

SUPREME COURT OF INDIA

Geeta Devi

Vs.

Daulti Devi

C.A.Nos.7129 with 7128 of 1996

(V. N. Khare CJI., S.B.Sinha and Dr. A.R.Lakshmanan JJ.)

15.01.2003

ORDER

1. The short question that arises for consideration in these appeals is : Whether a party to the compromise decree can file a petition under Section 4 of the *Partition Act, 1893* where parties to a partition suit entered into a compromise and a decree was passed in terms thereof?

2. It is not disputed that Ramadhikari Pandey was the original owner of the property in dispute. He had three sons Rupnarain Singh, Awadh Bihari and Brij Bihari, each having 1/3rd share. It is alleged that Rupnarain Singh transferred his share in favour of Brij Bihari. Subsequently Brij Bihari along with his sons mortgaged the property and as a result thereof they suffered a mortgage decree in the hand of Sohan Rai, mortgagee, and in execution case, half share of Brij Bihari and his sons in the house was sold by the Court which was purchased by one Daulati Devi, Subsequently, Daulati Devi filed a partition suit against Brij Bihari and his sons including Krishna Kumar Pandey to carve out her share of annas of disputed part of the house. It is accepted that in the said suit a compromise was arrived at between the parties and as a result thereof the compromise decree was passed. The terms of the said compromise are as under:

"A. That the house mentioned in the plaint which is to be partitioned north-south length is about 35 feet and east-west its length is about 42 feet.

North-South length has been partitioned and by doing so the present house has been divided into two equal parts meaning thereby 17.5 feet long north-south and 42 feet long east-west. Accordingly, two houses have come into existence, one towards north and the other towards south. One site plan is being filed along with this settlement and it shall form part of the compromise. On the site plan, house in the north has been marked with letter 'Ka' and southern house is marked 'Kha' letter. As per the compromise the house towards south having north-south length of 17.5 feet and east-west width 42 feet and which has been marked on the site plan with letter 'Kha' has been given to the applicant plaintiff and northern portion marked on the site plan with

letter 'Ka' has gone to the applicant defendants 1 to 5. Accordingly, the applicants came into possession of their respective partitioned share of the house independently and on the partitioned share of the plaintiff her actual possession was agreed upon and applicant defendants have no concern left with same. It is clarified that in the southern portion of the present house there is one shop which is under the tenancy defendant No. 6 Shri Lalan Prasad Gupta at monthly rent of Rs. 80/- and presently he is running a medical shop in it in the name of "Reliable Forma". This shop has particularly gone to the share of the plaintiff meaning thereby that the share marked in the site plan with letter 'Kha'. The appellants defendants 1 to 5 have now no concern with this shop and from this date the plaintiff shall have full right and entitlement to receive rent from defendant No. 6.

B. That as per the compromise, it is further agreed that in the middle of this house, where 'Ka' and 'Kha' portions joins, towards west there shall be a passage both parties shall have access to their respective partitioned share of the house and at the same passage stairs shall be constructed for going upstairs. This passage has been marked on the site plan with letter 'Ka'.

C. That through the compromise, it is further agreed that applicant plaintiff, when ever she likes, can construct a partition wall for separating two partitioned portions marked on the site plan with letter 'Ka' and letter 'Kha' and shall construct the passage mentioned in para 'B' of the present application : The applicant defendants 1 to 5 shall have no objection to this and in case they do so the same shall be illegal and without any effect before the Court. The expenses incurred in this shall be shared equally by the parties.

D. That the cost of the suit shall be shared equally by the parties.

Under the circumstances stated herein the applicants pray that the present suit be decided in terms of the present compromise.

Application of the applicant-Daulati Devi plaintiff through Babu Baij Nath Singh, Advocate and Brij Bihari Pandey on his own behalf and guardian and well-wisher of his minor sons Krishna Kumar Pandey, Pramod Kumar Pandey and Vinod Kumar Pandey and Arun Kumar Pandey, defendants 1 to 5 through Babu Sushil Kumar Jamnar, Advocate.

Sd/- Brij Bihar Pandey.

The said consent decree attained finality. It was, thus, executable and no proceeding for drawing up a final decree was necessary. The appellants herein are the transferee from Daulati Devi. Two petitions under Section 4 of the Partition Act, 1893 (hereinafter referred to as "the Act") were filed on 10-7-1980 and 23-7-1980.”

3. Krishna Kumar Pandey, who was a minor when the said consent decree was passed in the aforementioned partition suit also preferred an appeal which was numbered as Title Appeal No. 161 of 1980. One of the questions involved in the appeal was as to whether the father Brij Bihari could compromise the matter on behalf of his minor sons. The appellate Court recorded a finding that the compromise was for the benefit of the minor sons. However, the appellate Court modified the decree and remitted the matter to the lower Court for ascertaining the valuation (market value) of the suit holding 8 annas share on the date of filing application under Section 4 of the Act before the lower Court. Against this order, the appellants preferred appeal before the High Court which was dismissed by order dated 20-9-1994 which is impugned in Civil Appeal No. 7129/1996.

4. The appellants herein had raised an objection that the petition filed by the respondents under Section 4 of the Act was not maintainable in view of the compromise decree. The said objection was overruled. The Sub-Judge, Patna disposed of the matter on 27-5-1980 but the petition under Section 4 of the Act remained pending. By an order dated 25-7-1980, the Sub-Judge refused to entertain the petition under Section 4 of the Act. Against this order, the respondents filed a civil revision before the High Court and the High Court, by an order dated 25-2-1983 passed in Civil Revision No. 1639 of 1980, directed the appellate Court to consider the petition filed by the respondents. The appellate Court, as noticed hereinbefore, remanded the suit to the lower Court and the Sub-Judge by order dated 22-4-1992 fixed the value of the suit house for Rs. 2,25,000/- on the date of filing the petition by the respondents under Section 4 of the Act. Against this order, a civil revision was filed by the respondents before the High Court which was allowed by order dated 20th September, 1994 which is impugned in Civil Appeal No. 7128 of 1996.

5. Learned senior counsel appearing for the appellants urged that in view of the compromise decree, the petition under Section of the Act was not maintainable. In support of the said contention, he relied upon a decision of this Court in *Katikara Chintamani Dora and others v. Guntreddi Annamanaidu and others*¹. We find merit in his submission.

6. However, learned senior counsel appearing on behalf of the respondents urged that the provisions contained in Section 4 of the Act being special provisions enacted for the purpose of maintaining homogeneity in Hindu Joint Family property, the proceedings initiated thereunder are not affected by any compromise decree. This submission is without any substance.

7. By reason of the terms of compromise, as noticed hereinbefore, the parties agreed to partition the suit property by metes and bounds. When the decree was passed and the partition became final, the question of entertaining an application under Section 4 of the Partition Act would not arise inasmuch as in the event such an application being allowed, the same would result in two inconsistent decrees passed by competent Courts of law. Once it has been held that the compromise entered into by Brij Bihari on his own behalf as well as on behalf of his minor sons was valid and the same was to the benefit of the minor sons, an application under Section 4 of the Act was not maintainable even at the instance of the minor sons.

8. In that view of the matter, the appeals deserve to be allowed. We, accordingly, set aside the judgments under challenge. The appeals are allowed. There shall be no order as to costs.

Appeal allowed.

¹1974 (1) SCC 567