

Malati Ramchandra Raut & Others

Vs

Mahadevo Vasudeo Joshi & Others

Civil Appeal No.6190 of 1990

(Dr. T.K. Thommen, R.M. Sahai JJ)

20.12.1990

JUDGMENT

THOMMEN J

1. Special leave granted.

2. The defendants in suit No. 400 of 1972, which is a suit for partition, appeal from the judgment of the Division Bench of the Bombay High Court in Appeal No. 894 of 1985 whereby the learned Judges, setting aside the judgement of the single Judge, held that the valuation of the shares of the plaintiffs in the two suit properties had to be made for the purpose of S.3 of the Partition Act, 1893 (hereinafter referred to as the "Act") not as on the date when the defendants sought leave of the Court to buy the respective shares of the plaintiffs, but as on the date of the preliminary decree declaring the shares of the parties in the properties in question.

3. The suit for partition was filed by the present respondents on 17-5-1972. They averred that the nature of the suit properties was such that their division could not reasonably or conveniently be made and that their sale and distribution of the proceeds would be more beneficial for all the shareholders. The plaintiffs, therefore, prayed that the properties be sold and the proceeds distributed amongst the shareholders. The plaintiffs admitted that the defendants together held 1/3rd share in the properties and the plaintiffs together held 2/ 3rd shares. On 26-6-1972 the plaintiffs took out a notice of motion for the appointment of a receiver and injunction. In the affidavit filed on 5th July, 1972 by the defendatns in reply to the notice of motion, they stated that they were prepared to buy at a valuation the shares of the plaintiffs, and requested the Court to direct a valuation of the same. In their written statement filed on 9-10-1972, the defendants reiterated their willingness and sought leave of the Court to buy at a valuation the 21 3rd shares held by the plaintiffs in the properties.

4. The plaintiffs, however, took out chamber summons for amendment -of the plaint to delete their averment to the effect that the properties could not reasonably or conveniently be divided and the sale of the properties and distribution of the proceeds would be more beneficial for the shareholders. The chamber summons was dismissed on 9-11-1972. The appeal preferred by the plaintiffs against that order was dismissed on 1-4-1977.

5. In the meantime, the original plaintiffs and the defendants, except one, had died and their legal representatives were brought on record.

6. The learned single Judge noticed that there was no dispute between the parties as regards their respective shares in the suit properties. It was also no longer in dispute that the properties were incapable of division by metes and bounds and that they had, therefore, to be sold. The defendants having sought leave of the Court to purchase the shares of the plaintiffs in the properties at a valuation, those, shares had to be valued as on the date of their so seeking the leave and not as on any subsequent date. The learned Judge held that once the defendants exercised their right under S. 3(1) of the Act, their rights, as between themselves and the plaintiffs, were crystallised and concluded. He, however, stated that he did not pass any decree in the suit, but only directed the valuation of the properties with reference to the date on which the defendants sought leave of the Court under S. 3 in order that, upon conclusion of the proceedings, the shares of the plaintiffs in the properties could be sold to the defendants at the price so determined.

7. On appeal by the plaintiffs, the Division Bench held that the present appellants, who claimed to be the legal representatives of the original defendants, had first to obtain probate or letters of administration, and thereupon a preliminary decree had to be passed. It was with reference to the date of such preliminary decree that the valuation of the properties would have to be made.

8. In *R. Ramamurthy Iyer v. Raja V. Rajeswara Rao* ((1972) 2 SCC 721: AIR 1973 SC 643), this Court stated (at pages 647-648 of AIR):-

"The scheme of Ss. 2 and 3 (of the Partition Act, 1893) apparently is that if the nature of the property is such or the number of shareholders is so many or if there is any other special circumstance and a division of the property cannot reasonably or conveniently be made the court can in its discretion, on the request of any of the shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and distribute the proceeds among the shareholders. Now where a court has been requested under S. 2 to direct a sale any other shareholder can apply for leave to buy at a valuation the share or shares of the party or parties asking for sale. In such a situation it has been made obligatory that the court shall order a valuation of the share or shares and offer to sell the same to the shareholder who has applied for leave to buy the share at a price ascertained by the court. In other words if a plaintiff in a suit for partition has invoked the power of the court to order sale instead of division in a partition suit under S. 2 and the other shareholder undertakes to buy at a valuation the share of the party asking for sale the court has no option or choice or discretion left to it and it is bound to order a valuation of the share in question and offer to sell the same to the shareholder undertaking or applying to buy it at a valuation..... (p. 727)

9. It is the duty of the Court to order the valuation of the shares of the party asking for a sale of the property under S. 2 and to offer to sell the shares of such party to the shareholders applying for leave to buy them in terms of S. 3 at the price determined upon such valuation. As soon as a request for sale is made by a shareholder under S. 2, any other shareholder becomes immediately entitled to make an application under S. 3 for leave to buy the shares of the former. The right to buy having thus arisen and become crystallised, the date with reference to which valuation of the shares in question has to be made is the date on which the right arose.

10. The learned single Judge rightly observed that there was no dispute about the extent of shares held by the defendants. The fact that the legal representatives representing the estate of a deceased defendant had not yet obtained probate of administration did not mean that the right which arose in

favour of that defendant, upon his making an application for leave to buy under S. 3, was a right which did not accrue to the benefit of his estate, but was postponed till the legal representatives obtained probate or letters of administration. That right was never in abeyance; it had accrued in favour of the deceased during his life when he sought leave under S. 3 and came to be vested in his estate. That being a right of purchase, the valuation of the shares has to be made as on the date of accrual of the right, and valuation being a fact finding process must be resorted to as soon as possible after such accrual.

11. Accordingly, the valuation, though made subsequently, has to be made with reference to the time at which the right arose which, in the present case, as found by the learned single Judge, was on 5th July, 1972 when the defendants filed their affidavit seeking leave to buy, or, at any rate, on 9th October, 1972 when they filed their written statement reiterating that request. In a case such as this, where the extent of shares held by the plaintiffs and the defendants is not disputed, the fact that the proceedings continued by reason of the appeal filed by the plaintiffs against the order refusing to allow them to amend their plaint, or for any other reason, was not relevant to the time of accrual of a right arising under S. 3. The fact that a preliminary decree may have to be passed before passing a final decree and that no such decree has yet been made is again not relevant, on the facts of this case, to the question as to the time of accrual of a right under Section 3.

12. In the circumstances, whenever the shares in question in the properties come to be sold to the persons entitled to buy them under S. 3, the price of those shares will have to be determined on the basis of the valuation made with reference to the time of accrual of the right. This, as found by the learned single judge, was the price prevailing in July 1972.

13. The learned Judges of the Division Bench have, in our view, erred in setting aside the judgment of the learned single Judge. Accordingly, we set aside the impugned judgment and restore that of the learned single Judge. The appeal is allowed in the above terms with costs throughout.

Appeal allowed.

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