

Prakash Chand Sharma and Others

Vs

Narendra Nath Sharma

Civil Appeal No. 1444 of 1969

(A.Alagiriswami, P.K. Goswami, N.L. Untwalia JJ)

03.10.1975

JUDGMENT

UNTWALIA, J. -

1. This appeal by the plaintiffs is by a certificate granted by the Allahabad High Court under Article 133(1)(a) of the Constitution of India as it stood at the relevant time. It arises out of a suit for partition filed by Ram Saran Lal and his brother Babu Ram alias Babu Lal against the sole respondent Narendra Nath, s/o Pandit Bhagwati Prasad. Both the plaintiffs are dead and the appellants are their heirs and legal representatives. Bhagwati Prasad, Ram Saran Lal and Babu Lal were the sons of Pandit Raman Lal. Raman Lal died sometime in the year 1900. According to the case of the plaintiffs their family remained joint even after the death of Raman Lal. Certain properties were ancestral left by Raman Lal and certain properties were subsequently acquired by the joint family. Bhagwati Prasad was the karta of the family until he died in the year 1922 leaving behind a widow and an infant son Narendra Nath who was only two years of age then. Plaintiffs wanted partition of the properties left by Raman Lal and of schedule II properties as subsequently acquired by the joint family. The suit was instituted on May 1, 1951. The defendant-respondent contested the suit and assured that after the death of Pandit Raman Lal the three brothers separated and partitioned the properties left by Raman Lal which consisted of a house and a shop only. Since then the branch of Bhagwati Prasad has been separate. All properties mentioned in Schedule II and a few mentioned in Schedule I append to the plaint were acquired by Bhagwati Prasad in his own name. Thus according to the case of the respondent there was no joint family in existence and no property was available for partition.

2. The trial Court decreed the suit and directed partition of all the suit properties. On appeal by the defendant the High Court has dismissed the suit accepting his case in toto. Hence this appeal by the heirs of the original plaintiffs.

3. We have heard learned Counsel for the parties who took us through the relevant documents in the case. The documentary evidence clearly establishes the case of the defendant and negatives that of the plaintiffs. We fully agree with the conclusion arrived at by the High Court on the basis of the said documents. The documents relied upon by the plaintiffs did not prove their case at all. It is not necessary for us to repeat all that has been said by the High court in its judgment. We shall, however, briefly refer to some pieces of documentary evidence relied on by either side.

4. Ext. A-6 is a copy of the decree dated June 10, 1903 in a suit filed by Ram Saran alone for realization of certain money advanced by him on a bond to some person. This shows that Ram Saran had separate dealings. Learned Counsel for the appellants submitted that under the Hindu Law

even an undivided member of a joint family could carry on his separate business. It is so. But the document is not to be read in isolation. Reading this document along with others, it supports the case of the defendant and not of the plaintiffs. The next documents which may be referred here are Exts. A-7 and A-8, copies of the decrees dated January 2, 1915 and March 18, 1916 respectively passed in favour of Bhagwati Prasad for realization of certain loans advanced by him separately. Ext A-36 is a copy of a mortgage deed dated February 21, 1917 executed in favour of Ram Saran alone showing his separate moneylending business.

5. There are three documents which go a long way to support the case of the defendant and demolish that of the plaintiffs. Ext. 129 is a mortgage deed dated April 19, 1911 executed by one Nanak Ram in favour of Bhagwati Prasad for a sum of Rs. 1,400. Out of the said consideration the two bonds dated June 13, 1909 and June 20, 1909, Ext. 128 and Ext. 127 respectively, the former in favour of Ram Saran and the latter in favour of Babu Ram. The amount of loans covered by these two bonds were very small compared to the advance of loan by Bhagwati Prasad. This clearly establishes that the parties had separate dealings not because they were members of the joint family but in all probability as separated members. Ext. A-29 is a copy of the plaint instituted on February 28, 1923 by Narendra Nath who was then a minor under the guardianship of Babu Lal in respect of realization of certain mortgage dues - a mortgage which had been executed in favour of Bhagwati Prasad alone. Had this property been a joint family property as was the case of the plaintiffs the suit would have been instituted not on behalf of Narendra Nath. Ext. A-3 is the copy of an order dated January 21, 1935 showing that Narendra Nath under the guardianship of his mother had filed certain objection for release of certain property and the objection was allowed. Similarly Ext. A-31 is a bond dated April 16, 1935 executed by Ram Saran and his sons.

6. A very important document on record is Ext. A-26, copy of the statement of Ram Saran made on May 11, 1951 only 10 days after the institution of the suit in some proceedings in the court of Tehsildar of Anupshahr. Ram Saran said in his deposition : "My family and that of Narendra has not been joint since 1921". This was a very damaging admission on behalf of the plaintiffs. Ram Saran did not examine himself in the suit to explain this admission. The reason for his non-examination was not accepted by the High Court. The said admission clearly showed that at least since 1921 the parties were separate, yet the suit for partition of the properties by metes and bounds was not instituted after about three decades. No such case was made out in the plaint that the parties were separate from 1921. The plaint was drafted in a suppressive manner to claim partition as if the parties were joint till the institution of the suit. Nor was it disclosed in the plaint as to who became the karta of the allegedly joint family after the death of Bhagwati Prasad.

7. Exts. A-818 and A-819 are copies of registers of assessments of tax of the notified area of Anupshahr, the parties' ancestral place of residence. Separate assessments were made in the names of Bhagwati Prasad and Ram Saran. The house property of Ram Saran compared to that of Bhagwati Prasad was very small. All the documents relied upon on behalf of the defendant clearly supported his case of separation and partition long ago.

8. As against the numerous documents relied upon on behalf of the defendant the plaintiffs field and relied upon documents which did not prove or probalilise their case at all. We may briefly refer to some of the documents to which our attention was drawn by the learned Counsel for the appellants. Ext. 2 is a copy of the decree dated May 12, 1904 in favour of Bhagwati Prasad, Ram Saran and Babu Ram in respect of a right of easement. Ext. R is a copy of the sale deed dated July 16, 1895 in favour of Raman Lal. Comparing the boundaries given in Ext. 2 with those in Ext. R, it was found that the decree was in respect of this ancestral house. It did not, therefore, advance the case of

plaintiffs at all. Ext. 7 is a copy of the judgment dated March 28, 1935 in a certain suit in favour of one Ganga Ram against Babu Lal and others. Learn Counsel for the appellants tried to show from the judgment under issue No. 6 that the plea of separation setup by Bhagwati's son was not accepted by the trial Court. But on appeal the judgment was reversed and the suit was dismissed. A copy of the appellant judgment is Ext. 3. Instead of improving the case of separation. Ext. 8 is a copy of judgment in another suit filled by Mr. Ganga Ram against Babu Lal and others. This is dated May 8, 1936. The suit was decreed by the trial Court rejecting the plea of separation set up by Narendra. But it was dismissed by the High Court as admitted by Babu Lal in his evidence. Exts. 45 to 50, Ext. 57, Ext. 60 are letters written inter se between the three brothers during the lifetime of Bhagwati Prasad - mostly between 1910 to 1920. The contents of these letters do show that in the kiln business all the three brothers were taking interest. Instructions were being given by Bhagwati Prasad to his brothers in connection with the management of the business. On carefully going through these letters, we found that the other two brothers may have some sort of interest in the kiln business carried on by Bhagwati Prasad. That interest could be because they were erstwhile members of the family or because they were taken as working partners servants. There was no statement in any of the letters to indicate that the business was that of a joint family of the three brothers of that Bhagwati Prasad was joint with his brothers. In agreement with the High Court we hold that the said letters do not lend any appreciable support to the case of the plaintiffs. Similarly there are some letters Ext. 64, 65 and A-9 either written by third person whom some of the brothers or by Bhagwati Prasad. They stand on the same footing as their other letters. Lastly our attention was drawn to a copy of a statement of accounts of income and expenses of the family from the year 1922 to 1928. Such a sheet of paper containing the accounts of six years neither inspired any confidence nor on its face after examining the accounts we found anything in support of the plaintiff's case.

9. We, therefore, come to the conclusion that the High Court was right in dismissing the plaintiffs' suit. We accordingly affirm the judgment and decree of the High Court and dismiss this appeal with costs.

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