SUPREME COURT OF INDIA

Lalitha Theresa Sequeria (Since Died) By Lrs.

Vs.

Dolfy A Pias @ Adolphys Joseph Pais

C.A.No.6197 of 2010

(Ranjan Gogoi and R.K.Agrawal JJ.)

09.10.2014

JUDGMENT

RANJAN GOGOI, J.

1. The substituted appellants (hereinafter referred to as the plaintiffs) are the legal heirs of the plaintiff who had died during the pendency of the present appeal. The respondents 1 and 2 (Defendants 1 and 2) are the brothers of the deceased plaintiff whereas respondent Nos. 3(i) and (ii) are the legal heirs of the original defendant No.3 who is the elder sister of the parties.

2. The plaintiff had filed the suit (OS No.99 of 1995) out of which the present appeal has arisen seeking a declaration that the decree dated 16.8.1976 passed in OS No.397 of 1976 by the learned Munsiff, Mangalore was obtained by the defendants 1 and 2 (plaintiffs in that suit) by fraud and collusion designed to defeat the provisions of the Urban Land Ceiling Act, 1976. It was, therefore, prayed that the said decree be declared as null and void. The suit was dismissed by the learned trial court. Aggrieved, the plaintiff filed an appeal before the learned District Judge, Mangalore who allowed the same and decreed the suit of the plaintiff. A second appeal before the High Court of Karnataka was instituted by defendants 1 and 2 which was allowed by the impugned order dated 30.6.2005 reversing the decree passed in favour of the plaintiff by the learned First Appellate Court. It is against the aforesaid judgment and decree dated 30.6.2005 that the present appeal had been filed by the plaintiff who died

during the pendency of the appeal and has been substituted by her legal heirs.

3. The facts essential for an effective adjudication of the present appeal may be briefly noted at this stage.

> In the plaint filed in OS No.99 of 1995 the plaintiff had stated that the father of the plaintiff and defendants, one Anthony Pais, inherited land measuring 96 cents and 47 cents covered by Survey No.124 and 127 respectively situated in 90-A Boloor Village, Mangalore. According to the plaintiff, O.S.No.397 of 1976 was instituted by the defendants 1 and 2 claiming that in the year 1962 an oral partition was effected between her father and defendants 1 and 2 dividing the aforesaid property in more or less equal proportions i.e. 42, 42 and 47 cents respectively. The defendants as plaintiffs in O.S.No.397 of 1976 had averred that on 18.5.1976 their father had executed a Will wherein the oral partition effected in 1962 was reiterated. However, as their father had subsequently denied the oral partition of the property made in the year 1962, the aforesaid OS No.397 of 1976 was filed by the defendants 1 and 2 seeking the relief of declaration of their ownership etc. OS No.397 of 1976 was compromised and a decree was passed on 16.8.1976 to the effect that the defendants 1 and 2 and their father were the absolute owners of the property divided/partitioned in the year 1962 described as Schedule A, B and C properties respectively consisting of 42, 42 and 47 cents of land respectively. According to the plaintiff, she and her elder sister defendant No.3 were not made parties to the suit and the same was instituted by the defendant Nos. 1 and 2 with an oblique purpose i.e. to defeat the provisions of the original Urban Land Ceiling Act, 1976. According to the plaintiff, no oral partition was made in the year 1962 as claimed and the Will dated 18.5.1976 had not been probated or registered so as to have any legal effect. It was claimed that the concept of joint family property is alien to the parties who are Christians by faith. Therefore, the properties belonging to the father of the plaintiff could not have been divided/partitioned without giving the plaintiff her share therein.

4. In the written statement filed by the defendants 1 and 2, it was contended that after the partition was effected in the year 1962, their father had not disowned the same and in fact by the Will dated 18.5.1976 had re-affirmed the said oral partition. It was further stated that though there was a dispute that led to the filing of the OS No. 397 of

1976, the same was amicably resolved, as evident from the compromise decree dated 16.8.1976. According to the defendants, their father had, all along, acted in terms of the compromise decree passed in OS No.397 of 1976. In fact, he had sold a part of the Schedule ˜C™ property that had devolved on him under the compromise decree and in the sale deed it was again recited that he was the absolute owner of the property, conveyed by the said sale deed, under the compromise decree dated 16.8.1976.

5. The learned trial court dismissed the suit by its judgment and decree dated 22.7.1997 holding that the property having devolved on the father from his mother it was open for him to divide the same amongst his children, as he desired. As the plaintiff had no pre-existing right to the said property, she could not have questioned the division of the same made in the year 1962. The learned trial court further held that the Will dated 18.5.1976 specifically refers to the division of the family property in the year 1962 and though the Will itself is un-probated, its execution stood proved on the basis of the evidence of the attesting witnesses. Therefore, the Will can be looked into for collateral purpose. The learned trial court also came to the conclusion that the evidence of PW1, husband of the plaintiff, clearly demonstrated that there were four buildings on the suit land prior to the year 1968 and, therefore, the provisions of the Urban Land Ceiling Act were not applicable to the suit property. In these circumstances, the learned trial court came to the conclusion that the validity of the compromise decree cannot be doubted on the grounds urged. The learned trial court also took note of the fact that after the compromise decree was passed, its authenticity and genuineness had not been questioned by the father of the parties and the facts subsequent thereto, i.e. execution of the sale deed (Ext.D-1) by the father and the testimony of DW-1 would go to show that the compromise decree was given due effect. The learned trial court further held that the compromise decree was not required to be registered in view of the fact that the decree was only declaratory of the shares of the parties made as far back as in the year 1962.

6. The First Appellate Court overturned the findings of the learned Trial Court, primarily, on the ground that the partition effected in the year 1962 was without any legal effect as the concept of coparceners or joint family property was exclusive to Hindu Law and was not existent amongst Christians. The execution of the Will dated 18.5.1976; the filing of the suit by the defendants (OS No.397/76) and the passing of the compromise decree dated 18.07.1976, in view of the close proximity of time to each other, were held to be relevant facts leaning in favour of the version put forward

by the plaintiff and casting a serious doubt on the bona fides of the defendants in filing OS No.397/76, so as to warrant the conclusion that the decree in the said suit was intended to overcome the effect of the Urban Land Ceiling Act on the suit property.

7. In the second appeal, the High Court following the two substantial questions of law for its determination

> "1. Whether the lower appellate court is right in holding that the compromise arrived at was liable to set aside without going into the question that plaintiff had locus stand to question the compromise?
>
> 2. Whether the Urban Land Ceiling Act is applicable to this case?

8. Both the substantial questions of law framed by the High Court are interconnected inasmuch as the answer to either revolves around the legal validity of the compromise decree dated 16.08.1976. In answering the aforesaid question the existence or otherwise of the oral partition of the year 1962; the will dated 18.05.1976; the circumstances surrounding the compromise leading to the decree dated 16.08.1976 in O.S. No.397 of 1976 as also the facts subsequent thereto, namely, the sale of the Schedule ˜C™ property by the father and acknowledgment of the compromise decree in the sale deed (Exbt.1), would all be relevant. We find no basis to hold that what was claimed by the defendants to have occurred in the year 1962 is a partition of the joint family property as understood in Hindu Law. The property was inherited by the father of the plaintiff from his mother and the parties being Christians, the father must be understood to be absolute owner of such property. In that capacity he was certainly entitled to divide or distribute the property as he considered fit. What had actually happened in the year 1962 is, therefore, an oral division of the property at the instance of the absolute owner thereof i.e. the father in three more or less equal shares. So far as Schedule ˜C™ property which fell to the share of the father, a part of it was sold by Exhibit D-1 and the remaining devolved on 2 daughters including the plaintiff. The aforesaid arrangement was acknowledged in the will dated 18.05.1976 though the same has been referred to, and one must understand such reference to be loosely made, as a partition of the property. The execution of the will dated 18.05.1976 has been proved by one of the attesting witnesses who had been examined in the trial. The above understanding of the facts would dispel the arguments advanced on behalf of the plaintiff-appellant that the partition effected in 1962 has been wrongly accepted by

the High Court though no question of partition of joint family properties could arise in the present case, the parties being Christians by faith.

9. The basis of the suit (O.S. No.397/1976) filed by the defendant Nos.1 & 2 is the division of property made in the year 1962 and the will dated 18.05.1976. Though some amount of haste may be disclosed by the facts surrounding the passing of the compromise decree dated 16.08.1976, as already noted, the said decree had been acknowledged by the father in Exhibit D-1 i.e. sale deed by which a part of the Schedule ˜C™ property was sold by him. The father of the parties died in the year 1991 and for a period of 15 years after the compromise decree and the execution of the sale deed he had not raised any question with regard to the authenticity or genuineness of what is stated in the will and the compromise decree. In these circumstances, the compromise decree dated 16.08.1976 must pass the test of acceptability. The plaintiff contends that the compromise decree dated 16.08.1976 is fraud and collusive and was intended/designed to overcome the provisions of the Urban Land Ceiling Act in so far the suit property is concerned. Though an elaborate discussion on the said question has been made by the High Court, the issue has to be answered against plaintiff on the basis of the evidence of PW-1, her husband, who had deposed that, at the relevant point of time, there were four buildings standing on the land in question which fact alone would throw considerable doubt with regard to the applicability of the Urban Land Ceiling Act to the suit land. The plaintiff not having examined herself and having based her entire case on the testimony of PW-1, in the light of the evidence tendered by the said witness, it would be reasonable and justified to hold that the said evidence of PW-1 has itself demolished the case of the plaintiff in its entirety.

10. Accordingly, we find no ground or reason to interfere with the judgment and order dated 30.6.2005 passed by the High Court which has been challenged in the present appeal. We, therefore, dismiss the appeal and affirm the aforesaid order passed by the High Court of Karnataka in Second Appeal No.49 of 2003.