

Bachcha and Another

Vs

Chamru

Civil Appeal No. 1850(N) of 1970

(V. D. Tulzapurkar, R. S. Pathak JJ)

17.09.1980

JUDGMENT

TULZAPURKAR, J. –

1. The only question raised in this appeal relates to the construction of a compromise decree passed in Suit 31 of 1941. It arises thus :

2. A mortgage in respect of two houses (admittedly ancestral) was executed by Bachcha and Babu in favour of one Padmavati on December 14, 1933. The document was also executed by Bachcha as the guardian of his minor nephew Chamru. Padmavati, the mortgagee filed a suit to recover the mortgage-debt and obtained a decree on February 23, 1937. In execution the mortgaged property was sold and with permission of the court Padmavati purchased that property and obtained possession of it in 1940. In 1941 Chamru through another guardian filed a suit (being suit 31 of 1941) challenging the mortgage as being illegal and void. He also challenged the mortgage-decree as also the sale which took place in execution of that decree. His case was that the mortgage was without consideration, without legal necessity and not binding on him as Bachcha has no authority to act as his guardian. That suit ended in a compromise decree on May 8, 1941, whereunder the suit was decreed in respect of one house but dismissed in respect of the other house. It seems Babu in the meanwhile had died issueless with the result that Chamru had become entitled to 1/2 share in the two ancestral houses and Padmavati the mortgagee, agreed to release one of the two houses for the benefit of the minor Chamru, which presumably represented his half share in the interest of the minor Chamru. Pursuant to the decree, Chamru got possession of the house.

3. The present suit was filed by Bachcha and his son Gopal as plaintiffs 1 and 2 against Chamru (defendant) seeking partition of the house claiming half share in it on the ground that the house continued to retain its ancestral character even after the compromise decree and that the benefit of the property recovered under the compromise decree enured to the joint family. The claim was resisted by Chamru contending that the compromise decree was for his benefit alone and there was no question of Bachcha and Gopal having any share in that property. The question whether the plaintiffs would be having any share in the suit house obviously depended on the construction of the compromise decree. The trial Court held that as a result of the compromise the mortgage must be regarded as having been declared illegal and not binding on Chamru's share in the ancestral houses and that in any case on construction of the compromise decree the suit house had been released in favour of Chamru for his benefit alone and there was no question of plaintiffs having any interest in that property. It, therefore, dismissed the suit. In appeal, the learned 4th Additional Civil Judge reversed that decree and granted a share to the plaintiffs. In second appeal preferred by Chamru the High Court reversed the appellate decree and restored that of the trial Court. In other words, the

plaintiff's suit was dismissed and they have come up in appeal to this Court.

4. In this appeal counsel for the plaintiffs contended that by the compromise decree the mortgage was held to be illegal and void so far as one house is concerned and if a coparcener retrieves an ancestral house it will retain its original character and the plaintiffs would be entitled to get a share in it. The principle enunciated by counsel will not avail because we, are only concerned with the question of proper construction of the compromise decree, and whether the benefit thereunder was intended to be given to Chamru alone or to the joint family. Counsel has taken us through the terms of the decree and all that the decree states is that the plaintiff's suit is decreed in respect of one house while it is dismissed in regard to the other house. The plaintiffs have based their claim to a share in the concerned house on the strength of this decree and hence its effect will have to be determined. Two or three aspects emerge in light of which the decree will have to be construed. First, though Bachcha and Babu were impleaded as party defendants to Suit 31 of 1941 nothing was said about any interest or benefit or relief being given to them in the decree - in fact they were discharged from the suit long before the compromise was made between Chamru and Padmavati. Secondly, the compromise terms show that Padmavati was prepared to release one of the two houses in favour of Chamru so that the minor should receive some benefit. Thirdly, because the compromise was for the benefit of the minor the court sanctioned it. It does appear that the parties to that suit intended to release the share for Chamru alone, which had become half and in lieu of such share in both the houses one house was completely released in his favour. In our view, in light of these facts the High Court has rightly construed the terms of the compromise decree as conferring the benefit thereunder to Chamru alone. The appeal is, therefore, dismissed with costs.

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