

Chintaman

Vs

Shankar and Others

Civil Appeal No. 3350 of 1998

(S. B. Majmudar, M. Jagannadha Rao JJ)

17.07.1998

ORDER

1. Leave granted.

2. We have heard learned counsel for the appellant as well as learned counsel for Respondent 3 who is the only contesting party. In our view, this is a fit case in which this Court should interfere in the interest of justice. A few relevant facts for highlighting the aforesaid conclusion of ours are required to be noted.

3. The appellant and Respondent 1 are brothers. It is not in dispute that there were agricultural lands in which the appellant and Respondent 1 and his another brother had 1/3rd undivided share each. The undivided 1/3rd shares of Respondent 1 as well as his brother were sold to one Chandramohini Devi. Thereafter, the present appellant as well as his brother, Respondent 1 along with the third brother were sued by the said purchaser in a Regular Civil Suit No. 12-A of 1954 in the Court of Civil Judge, Senior Division, Bhandara. The plaintiff wanted her 2/3rds share to be separated. The remaining 1/3rd share belonged to the present appellant, the third brother. There were other parties joined in the suit being Defendants 4 to 10 with whom we are not concerned as ultimately in the suit, the trial court passed the decree in the following terms :

"1. It is hereby declared that the sale deed passed by Defendants 1 and 2 to Defendants 4 and 5 for the land Kh. No. 35 Village Sawari on 17-4-1958 and the other sale deed passed by them to Defendant 6 for Kh. No. 2712 of the same village on 11-5-1962, are not binding on the plaintiff as these lands were already sold by Defendants 1 and 2 to the plaintiff on 10-12-1951.

2. It is further declared that each of Defendants 1 to 3 has 1/3rd share in the suit property described in Schedules (1), (2) and (3) annexed with the plaint.

3. From the landed property described in Schedule (1), the land Kh. No. 218/3 admeasuring 1.34 acres situated at Village Kinhi and land Kh. No. 1/6 admeasuring 17 acres situated at Village Garada, are fallow lands and they are sold by Defendants 1 and 2 to the plaintiff. Therefore, they are ordered to be allotted to the 2/3rds share of Defendants 1 and 2 and their possession be given to the plaintiff, as Defendants 1 and 2 have sold them to the plaintiff.

4. At Village Sawari, there are 10 pieces of lands admeasuring 13.20 acres belonging to Defendants 1 to 3. Out of these lands, only 7 acres are sold by Defendants 1 and 3

to the plaintiff. These lands are therefore allotted to the share of Defendants 1 and 2 and as they are sold by them to the plaintiff, the plaintiff should be given possession of these 7 acres' land at the time of partition. The rest of the land admeasuring 6.20 acres from Village Sawari, is allotted to the share of Defendant 3, though his 1/3rd share comes to 4.40 acres. The surplus 1.40 acres of land from Sawari is given to him, which is cultivable, as no share is given to him in the land at Kinhi and Garada, which are fallow. This adjustment is ordered from the point of equity.

5. The house property from Schedule (2) and moveable property from Schedule (3) belong to Defendants 1 to 3 only. They do not claim partition of this property between themselves and the plaintiff has no interest in that property. Therefore, no order is passed about these two properties.

6. The partition of the landed property is to be effected by the Collector of Bhandara or his gazetted subordinates, in the light of the above things and the plaintiff be put in possession of the 2/3rds share of Defendants 1 and 2, as said above.

7. Defendants 1 and 2 shall pay the plaintiff's costs of this suit, incurred after remand of the suit from the High Court.

8. All the defendants will bear their own. (sic)

9. The maps described as A, B and C, filed by the plaintiff along with the plaint, shall form part of the decree.

10. Final decree for partition of the land, as per Order XX Rule 18(1) of the Civil Procedure Code, be framed."

4. It is, therefore, obvious that the 2/3rds share in the suit properties was ordered to be put in possession of the plaintiff while the remaining 1/3rd share remained with the appellant. Not only that, but the trial court also clearly indicated in para 4 of the decree that the share of the present appellant, original Defendant 3 would be 6 acres and 20 gunthas in Village Sawari. In para 6 of the final order, it was clearly mentioned that the partition of the landed property is to be effected by the Collector of Bhandara or his gazetted subordinates in the light of the above things and then it was further directed that the plaintiff be put in possession of the 2/3rds share of Defendants 1 and 2, as said therein. In para 10, it was directed that the final decree for partition of the land as per Order 20 Rule 18(1) of the Civil Procedure Code be framed. When we turn to Order 20 Rule 18 sub-rule (1), we find that such a direction would require the Collector to put into effect partition on the spot so far as the agricultural lands are concerned as per the provisions of Section 54 of the Code of Civil Procedure. Order 20 Rule 18(1) reads as under :

18. Where the court passes a decree for the partition of property or for the separate possession of a share therein, then, -

(1) if and insofar as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of Section 54;"

5. Section 54 is also required to be noted at this stage. It provides as under :

"54. Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates."

6. In view of these clear provisions, it was for the Collector to put the plaintiff in possession of 2/3rds share and the remaining 1/3rd share which was adjudicated upon in favour of the appellant, Defendant 3 admeasuring to 6 acres 20 gunthas had to be put into possession of the appellant. Even though the decree was passed as early as in 1968, unfortunately still the appellant has not been put in possession of his 6 acres 20 gunthas. It is true that the appellant moved the executing court under Order 21 Rule 35 seeking execution of that decree in 1980 and in that application, he stated that he was put in possession but Defendants 1 and 2 were obstructing his possession. However, the executing court by its order dated 21-1-1991, after hearing the parties and looking at the relevant documents came to the conclusion that this decree so far as the appellant was concerned was not executed on the spot and the statement in the application was not a correct one and it was a misconceived one. The trial court referred to relevant documents which projected the following picture :

"...There are certified copies of the extracts of the Mutation Register of the entries at Mutations Nos. 117, 118, 119, 122 and 123 issued by the Talathi on 8-4-1971. According to these entries in the Mutation Register, it is clearly mentioned that the possession of the land of the 1/3 share of the applicant has not been delivered to him from the date of the decree, i.e., 28-3-1968 in RCS No. 12-A of 1954 till the date of mutation, i.e., 10-2-1978 and that the possession of the land of 2/3rds share of the other parties has been delivered to them. In view of this position, it appears that the possession of the land of 1/3rd share of the land of his share was not at all delivered to the applicant up to the year 1978. Consequently, the so-called admission of the applicant in the application that he had received possession of the land seems to be incorrect"

7. In view of this finding reached by the trial court, the appropriate directions were issued to the Collector, Bhandara to deliver possession of 1/3rd share to the present applicant as per the decree passed by the Court in Regular Civil Suit No. 12-A of 1954 on 20-3-1968. The said order passed by the learned trial Judge reads as under :

"(1) The application is hereby partly allowed.

(2) The Collector, Bhandara is hereby directed to deliver the possession of 1/3rd share to the applicant as per the decree passed by this Court in Regular Civil Suit No. 12-A of 1954 on 28-3-1968, through his gazetted subordinate by removing non-Applicant 4 who is bound by that decree and who is in unauthorised possession of the 1/3rd share of the applicant.

(3) After delivery of the possession to the applicant of his share as per the decree, his name shall be recorded in all the relevant revenue records accordingly.

(4) The prayer of the applicant as regards the action for contempt against the non-applicants stands rejected as not pressed.

(5) A copy of the operative part of this order be sent to the Collector, Bhandara for compliance."

8. This order was challenged by Respondent 1 before the High Court in civil revision application. The learned Judge of the High Court took the view that when the final decree in a partition suit is passed, such an application before the executing court was not maintainable. Only on this short ground, the order of the trial court was set aside. That is how the appellant is before us.

9. Now it is obvious that once the partition decree has been passed as per Order 20 Rule 18, Section 54 of the CPC directly gets attracted and when the grievance of the appellant was found well established on record by the trial court that the Collector had not put the appellant in possession of his share of the property and only the plaintiff's 2/3rds share was carved out and put in possession of the plaintiff, it is obvious that the applicant's application was a sort of a reminder to the trial court to direct the Collector to complete his work under Section 54 as per the final decree. It was, strictly speaking, not an application under Order 21 Rule 35. To that extent, the learned Judge of the High Court was right. But that is not the end of the matter. Further question remains as to whether the ultimate order of the trial court was justified on facts or not. It is found as a fact that the appellant was actually not put in possession of his 6 acres 20 gunthas decreed to him as early as in 1968 and that finding was never challenged before the High Court by the appellant. In the light of this well-established factual position on record, it must be held that despite the decree of 1968 decreeing 6 acres 20 gunthas of land in favour of the appellant and the direction contained in the decree itself as per Order 20 Rule 18 calling upon the Collector to effect partition of the landed property as mentioned in the first part of para 6 of the decree, it was not complied with by the Collector. The trial court was, therefore, perfectly justified in issuing further direction to the Collector for completing the task which unfortunately has remained incomplete for 30 years by now. Under these circumstances, there is no escape from the conclusion that the appellant must be permitted to be put in possession of the land which was already decreed in his favour years back in 1968 by the civil court and which decree, we are told, has become final as no higher court has upset that decree. Consequently, this appeal is allowed. The judgment and order of the learned Single Judge of the High Court are set aside and the order passed by the learned trial Judge is restored. No order as to costs.