

Murarka Properties (P) Ltd.

Vs

Beharilal Murarka and Others

Civil Appeal No. 1350 of 1967

(N. L. Untwalia, P. S. Kailasam JJ )

30.11.1977

JUDGMENT

KAILASAM, J. -

1. This appeal is by certificate granted by the Calcutta High Court against its judgment dated May 18, 1967 in Appeal 14 of 1957, upholding and affirming the judgment and decree dated September 13, 1956 in suit 1607 of 1938. The appellants in this appeal are defendants 12 and 13 in the suit. The suit was filed by Beharilal and his mother Ginni praying amongst other reliefs for the declaration that the respondent is entitled to one-eighth share in the assets and properties belonging to the joint family for setting aside all conveyances and transfers and for a declaration that plaintiff is entitled to separate properties and funds of Laloolal Murarka, the father of the plaintiff and husband of second plaintiff. After written statements were filed, the plaint was amended on July 6, 1939 whereby an alternative claim for one-eighth share of the Company's property was made if it was held that there was no joint family but only a company.

2. One Ram Niranjandas Murarka died on October 29, 1930 leaving his widow Janki Devi, the tenth defendant and 8 sons - Hiralal Murarka defendant 1, Nandalal Murarka since deceased, Radheyalal Murarka defendant 3, Misri Lal Murarka defendant 5, Chinni Lal Murarka defendant 7, Chotelal Murarka defendant 8, Kisenlal Murarka defendant 9, and vast moveable and immovable properties and several business assets situate within and outside the jurisdiction of the Calcutta High Court. Motilal Murarka died without leaving any issue. Amongst 8 sons, in this appeal, we are concerned with the families of 3 sons. Laloolal's wife Ginni is the second plaintiff and their son is Beharilal, the first plaintiff. Radheyalal's son is Makhanlal and Makhanlal's son is Murarilal respondent 12 in this appeal. Murarilal's widow is Bimla and their son is Rahul. Bimla and Rahul were brought on record as legal representatives of Murarilal after his death pending appeal in this Court and they are contesting the present appeal. Chinnilal's son is Ratanlal and he is respondent 20 who is also contesting this appeal. The other sons and their descendants contested the plaintiff's plea that they were members of a joint family. Their case was that family was divided and the impugned alienations in favour of defendant 12 and defendant 13 were valid. They have stuck to this plea throughout and as they are in fact supporting the appellants, it is unnecessary to consider their case separately. The suit was decreed and an appeal was preferred by defendants 12 and 13. Pending appeal the plaintiffs changed their front and started supporting the present appellants, defendants 12 and 13, stating that the impugned alienations were binding on them. But Bimla and Rahul who were brought on record pending the appeal in this Court are questioning the validity of the impugned transaction though Murarilal opposed the plaintiffs' claim during the suit and the appeal. Though Chinnilal in this written statement supported the case of the present appellants that the impugned transactions were valid, Chinnilal's son Ratanlal, who attained majority in 1943,

challenged the validity of the impugned transactions 3 years after attaining majority. The position therefore is that the plaintiffs who belonged to Lallolal's group (the widow and son of the sons of Laloolal) who were the only persons that questioned the alienations at the time of the suit later on supported the case of the present appellants, while the descendants of two sons Radheylal and Chinnilal though they originally affirmed the impugned transactions are questioning the validity of transactions and contesting the appeal before us.

3. The present litigation is about 39 years old. The suit was filed on August 22, 1938. The decree was passed by the trial Court on September 13, 1956 and the appellate decree is dated May 18, 1967. It has now come up before us after 10 years since the passing of the decree by the appellate Court in Calcutta. The trial went on for 63 days.

4. The main contention that was raised in the appellate Court by defendant 12 and defendant 13, the present appellants, was that the immovable properties which stood in the name of Ramniranjandas were his self-acquired properties and they were brought into the assets of company of his 8 sons having defined shares in the said properties. The properties were conveyed to the appellant's company. The appellate Court held that the family of Ramniranjandas Murarka consisted of himself and his sons and was a joint Hindu family governed by Mitakshara law until the death of Ramniranjandas and thereafter the families of his sons and their sons and grandsons continued to be a joint Hindu family until the institution of the suit. They also rejected the plea that even if the family was joint the transfers of the impugned property were for better management of the immovable properties and as such for legal necessity and would thus bind the members of the joint family. It further held that there is no evidence that immovable properties were brought into the joint stock of the firm by Ramniranjandas and that on the assumption that the said properties were separate and self-acquired properties of Ramniranjandas, the said properties were inherited by his 8 sons from their father and upon the father's death they were ancestral properties in their hands and the respective male descendants of the said 8 sons of Ramniranjandas also acquired coparcenary interest in the said immovable properties. In this view the appellate Court dismissed the appeal preferred by defendants 12 and 13.

5. In this appeal before us Mr. Lal Narain Sinha learned Counsel for appellants, defendants 12 and 13, submitted that without going into the correctness of the finding of lower Court that Ramniranjandas and his sons were members of joint Hindu family, he would confine himself to a limited submission that the impugned transactions showed that there was a partition earlier and in any event the family became divided in status on December 9, 1932, and a disruption of the original joint family into 8 different families took place. Secondly, he submitted that even if this contention is not accepted and it is found that 8 sons were members of a joint family, as the impugned alienations were as a result of joint deliberations and unanimous decision of all of the eight sons and other adult members of the family, it must be presumed to be a prudent transactions the entire family properties were preserved for 8 sons though it was by transferring them to a company, and that the alienations were for the benefit of the family and therefore for family necessity. Apart from the two main contentions, the learned Counsel also submitted that even if the transactions were not binding on the members of the joint of a coparcener to the extent of his interest in the joint family and as the only branch that questioned the validity of alienation has left the field, the present respondents who originally supported the alienations are not entitled to any relief and in any event their claim, if any, is barred by limitation.

6. The transactions that are impugned are conveyances in favour of the appellants Murarka Properties Limited and Buckingham Court (P) Ltd. by various conveyances, one of which is Ex. L.

As the plea of Shri Lal Narain Sinha, the learned Counsel for the appellants, is that Ex. L. itself proves that at the date of the document there was no joint family and that in any event the document itself effected a separation, it is necessary to refer to the relevant recitals in the document. The document prefaces : "This indenture of conveyance date December 9, 1932 between Hiralal Murarka eldest son of Ramniranjandas Murarka for himself and as the father and natural guardian of his infant son Kunji Lal Murarka and as the karta of the joint family consisting of himself and his son . . .". The same description is adopted in the case of all sons, for instance in the case of second son the recital is Nandalal Murarka son of the said Ramniranjandas Murarka deceased for self and as the father and natural guardian of his infant sons Shankerlal Murarka and Purshottamlal Murarka and as the Karta of joint family consisting of himself and his sons. It will be seen that all the 8 sons have described themselves each one stating that he is acting on behalf of himself and his sons. The recitals show that there were 8 different joint families consisting of each of the sons with his sons etc. The plea of the learned Counsel that a reading of the document would show that the brothers themselves affirmed that there were 8 joint families is sound. The reply to this contention on behalf of the contesting respondents as put forward by Mr. Mridul, the learned Counsel, is that the plea that there was disruption of the joint family in 1932 is a new point and should not be allowed to be raised. The plea cannot be accepted. The appellants denied the existence of a joint family consisting of Ramniranjandas and his sons and grandsons or that the joint family continued after the death of Ramniranjandas. It was specifically mentioned in para 2 of the written statement that there was disruption of coparcenary prior to 1926 and Ramniranjandas and his 8 sons carried on the company after they became separate and as such there was no joint family as alleged in the plaint. This plea is very specific that there was disruption of the joint family prior to 1926. The point at which the disruption took is not stated clearly but the plea of the appellants that it was prior to 1926 would enable him to rely on the document of 1932 to establish that there was a separation sometime before 1932. In the memorandum of appeal dated January 24, 1967 by the appellants is ground 26 it was clearly alleged that the learned Judge was wrong in holding that Ramniranjandas and other sons were members of joint family. The contention of Shri Mridul, the learned Counsel for respondents, that this plea is new and should not be allowed cannot therefore be sustained. The second contention of Shri Lal Narain Sinha, the learned Counsel for the appellants, relying on the recitals in Ex. L. is that in any event the document itself effected a separation in status at least from the date of the document. The effect of the document L, M, N, O etc. is that the properties which were owned by several sons were transferred to a company consisting of themselves alone. Even if the recitals in the document do not prove separation of status before the date of the document they make it clear that 8 sons who were acting as Kartas of their sons and grandsons were transferring the properties to a company consisting of themselves alone. It is to be noted that the entire family properties were transferred to the company consisting of 8 brother and their descendants alone. The transaction will have the effect of transferring the properties from the families to the company though it may not be the nature of a family settlement. Even if the joint family of Ramniranjandas Murarka was in existence before December 9, 1932 this transaction had the effect of bringing about a separation in status and the members entered into the transaction as co-tenants. We are satisfied that the recitals in documents Ex. L. and others prove that even if there was a joint family in existence before the date of the document, the recitals in the document would have the effect of disrupting the joint family.

7. Mr. Lal Narain Sinha submitted that even if it is held that there was a joint family in existence on the date of the impugned documents, the transactions are for the benefit of the family and as such binding on all the members. The facts disclose that the transactions were entered into not only by all the eight sons but also by all the adult coparceners of the eight branches. It cannot be denied that the transactions were the result of joint deliberations and unanimous decision of all the adult

members. The evidence of the Solicitor who prepared the documents is that it was for necessity and with the object of preserving the property, the entire properties of the family were transferred to the company consisting of eight sons and their families alone. Eight branches secured equal number of shares in the transferred company. On the facts the question arises whether the transaction could be held to be prudent and binding on the members of coparcenary. Bearing in mind the fact that all the adult members unanimously joined in the transaction after deliberations by all of them and that the entire properties were transferred in equal shares to the company of which the 8 sons were only shareholders, we will proceed to examine the validity of the transaction.

8. Mulla in his Principles of Hindu Law at p. 300 (Fourteenth Edition) states the law thus : "The power of the manager of a joint Hindu family to alienate joint family property is analogous to that of a manager for a infant heir as defined by the Judicial Committee in *Hunoomanpersaud Pandey v. Musummat Babooee, Munraj Kunwaree* ((1856) 6 MIA 393 : 2 Suther 29 : 1 Sar 552). The manager of a Joint Hindu family has power to alienate for value joint family property, so as to bind the interest of both adult and minor co-parceners in the property, provided that the alienation is made for legal necessity, or for the benefit of estate. As to what is benefit of the estate there was conflict of opinion. One view was that a transaction cannot be said to be for the benefit of an estate unless it is of defensive character calculated to protect the estate from some threatened danger or destruction. Another view was that for a transaction to be for the benefit of the estate it is sufficient if it is such as a prudent owner, or rather a trustee, would have carried out with the knowledge that was available to him at the time of transaction. The question whether it is for the benefit of family would depend upon the facts of the case. On the facts of this case could be no difficulty in coming to the conclusion that the transaction was for the benefit of the estate. The evidence of Mitra, the Solicitor who was instrumental in bringing about the transactions, is that the purpose or the reason for these transactions is for protecting the properties for the members of the family and that the idea was that the properties may not be partitioned and to prevent any member of the Murarka family from selling away any share of the property by transfer of mortgage. The witness was not cross-examined. It is clear therefore that by the transaction there was no dissipation of the property. The transaction was only for the purpose of preserving the properties for all the members after due deliberations by all the adult members. In *Balmukand v. Kamalawati* ((1964) 6 SCR 321 : AIR 1964 SC 1385), the Court held that any transaction to be regarded as one which is of benefit to the family need not necessarily be only of a defensive character but what transactions would be for the benefit of the family would depend on the facts and circumstance of each case. The Court would depend on the facts and circumstances of each case. The Court must be satisfied on the material before it, that it was in fact such as conferred or was necessarily expected to confer benefit on the family at the time it was entered into. The property in question in the case referred to consisted of a fractional share belonging to the family in a large plot of land. Earnest money was paid to Karta, but the Karta did not execute the sale deed. The appellant instituted a suit for specific performance. The other members who were brothers of the Karta and who were adults at the time of the contract were also impleaded in the suit as defendants. The suit was resisted on the ground that there was no legal necessity and that the contract for sale was not for the benefit of the family. On the facts, the Court held that to sell such property and that too on advantageous terms and to invest the sale proceeds in a profitable may could certainly be regarded as beneficial to the family. These observations apply with equal force to the facts of the present case. We have no hesitation in holding that the transaction was for the benefit of the family and as such even if it was found that there was a joint family, the transaction would be binding on all the coparceners. In this view, it is unnecessary for us to consider whether the transaction could be regarded as a family arrangement as was contended by Mr. Lal Narain Sinha. The transaction may not strictly be a family arrangement as there is a transfer

of properties from the family to the company in which all the 8 brothers were allotted equal shares.

9. We will now refer to certain documents and conduct of the parties relied on by the learned Counsel for the contesting respondents in support of his contention that the transactions entered into under Ex. L were not considered as having effected division in status. After the date of the impugned document in 1932, the parties entered into two transactions one on October 6, 1935 and another on October 9, 1935. By the document dated October 6, 1935 Ex. 000040, the eight brothers put on record that their mother gifted and distributed all the ornaments, jewellery and silver wares to and amongst all the eight brothers and nothing now remained undistributed and the said property so gifted and distributed remained the property of each individual concerned. By the document Ex. 000039 dated October 19, 1935 the eight brothers put on record that they have divided and distributed equally amongst themselves all the household furniture, fittings, electrical equipments, musical instruments, beddings, photo cameras, cutleries, radios and fieldglasses which were with them and their sons in Calcutta and it remained only the exclusive property of each individual and was in their possession. It was submitted by Mr. Mridul, Counsel for the respondents, that these documents would indicate that the separation was effected for the first time on October, 1935 or at any rate the immovable properties were divided about the time when these transactions were entered into. It is a common knowledge that usually a division of the moveables takes place after immovable properties are divided. These two documents instead of supporting the plea of the respondents probalimize the case of the appellants that the separation took place before the date of the documents. The learned Counsel for the respondent relied on two affidavits filed by the members of the family to the effect that the joint family continued. In Ex. L dated December 9, 1936 Mohanlal Murarka stated in a petition for bringing on record the legal representatives for executing a decree obtained by Ramniranjandas Murarka that Ramniranjandas Murarka (the deponent's grandfather) during his life-time and at the time of his death along with the applicants named in the petition constituted a Hindu joint family governed by the Mitakshara School of Hindu Law. This affidavit though filed before the institution of the suit cannot be taken as proving the existence of the joint family after the death of Ramniranjandas Murarka. All that it states is the Ramniranjandas Murarka during his life-time and at the time of his death along with the applicants was member of joint family. The affidavit does not throw any light as to whether the joint status continued after Ramniranjandas died. In Ex. UU a verified petition filed for bringing on record legal representatives of Ramniranjandas Murarka for executing a decree stated that the petitioners were legal representatives as Ramniranjandas Murarka was a Hindu governed by Mitakshara School of Law. It is averred that the joint family continued after the death of Ramniranjandas Murarka. These two affidavits do not advance of Radheylal and that of Ganariwale who spoke to existence of the joint family. In the face of the documentary evidence on record, the oral evidence is not entitled to any weight.

10. Though the conclusions arrived at by us would dispose of the appeal, we would shortly refer to the submission of Shri Lal Narain Sinha that the present respondents have no status to oppose this appeal, the plaintiff having retired from the contest. While this plea may be sound as regards Bimla and Rahul son of Murarilal the case of Ratanlal stands on a different footing. Radheylal son of Ramniranjandas and his son Makhanlal father of respondent 12 contended that the impugned transactions were valid. The legal representatives of Murarilal, Bimla and Rahul who came on the record in the appeal before the Supreme Court cannot be allowed to put a different case from that the Murarilal. This objection is not available against Ratanlal, respondent 20. In 1946, three years after the date of his attaining majority, he filed the statement challenging the validity of impugned transaction. It was submitted on behalf of the appellants that Ratanlal cannot be permitted to challenge the validity of the transactions as the plea was taken 3 years after his attaining majority. It

was also contended that the plaintiff representing one of the 8 brothers alone prayed for allotment of one-eighth share and the challenge as regards alienation of share of others cannot be sustained. We do not think we are called upon to decide this question, but we may observe that one of the reliefs asked for is for setting aside the alienation and therefore the failure of one of the branches to question the validity of the alienation would not bar the right of the other branch for the said relief.

11. On a consideration of the entire evidence placed before us and the contentions of the parties, we hold that the family of Ramniranjandas Murarka became divided in status before 1932 and that in any event a division in status was effected from the date of the document Ex. L etc. in 1932, and that even if there was a joint family in existence as the transactions were for the benefit of the family, the other coparceners cannot challenge its validity. In the result the appeal is allowed and the decree of the trial Court is set aside so far as the appellants, defendant 12 and defendant 13, are concerned. Costs will be paid by the contesting respondents who are legal representatives of respondent 12, Bimla and Rahul, respondents 12A and R-12B and his three sons R-42, R-43, R-44.

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