SUPREME COURT OF INDIA

Madanalal (Dead) by Lrs.

Vs.

Yoga Bai (Dead) by Lrs.

C.A.No.4228 of 1992

(Brijesh Kumar and D.M. Dharmadhikari JJ.)

24.02.2002

JUDGMENT

Brijesh Kumar J.

1. This appeal is preferred against the judgment and order passed by the Andhra Pradesh High Court allowing the appeal of the plaintiff-respondent(herein) and setting aside the judgment and decree passed by the trial court dismissing the suit for partition.

2. It appears that one Purandas had established his business in Hyderabad after having shifted there from Burhanpur in the State of Madhya Pradesh. The business was being carrie on under the name & style of Purandas Ranchoddas & Sons. It appears that he had different businesss mainly perfume busineess in two places in Hyderabad. He had four sons, namely, Rchhoddas, Dwarkadas, Motilal, Bhaulal and a daughter Yoga Bai. Purandas died in the year 1962. Ranchoddas was eldest son. That being the position, Ranchoddas continued to look after the business. Dwarkadas died in the year 1966. His wife, Purna Bai and sons Daya Bhai and Raj Kumar filed a suit for partition of the properties as joint family property impleading Ranchoddas as the Defendant No. 1 and his sons as Defendants 2 to 5. Son of Motilal, namely Ramal Lal and Shanti Lal, were impleaded as Defendants 7 and 8 and Yoga Bai, daughter of Purandas was impleaded as Defendant No. 9. The palintiffs claimed 1/5th share in the property. The appellants (herein) filed their written statements denying the fact that there was any joint family property as claimed by the plaintiffs. The trail court dismissed the suit with a finding that Purandas had left Hyderabad and went back to Burhanprur in 1942 and before leaving he gave one shop at Secunderabad to his son Dwarkadas, the shop at Gulzar House, Hydrabad to his other three sons. By this arrangements, Purandas left no property in respect of which any partition could be made. The appeal preferred by the plaintiffs in the High Court has been allowed holding that plaintiff is entitled for 1/5th share in the property. The present appeal is against the judgment of the High Court.

3. This appeal stood disposed of by order dated 2.9.1994 on the basis of a compromise except as against Respondent No. 7. The respondents 1,2, and 3 are the plaintiffs and Respondent No. 4 Motilal is son of Purandas who has died and respondents No. 5 and 6 are

son of Motilal. Respondent No. 7 is Yoga bai, namely, the daughter of Purandas. She also died during the pendency of the case and her legal representatives have been brought on record. The position as it stands is that the appeal stands disposed of by means of a compromise between the parties including the plaintiff except in so far it related to Yoga Bai Respondent No. 7, who was defendant No. 7 in the suit . The appeal was ordered to continue in respect of Respondent No. 7. No one has turned up for Respondent No. 7, namely, the legal representatives of Yoga Bai. Legal Representatives of Respondent No. 7 have chosen not to put in appearance though served.

4. Learned counsel for the appellant has vehemently urged that the High Court while dealing with the appeal has appreciated the evidence in detail and has set aside the findings of fact recorded by the trial court. We see that it is within the scope of first appeallate court to go into the question of fact and appraise the evidence available on record. The High Court has considered the statements of different withesses who deposed during the proceedings of the suit as well as the documentary evidence. The High Court considered the evidence to the effect that business was orginally started by Purandas and after the birth of Ranchoddas it was shifted to Gulzar House in the name and style of Purandas Ranchhodas & Sons and that all the sons and the father Purandas were running the business together. The High Court particularly noted the fact that even accordig to the defendants prior to alleged division in 1942 entire business bwlonged to all of them and the income therefrom was enjoyed by all. Therefore, the Hifgh Court found that the question which was to be conisdered was as to whether property acquired by the father and the sons by putting their efforts together in ther family business would be amenable to partition at the instance of the sons or not. Referring to serveal decisions of different High Courts, namely, Bombay High Court, Oudh Chief Court, Madras High Court as well as Andhra Pradesh High Court on the point, it came to the conclusion tht the property in question was raised and developed by the joint efforts of Purandas and his sons and therefore it was joint family property, amenable to partition among the father and sons etc. We do not find any flaw in the conclusion drawn by the High Court on the point enumarated above.

5. The High Court has not believed the case of the defendants that there has already been a settlement in respect of the properties in question in 1942. It at least indicate that even according to the contesting defendants, some settlement of the property amongst the members of the family was necessry which had already taken place earlier i.e. to say existence of joint property cannot be denied. Once their case of settlement in respect of the same property having taken place earlier has been dis-believed, there remain hardly any ground to resist the claim of the plaintiff for partition and 1/5th share in the properties. The case of the defendant that after the settlement the brothers have been residing separately and they have been carrying on their business separately, hence there remained nothing which was joint amongst the members of the family which could be partitioned is rightly held to be untenable.

6. We find that after appreciation of the evidence the High Court has arrived at a finding that no such settlement had taken place in 1942. Learned counsel for the appellant has vehemently urged that Exhibit B-3 is the deed of settlement which should have been given

due weight by the High Court while considering the evidence. He has also submitted that the High court has not taken into account documentary evidence placed on record, namely Exhibits B-2, B-3, B-4, B-5, B-6 etc. as well as Ex. B-15 and B-16. He has also placed reliance upon the decision in *Surinder Singh v. Hardial Singh and others*[1] to the effect that findings of fact recorded, ignoring the documentary evidence on record is vitiated. We find that the High Court has considered a number of documents on record except a few which may not have been considered necessary to be referred to in the judgment. The High Court has taken a note of Ex. B-3, the alleged deed of settlement executed by Purandas in 1957 and has dealt with it in detail. Referring to the statement of DW-1, the High Court has taken a note of the fact that according to him B-3 came into existence since the Government was demanding inspection of their account books. DW-1 also could not indicate the order of handing over the shop to him by Purandas prior to 1949. The settlement was said to be in 1942 and deed is executed in 1957. Taking the evidence on record as a whole the case of the defendant of settlement of properties in 1942 and the deed executed in 1957 have not been believed. We find no good reason to interfere with the finding of fact which is supported by evidence and cogent reasons. In so far the other documents, which according to the appellant have not been considered, they are some partnership deeds which have been entered into between different members of the family in different combinations. It is sought to be established that they have been running their business separately under different partnerships. We feel that no such inference can be drawn. In a family which carries on a number of business, it is quite often that it is carried out under different names and styles and often constitutes different companies or partnership for better handling of business or to keep it manageable or for various other reasons. It is no proof of separation nor are the letters which are sought to be relied upon, written to the income-tax authorities and the assessment orders passed but the income-tax authorities. It has already come in evidence that even B-3 came into existence since the government wanted to inspect the account books. Therefore, once the settlement before the suit for partition was filed is not accepted by means of a finding of fact recorded by the High Court the case of the defendant falls through.

7. As indicated earlier, the matter stands settled and disposed by compromise among the parties except Respondent No. 7 whose legal heirs have not turned up to put in appearance. We do not find any good reasons to interfere with the judgment of the High Court except to the extent as may stand modified in view of the order passed by this Court on 2nd September, 1994 to the following effect:

> "Appeal is disposed of on the basis of a compromise except against respondent No. 7. Appeal shall continue in respect of respondent No. 7 and will disposed of according to law."

8. There is no merit in the appeal, it is accordingly dismissed. Costs easy.

[1] *1985(1) SCC 91*