

Babu Rameshwar Prasad Singh And Others

Vs

Sheo Shankar Prasad Singh And Others

Civil Appeal No. 705 of 1968

( H.R. Khanna, V.R. Krishna Iyer, A.C. Gupta, Syed M. Fazal Ali JJ)

29.08.1975

JUDGMENT

GUPTA, J. -

1. This appeal by certificate granted by the Patna High Court under Article 133 (1)(a) of the Constitution arises out of a suit for partition. Here we are faced with a somewhat uncommon situation where a defendant is asserting a right in certain properties in which he had disowned any interest in his written statement, and the plaintiffs who in the plaint had conceded a share to the defendant in these properties now deny he had any.
2. The suit was instituted by one Akleshwar Prasad Singh and his two sons against 15 defendants for partition of the properties described in the various schedules to the plaint. Plaintiff No. 1 Akleshwar Prasad Singh and the first three defendants were brothers. Admittedly in 1348 Fasli there was a partition of the ancestral properties of the four brothers. According to the plaintiffs the properties acquired by the brothers out of 'Khatari' fund, however, remained joint and the refusal by the first defendant to have these properties partitioned gave rise to the instant suit. The plaintiffs claimed 1/4th share in these properties which, according to them, included the properties described in Schedule 1(f), 1(g), 1(h), 1(k), 1(l), and 1(m) which are the only properties we are concerned with in the appeal before us. The defendants Nos. 2 and 3 supported the plaintiffs' case. Defendant No. 1 Rameshwar Prasad Singh, in his written statement contended that there was a complete partition of the ancestral properties as well as the properties acquired from the 'Khatari' fund in 1348 Fasli. According to the first defendant the properties mentioned in Schedule 1(c), 1(d) and 1(e) were acquired by his wife, daughter-in-law and sons out of their personal funds and the properties of Schedule 2 had been acquired by defendants Nos. 14 and 15. The first defendant further disclaimed any interest in the properties described in Schedule 1 (f), 1 (g), 1 (h), 1 (j), 1 (k), 1 (l) and 1 (m) which according to him, were all acquired by plaintiff No. 1 and defendants Nos. 2 and 3 out of their own resources after the partition of the joint properties in 1348 Fasli.
3. The trial Court directed partition of the plaintiffs' 1/4th share in the properties described in Schedule 1 (a), 1 (b) and 1 (i) as well as Schedule 2 with the exception of the properties mentioned therein which stood in the names of defendants Nos. 14 and 15. He also directed partition of 1/4th share of the plaintiffs in the properties of Schedule 1 (f), 1 (g), 1 (h), 1 (j), 1 (k), 1 (l) and 1 (m). He dismissed the suit in respect of the properties of the Schedule 1 (c), 1 (d), and 1 (e) and those included in Schedule 2 which were claimed by defendants Nos. 14 and 15.
4. Against the decision of the trial Court the plaintiffs as well as defendants Nos. 2, 3 and 7 preferred an appeal to the High Court. Plaintiff No. 1, Akleshwar Prasad Singh, died during the

pendency of the appeal before the High Court. The appeal in the High Court was confined to the respective claims of the parties in regard to the properties of Schedule 1 (f), 1 (g), 1 (h), 1 (j), 1 (k), 1 (l) and 1 (m). The High Court allowed the appeal and dismissed the suit for partition in respect of the properties described in the aforesaid schedules, which means that the first defendant's case in the written statement in respect of these properties that he had no interest in them was accepted by the High Court. The High Court arrived at this conclusion on a consideration of several circumstances, namely, that there was no reliable evidence to show that these properties had ever been in the joint possession of all the brothers including defendant No. 1 and that if defendant No. 1 had contributed to the fund required for the acquisition of these properties, he would not have failed to get his name mentioned in the deals concerned. The High Court was of the view that just as defendant No. 1 has acquired properties mentioned in Schedule 1 (c), 1 (d) and 1 (e) in the names of his wife, daughter-in-law and sons after 1348 Fasli, similarly the properties mentioned in the Schedule 1 (f), 1 (g), 1 (h), 1 (j), 1 (k), 1 (l) and 1 (m) must have been acquired by plaintiff No. 1 and defendants Nos. 2 and 3 out of their own funds after 1348 Fasli. The High Court held that the plaintiffs had therefore no cause of action for partition of these properties against defendant No. 1 and dismissed the suit in respect of these properties.

5. The appeal to this Court which has been preferred by the first defendant and his sons is also limited to the properties of Schedule 1 (f), 1 (g), 1 (h), 1 (j), 1 (k), 1 (l) and 1 (m). The only submission made on behalf of the appellant was that the High Court was in error in proceeding upon the admission of the first defendant made in his written statement that the properties mentioned in the said schedules belongs exclusively to plaintiff No. 1 and defendants Nos. 2 and 3. It was pointed out that this admission was only a part of the first defendant's case and our attention was drawn to the claim made by the first defendant in his written statement that all the joint properties including those acquired out of 'Khatari' fund had been partitioned in 1348 Fasli. It was submitted that it was in that context that the admission had been made and the High Court could not in law reject the defendant's case of complete partition and at the same time rely on the admission. We do not think there is any substance in this contention because the High Court did not really base its conclusion on the defendant's admission but on other circumstances to which we have referred above.

6. The appeal has no merit and is accordingly dismissed but in the circumstances of the case without any order as to costs.

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