

Pandit Sri Chand and Another

Vs

Pandit Om Prakash and Others

Civil Appeal No. 1825 of 1968

(CJI A.N. Ray, M.H. Beg, Jaswant Singh JJ)

03.11.1976

JUDGMENT

RAY, C.J. –

1. This appeal is by certificate from the judgment dated May 9, 1966 of the High Court of Allahabad.
2. Reoti Saran filed a suit for partition of immovable properties consisting of shops, houses and vacant lands. He claimed one-third share in the properties. The claim was contested by defendants 1 and 2, who are the sons of Gaya Prasad.
3. The principal question was whether Reoti Saran had relinquished his share by two deeds of relinquishment made in the year 1922. The trial Court accepted the defence and came to the conclusion that Reoti Saran had relinquished his share. The trial Court therefore dismissed the suit.
4. The High Court on appeal set aside the judgment and held that the plaintiffs were entitled to a decree for partition of one-third share in the properties.
5. We are in agreement with the conclusion as well as the reasons given by the High Court. The High Court gave two cogent reasons as to why the deeds of relinquishment were never acted upon. One was that a sale deed as executed on October 28, 1942 by Reoti Saran for self and as guardian of his two sons as also by Sri Chand defendant 1 for self and as guardian of his brother defendant 2 along with Mohan Lal (father of defendants 3 and 4) who was then alive. In that sale deed certain property belonging to the family was sold. It was stated therein that the vendors which would include Reoti Saran were owners in possession of the property. The other feature to which the High Court referred to is the deed of partition dated February 14, 1934. The High Court found that there was admission of defendant 1, who was then major and the ancestors of defendants 3 to 8 that Reoti Saran and his sons were jointly owners of the ancestral property.
6. It was contended by the appellant that the evidence of Sri Chand and Lakshmi Chand should have been accepted as the trial Court did. The High Court has rightly rejected the evidence of Sri Chand as well as of Lakshmi Chand. Sri Chand was born in 1927 and therefore he was not at all competent to speak of events that took place in 1922 or before that. Lakshmi Chand was separated and he accepted one-fourth share in 1934. If the deed of relinquishment had been a genuine document then Lakshmi Chand's share in 1934 would have been one-third and not one-fourth which he accepted. The other reason which is given by the High Court is that Reoti Saran was a freedom fighter and he took recourse to the deed of relinquishment as a fictitious document to avoid confiscation of

property is also correct.

7. For these reasons the appeal is dismissed with costs.

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