 1 and the two sons of defendant No. 1, namely defendants Nos. 2 and 3. Each of the partners would therefore have a one-fourth share in the shops.

6. Turning to Ex. 'Y' we find it impossible to accept the contention that the partition of the shops was itself effected by the document. The document expressly mentions that the parties had appointed one Thakar Chandgi Ram Gupta as a Panch and that they had decided to accept the decision given by him. The document then sets out the terms of that decision and says : "We both shall be bound by that decision". It is contended that the decision of the Panch must be treated as a nullity because the Panch is in position of an arbitrator and he could not have acted except in accordance with the provisions of the Arbitration Act. This argument seems to us too sophisticated to be applied to the facts before us. The parties appear to have asked a person of common confidence to effect the partition and it was not intended to resort to any formal proceeding under the Arbitration Act. It was therefore not necessary for the parties to execute a formal reference or for the Panch to declare could, therefore, be received in evidence though it is not registered. The first contention accordingly fails.

7. As regards the second contention that Ex. 'Y' is not binding on defendant No. 1, he not having signed, it, the absence of defendant No. 1's signature on the memorandum of partition will not invalidate the partition effected by the Panch. Besides, as held by the High Court, the conduct of the parties subsequent to the partition shows that the arrangement effected under the guidance of the Panch was mutually accepted and acquiesced in. After the partition, the erstwhile partners began to look after their respective properties separately. The property allotted to the share of the plaintiff was in the possession of a tenant but defendants Nos. 1 to 3 did not ever ask for a share in the rent of the property. It is urged on behalf of the appellant that there is nothing to show that the tenant paid the rent. But, in the absence of any allegation that the tenant had not paid the rent, it would be reasonable to assume that the tenant had not committed default in payment of the rent. Further, taxes in respect of the shop allotted to the share of defendants Nos. 1 to 3 were separately paid by them. Thus the second contention must also fail.

8. The last contention as regards the allotment of shares in the shops suffers from the weakness that no such plea was taken in the written statement and naturally therefore no issue was raised on the point. We cannot permit this contention to be taken for the first time in this Court.

9. Accordingly, the appeals fail and are dismissed with costs. Costs shall be in one set.

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