SUPREME COURT OF INDIA

Rohit Chauhan

Vs.

Surinder Singh

C.A.No.5475 of 2013

(Chandramauli Kr.Prasad and V.Gopala Gowda JJ.)

15.07.2013

JUDGMENT

CHANDRAMAULI KR. PRASAD,J.

1. Sole plaintiff Rohit Chauhan is the appellant before us. His grandfather Budhu had three sons, namely, Gulab Singh, Zile Singh and one Ram Kumar. Gulab Singh, father of the plaintiff, has been arrayed as defendant no. 2, whereas son of Zile Singh i.e. Surinder Singh figures as defendant no. 1 in the suit. In partition between Budhu and his three sons, defendant no. 2 got 1/4 share i.e., 72 Kanals of land. In the said partition Budhu also got 72 Kanals of land and he bequeathed 1/4 of his share i.e., 18 Kanals to each of his three sons and kept with himself 18 Kanals. After the death of Budhu, defendant no. 2 inherited 1/3 share i.e., 6 Kanals and in this way plaintiff's father Gulab Singh, defendant no. 2,got 96 Kanals of land. Defendant No.2 during his lifetime also acquired 8 Kanals of land from the income of the properties which he got in partition amongst his father and brothers. At the time of partition defendant no. 2 was unmarried. But later on, Gulab Singh was married to defendant no. 7, Rajesh Rani and from the wedlock the plaintiff as also defendant no. 6 were born. Plaintiff was born on 25th of March, 1982. Plaintiff alleged that his father defendant no. 2 executed two separate sale deeds on 19th of May, 2000 selling 8 Kanals of land acquired from joint family funds to defendant nos. 3 to 5. It is further allegation of the plaintiff that his father illegally gifted 96 Kanals of land in favour of defendant no. 1 Surinder Singh, the son of his real brother Zile Singh by way of release deed dated 28th of May, 2004. On the basis of the release deed and the sale deeds, the defendants claiming interest therein got their names mutated and attested in the revenue records. It is the case of the plaintiff that the property received by his father is ancestral property and,

therefore, alienation of the same by him is null and void. On the basis of the aforesaid pleadings, the plaintiff prayed for declaration that the release deed, sale deeds and the mutation entries made on that basis are illegal, null and void and not binding on him, Varsha (defendant no. 6) and Rajesh Rani (defendant no. 7).

2. Defendant no. 1 contested the suit and, according to him, the plaintiff, his mother Rajesh Rani and minor sister Varsha were living separately from defendant No. 2 and there was no good relation between them. They were not even on talking terms. According to defendant no. 1, he and his family members were rendering service and giving honour to defendant no. 2 and he was residing with them as their family member. Defendant no. 1 further averred that out of love, affection and service rendered by him, defendant no. 2 was pleased and, as such, he executed a release deed in his favour and on that basis mutation entries were made. It is the plea of defendant no.1 that the land in question became the self acquired property of defendant no. 2 after partition and, therefore, he was competent to transfer the property in the manner he desired. Defendant no. 1 further alleged that the sale deed executed by defendant no. 2 in favour of defendant nos. 3 to 5 is legal and valid. Defendant no. 2 supported the case of defendant no. 1 and adopted the written statement filed by him. Defendant nos. 3 to 5 filed their separate written statements and supported the plea of defendant no. 1 and averred that the sale deeds and the release deed were validly executed. On the basis of the aforesaid pleading of the parties various issues have been framed including the following issues:

> "1.Whether the plaintiff is entitled to a decree for declaration to the effect that impugned release deed dt.28.5.2004 and mutation no.3365 entered and attested in lieu of impugned release deed and further two sale deeds dt.19.5.2000 bearing no.272/1 and 273/1 and mutation no.3110 and 3106 entered and attested on the basis of impugned two sale deeds and further revenue entries are wrong, illegal and not binding on the rights of the plaintiff and defendants no. 6 & 7?"

3. The trial court, on analysis of the materials placed on record and the legal position, came to the conclusion that the property which defendant no. 2 got by virtue of the partition decree amongst his father and brothers was although separate property qua other relations but it attained the characteristics of coparcenary property after the plaintiff Rohit Chauhan was born. The finding recorded by the trial court in this regard reads as follows:

> "21. No doubt Gulab Singh got some of his share in the property described in para no. 1(a) of the plaint through his father Budhu vide mutation no. 3089 in which the father Budhu suffered a decree in favour of defendant no. 1 along with Zile Singh and Ram Kumar of 3/4th share but in the year 1969 when the said decree was passed Gulab Singh was unmarried and he had got alienated the land which had come to his share when Rohit Chauhan, Plaintiff came into existence i.e. on 25.3.1982. Meaning thereby that the property which Gulab Singh had got by the decree was although his separate property qua other relation but became JHF property immediately when Rohit Chauhan was born thereby getting characteristic of coparcenary property."

4. Accordingly, the trial court decreed the suit.

5. Defendant no. 1, aggrieved by the same, preferred appeal and it was his plea that the property received by defendant 2 on partition will become his separate property and requires to be treated as his self acquired property and, therefore, defendant no. 2 was free to deal with the property in the manner he liked. In other words, according to defendant no. 1, after partition the property falling in the share of defendant no. 2 lost its character as a coparcenary property and assumed the status of self acquired property. The aforesaid plea found favour with the lower appellate court and it held that the property which defendant no. 2 got on partition "lost the character of coparcenary property and became the self acquired property of Gulab Singh". The lower appellate court further held that once the property is held to be self acquired property of Gulab Singh, he had every right to deal with the same in any manner he liked. Relevant portion of the judgment of the lower appellate court reads as follows:

> "13. In the light of above said precedents it can be readily concluded that only when the property which is received by a person from his ancestors by survivorship can be held to be ancestral/coparcenary property and any other property which although, might have been received from the ancestors by means of will or consent decree or a father partitioned the property, will loose its character as that of coparcenary property and will become self acquired property in the hands of person receiving it. Applying these precedents to the facts of the present case, this Court will conclude that approximately 96 Kanals of land was received by Gulab Singh from his father Budhu on the basis of consent decree or on the basis of will and not by survivorship and this property lost the character of coparcenary property and was self acquired property of Gulab Singh. The version of

plaintiff/respondent no. 1 in the present case is that rest of the property was acquired by Gulab Singh with the funds originated from joint Hindu family property and the said property also assumed the character of joint Hindu family property, also cannot be sustained because the major chunk of land in the hands of Gulab Singh has been held to be non-ancestral property and rather self acquired property of Gulab Singh.

14. Once the property involved in the suit has been held to be self acquired property of Gulab Singh then Gulab Singh was having every right to deal with the same in any manner he liked and no embargo can be put on the rights of Gulab Singh as well as his rights to alienate the suit property are concerned and thus neither release deed nor sale deeds executed by Gulab Singh can be questioned by anyone much less by son of Gulab Singh……"

6. Accordingly, the lower appellate court allowed the appeal and set aside the judgment and decree of the trial court and dismissed the suit.

7. Plaintiff, aggrieved by the same, preferred second appeal and the High Court dismissed the second appeal in limine and, while doing so, observed as follows:

"……Finding of the lower appellate court that the suit land is not proved to be ancestral or coparcenary property is fully justified by the documentary evidence and admitted facts……"

This is how the plaintiff is before us.

Leave granted.

7. Mr. L.Nageshwar Rao, learned Senior Counsel appearing on behalf of the plaintiff-appellant submits that at the time when the plaintiff's father Gulab Singh got the property in partition, it was his separate property vis- à-vis his relations but after the birth of the plaintiff on 25th of March, 1982, plaintiff acquired interest in the property as a coparcener. Mr. Satinder S. Gulati, learned Counsel appearing on behalf of the defendant- respondents, however, submits that once the property fell into the share of the plaintiff's father Gulab Singh, it lost the character of a coparcenary property and the said status will not change on the birth of the plaintiff. He points out that even if plaintiff Rohit Chauhan was born at the time of partition between defendant no. 2, his father and brothers, plaintiff would not have got any share under Section 8 of the Hindu Succession Act. In support of the

submission he has placed reliance on a judgment of this Court in the case of Bhanwar Singh v. Puran, (2008) 3 SCC 87 and our attention has been drawn to the following passage from the said judgment:

> "13. Section 6 of the Act, as it stood at the relevant time, provided for devolution of interest in the coparcenary property. Section 8 lays down the general rules of succession that the property of a male dying intestate devolves according to the provisions of the Chapter as specified in Clause (1) of the Schedule. In the Schedule appended to the Act, natural sons and daughters are placed as Class I heirs but a grandson, so long as father is alive, has not been included. Section 19 of the Act provides that in the event of succession by two or more heirs, they will take the property per capita and not per stripes, as also tenants-in-common and not as joint tenants."

8. We have bestowed our consideration to the rival submission and we find substance in the submission of Mr. Rao. In our opinion coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor. Coparcenary is a narrower body than the Joint Hindu family and before commencement of Hindu Succession (Amendment) Act, 2005, only male members of the family used to acquire by birth an interest in the coparcenary property. A coparcener has no definite share in the coparcenary property but he has an undivided interest in it and one has to bear in mind that it enlarges by deaths and diminishes by births in the family. It is not static. We are further of the opinion that so long, on partition an ancestral property remains in the hand of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property but if a son is subsequently born, the alienation made before the birth cannot be questioned. But, the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that and become a coparcener. The view which we have taken finds support from a judgment of this Court in the case of M. Yogendra v. Leelamma N., (2009) 15 SCC 184, in which it has been held as follows:

> "29. It is now well settled in view of several decisions of this Court that the property in the hands of a sole coparcener allotted to him in partition shall be his separate property for the same shall revive only when a son is born to him. It is one thing to say that the property remains a coparcenary property but it is another thing to say that it revives. The distinction between the two is absolutely clear and unambiguous. In the case of former any sale or

alienation which has been done by the sole survivor coparcener shall be valid whereas in the case of a coparcener any alienation made by the karta would be valid."

9. Now referring to the decision of this Court in the case of Bhanwar Singh (supra), relied on by respondents, the same is clearly distinguishable. In the said case the issue was in relation to succession whereas in the present case we are concerned with the status of the plaintiff vis-à-vis his father who got property on partition of the ancestral property.

10. A person, who for the time being is the sole surviving coparcener as in the present case Gulab Singh was, before the birth of the plaintiff, was entitled to dispose of the coparcenary property as if it were his separate property. Gulab Singh, till the birth of plaintiff Rohit Chauhan, was competent to sell, mortgage and deal with the property as his property in the manner he liked. Had he done so before the birth of plaintiff, Rohit Chauhan, he was not competent to object to the alienation made by his father before he was born or begotten. But, in the present case, it is an admitted position that the property which defendant no. 2 got on partition was an ancestral property and till the birth of the plaintiff he was sole surviving coparcener but the moment plaintiff was born, he got a share in the father's property and became a coparcener. As observed earlier, in view of the settled legal position, the property in the hands of defendant no. 2 allotted to him in partition was a separate property till the birth of the plaintiff and, therefore, after his birth defendant no. 2 could have alienated the property only as Karta for legal necessity. It is nobody's case that defendant no. 2 executed the sale deeds and release deed as Karta for any legal necessity. Hence, the sale deeds and the release deed executed by Gulab Singh to the extent of entire coparcenary property are illegal, null and void. However, in respect of the property which would have fallen in the share of Gulab Singh at the time of execution of sale- deeds and release deed, the parties can work out their remedies in appropriate proceeding.

11. In view of what we have observed above, the view taken by the lower appellate court as affirmed by the High Court is erroneous in law.

12. In the result, we allow this appeal, set aside the judgment and decree of the lower appellate court as affirmed by the High Court and restore that of the trial court with the liberty aforementioned. In the facts and circumstances of the case, there shall be no order as to costs.