Surendra Kumar

Vs.

Phoolchand (dead) through and another

Civil Appeal No. 833 of 1987

(K. Ramaswamy, G. B. Pattanaik JJ)

02.02.1996

JUDGEMENT

G. B. PATTANAIK, J.

1. This appeal is directed against the Judgment of the Madhya Pradesh High Court in a proceeding under Section 30 of the Land Acquisition Act (hereinafter referred to as 'the Act'). A property measuring 25.12 acres appertaining to survey Nos. 70 and 71 in village Narwal in the District Indore had been purchased from one Mithulal under a registered Sale Deed in the year 1961 in the name of appellant Surendra Kumar by grand father Chhogalal as guardian. The said property was acquired for the industrial area Indore and the Land Acquisition Collector passed an award on 5-3-1966 under Section 11 of the Act and compensation of Rs. 99.373/- was granted to the appellant. Subsequent to the passing of the award the respondents appeared before the Land Acquisition Collector and claimed that the property in question is joint family property and they are entitled to share in it. Dispute having arisen to the apportionment of the compensation. The Land Acquisition Collector referred the dispute for the decision to the Court under Section 30 of the Act. Before the Ld. Additional District Judge it was contended on behalf of the appellant that the land in question has been purchased in his name from out of his funds though his grandfather Chhogalal acted as his guardian and therefore the same cannot be treated to be joint family property. It was also contended that Ramchandra one of the claimants had filed a suit for partition of the joint family property which was registered as Civil Suit No. 51/53 and in that suit the disputed property had not been included and present claim therefore is barred by the provisions of Order II, Rule 2, C. P. C. The alternative contention also have been raised on behalf of the appellant to the fact that Phoolchand had relinquished his interest in the joint family property by executing a release deed in favour of Chhogalal and consequently he also relinquished his share in the compensation amount. The respondent on the other hand contended that the property has been purchased by Chhogalal in the name of the appellant from out of the funds of the joint family, and as such they are entitled to 1/3 share in the compensation amount. It was also pleaded that the so called release deed is null and void and non-operative and is not binding. The Ld. Additional District Judge on thorough consideration of the matter before him came to the conclusion that Chhogalal grandfather of appellant-Surendra Kumar was managing the affairs of the business of the Joint Hindu Family and the Joint Family had sufficient funds to purchase the land in question. He also found that the earlier partition suit having been filed in the year 1953 and the disputed property having been purchased only in the year 1961, the same could not have been included in the suit for partition and such non-inclusion is not fatal to the case of the respondents and Order II, Rule 2, C. P. C. has no application. On the question as to whether the property is a joint family property or not, it was found that consideration money for purchasing the property had been paid by Chhogalal from out of the Joint Family funds and as such it was the joint family property. The plea of the appellant that the

consideration money was in fact paid by appellant's maternal grandfather was rejected as the appellant failed to adduce sufficient evidence on that score. With these findings it was directed that the appellant as well as the respondents would be entitled for 1/3 share each in the compensation amount. The aforesaid judgment of the Addl. District Judge in Miscellaneous Judicial Case No. 9 of 1973 was assailed in appeal which was registered as First Appeal No. 59/1977. The High Court reappreciated the evidence on record and affirmed the findings of the Ld. Addl. District Judge. Bearing in mind the correct legal position with regard to the presumption of joint interest to the property in question the High Court scrutinised the evidence and came to the conclusion that land in question was the joint family property. The Court also came to the conclusion that the Sale Deed in favour of the appellant having been executed in the year 1961, non-inclusion of the property in the earlier partition suit of 1953 cannot be held to be fatal to the present proceedings. The Court also further held that the appellant having raised the plea that the consideration money for the land was paid by the maternal grandfather and having failed to establish the same and no material having been produced to establish that the property was purchased out of the funds of the appellant, the conclusion is irresistible that it is the joint family property and has been purchased by Chhogalal the manager of the joint family property in the name of grandson the present appellant and consequently the property is the joint family property. With these conclusions the appeal having been dismissed, the present appeal has been preferred.

2. The learned counsel appearing for the appellant argued with force that though the sale deed was executed in the year 1961 but the property was in possession of Chhogalal since 1951 and even though the respondent knew about the same yet the property was not included in the earlier partition suit filed in the year 1953 and therefore the provisions of Order II, Rule 2, C. P. C. must be attracted. Alternatively he argued that at any rate by 1966 the respondent having come to know about the existence of the property and at that time the appeal against the judgment in Civil Suit No. 51/53 have been pending and yet the property not having been sought to be brought over in the appeal, it must be assumed that the present claim is mere afterthought. Lastly, the learned counsel contested the finding that the property is the joint family property and rejection of the case of the appellant that the consideration money was paid by maternal grandfather is wholly unsustainable in law and is merely arbitrary and, therefore, this Court would be justified in reversing the finding with regard to the jointness of the property.

3. Learned counsel for the respondent on the other hand contended that two Courts below having examined the relevant materials in its proper perspective and having recorded the finding that the property is the joint family property, it would not be appropriate for this Court to interfere with the same particularly when no question of law arises in this regard. The learned counsel also contended that the earlier suit filed by one of the respondents being in the year 1953, and at that point of time the property not having been purchased, the question of inclusion of the same in the earlier suit did not arise and consequently the Courts below rightly held that the non inclusion cannot be held to be fatal to the present suit.

4. In view of rival contentions, two questions really arise for our consideration :

> (1) Whether non inclusion of the disputed property in the earlier partition suit will in any way affect the present proceedings by application of Order II, Rule 2, C. P. C. ?
>
> (2) Whether the findings of the two Courts below on the question that the property is a joint family property can at all be interferred by this court ?

5. So far as the first question is concerned on the admitted position that the sale deed in the name of the appellant was executed only in the year 1961 and the suit for partition of the Joint Family property by Ramchandra had been filed in the year 1953, the said property could not have been included in the partition suit and therefore non inclusion of the property is not fatal to the present proceedings. In our considered opinion the provisions of Order II, Rule 2, C. P. C. cannot be applied to the facts and circumstances of the present case. In this connection it will be appropriate to consider the contention raised by the learned counsel for the appellant that the respondent came to know about the property when they filed application before the Land Acquisition Authority and still they did not approach the appellate forum in the Civil Court for inclusion of that property and on the score they would not be allowed to agitate in the present proceeding. We are afraid this submission does not have any substance. That the property having been acquired and an award has been passed, any claim in respect of the said compensation amount can only be made by raising a dispute before the land acquisition authority and that has been done in the present case. We also do not find any material in support of the contention raised on behalf of the learned counsel for the appellant that the respondent must be presumed to have knowledge about the purchase of the property since Chhogalal was in possession of the same since 1951. We have carefully scrutinised the material on record and we do not find iota of evidence in support of the aforesaid contention. In the aforesaid premises the irresistible conclusion is that non inclusion of the disputed property in the earlier partition suit does not in any way affect the present proceeding and therefore in a reference under Section 30 of the Land Acquisition Act the Court was fully justified in deciding the question as to whether the property is joint family property or is the self-acquired property of the appellant. The provisions of Order II, Rule 2, C. P. C. has no application.

6. Coming to the second question it is an admitted fact that Chhogalal was the eldest member of the family and was the manager of the Joint Family consisting of Chhogala, Ramchandra and Phoolchand. The agreement to sale is stated to have been made in the year 1951 and consideration money had been paid in 1951 and 1952 and finally sale deed was executed in the year 1961. At that point of time the present appellant was a minor and the property was therefore purchased in the name of the minor with Chhogalal as the guardian. In course of the proceedings appellant has taken the specific plea that the consideration money had been paid by his maternal grandfather and that plea has been rejected by the Courts below on consideration of material with the finding that the appellant has failed to establish the same. Thus there is no material to establish that consideration money for the property was paid by the appellant from out of his separate funds. It is no doubt true that there is no presumption that a family because it is joint possessed joint property and therefore the person alleging the property to be joint has to establish that the family was possessed of some property with the income of which the property could have been acquired. But such a presumption is a presumption of fact which can be rebutted. But where it is established or admitted that the family which possessed joint property which from its nature and relative value may have formed sufficient nucles from which the property in question may have been acquired, the presumption arises that it was the joint property and the burden shifts to the party alleging self acquisition to establish affirmatively that the property was acquired without the aid of the joint family. Both the Courts below have scrutinised the evidence bearing in mind the aforesaid legal position and have rightly come to the conclusion that the property in question is the joint family property. We see no justification for our interference with the said concurrent finding of the two Courts below. The appreciation of evidence has been rightly made bearing in mind the correct legal position. The appellant thus has utterly failed to establish that the consideration money for the property was paid out of his personal funds. In the aforesaid circumstances agreeing with the two Courts below we hold that the property was the joint family property and therefore the respondents have 1/3 share

each in the compensation amount. In the aforesaid premises this appeal is devoid of merits and the same is accordingly dismissed but in the circumstances without any order as to costs. Appeal dismissed.