

MADHYA PRADESH HIGH COURT

Ramadin Jitrai Rathor

Vs.

Gokulprasad

First Appeal No. 82 of 1953, Decided on 10.9.1958., against decree of 1st Addl. Dist.
J., Bilaspur
(G.P. Bhutt and B.K. Chaturvedi, JJ.)

24.03.1953. 10.09.1958

JUDGMENT

G. P. Bhutt, J.

1. This is plaintiff's appeal from the decree dismissing his suit No. 3A of 1952 for declaration.
2. The fields in dispute are mentioned in the plaint Schedule B. They were purchased in the name of the plaintiff by sale-deeds, dated 20-5-1921, 19-4-1925, 26-10-1925, 11-1-1928, 29-3-1928 and 8-5-1935, Exs. P-9 to P-15. The case of the plaintiff was that the fields were acquired by him from his separate funds and formed his exclusive property.
3. The defendants are the sons of Ramlal, younger brother of the plaintiff. The plaintiff had four more brothers, Puriram, Phudgu, Saheblal and Fulchand. The joint family property of the six brothers was divided by the Panchas by an award, dated 31-1-1921. The fields allotted to the plaintiff and Ramlal are mentioned in Schedule A of the plaint. These fields, however, were always recorded jointly in their names in the village papers. Schedule C of the plaint sets out the fields acquired by the two brothers in their joint names by sale-deeds, dated 24-5-1927, 1-6-1928 and 14-6-1928. A house was allotted to Ramlal and a Baithak to the plaintiff, but the plaintiff continued to live jointly with Ramlal.
4. The case of the defendants was that the plaintiff and Ramlal did not effect any partition between them, but in case they are held to have become separate, they simultaneously reunited. On this ground, they claimed the fields in suit as joint family

property.

5. In the year 1933 disputes arose between the plaintiff and Ramlal. According to the plaintiff, they agreed to take separate possession of the fields allotted to them by the award of 1921, and also appointed Parchas who divided the fields acquired by them jointly. At that time the plaintiff shifted to his newly constructed house. In May 1933, however, Ramlal died, and although in that year the defendants took the crops of the fields allotted to Ramlal, the plaintiff began to cultivate all the fields from the year 1934 as before and to divide the produce.

6. On this point the case of the defendants was that on account of the disputes the plaintiff provisionally gave some fields to them by way of family arrangement., of which they took the crops in the year 1933. However, in the year 1934, the plaintiff forcibly removed the crops raised by them. On that account, their mother, Anundkuwar (D.W. 1), acting as their next friend, filed civil suit No. 21-B of 1935 against him for recovery of Rs. 300/- as value of the crops, but as he pleaded that there was no partition between him and Ramlal, she withdrew the suit with liberty to sue him again.

7. It appears that the defendant's contention is correct. Ex. D-25 is the preliminary written Statement of the plaintiff, in which he asserted that he was joint in estate with Ramlal till his death. In Ex. D-18 his counsel denied that the defendants had done any separate cultivation. Admittedly, all the fields continued to be recorded jointly in the names of the parties even after 1933 and a joint patta was issued to them in the consolidation proceedings of 1939-40. In view of these facts, we see no reason to doubt the testimony of Anand-Kuwar (D.W. 1) that in the year 1933 some fields were only given for maintenance on account of disputes. This also explains why the plaintiff began to live separately in that year, which, therefore, does not betoken a partition.

8. Frustrated in civil suit No. 21-B of 1935, Anandkuwar (D.W. 1) instituted civil suit No. 60-A of 1936 against the plaintiff who setup the partition see Ex. P-8. In that suit, the plaintiff set up the partition of 1921 as a bar and asserted that although the fields were cultivated jointly, it did not amount to reunion : see Ex. D-20. The suit was ultimately dismissed in default of appearance. The case of the plaintiff was that Anandkuwar (D.W. 1) did not prosecute the suit as the Court demanded ad valorem

court-fees. The defendants alleged that their agent colluded with the plaintiff and so did not put in appearance. This point is, however, immaterial. What is pertinent is that the plaintiff had taken a stand in the suit, which was inconsistent with that taken by him in the previous suit (No. 21-B of 1935).

9. In the year 1940 the parties appointed Panchas for settling their disputes. The case of the plaintiff was that the parties had accepted the partition of the fields as made in the years 1921 and 1933 and had only referred the dispute relating to moveable's for arbitration. This does not, however, appear to be correct. Ex. D. 22 is the deed of reference, dated 27-2-1940, executed by the plaintiff, in which he had not limited the dispute to be decided by the Panchas. In fact, no division of the fields in the year 1933 was mentioned in that document. Ex. D-26 is the award which bears the plaintiff's signature. The award shows that the Panchas had given directions for the division of fields. It is not in dispute that the plaintiff refused to act in accordance with the award which, in consequence, remained unregistered. The reason which led him to do so is not material for purposes of this appeal. What is pertinent is that he did not in the deed of reference claim the fields in suit as his exclusive property and gave plenary powers to the Panchas to decide all the disputes.

10. That the Panchas had divided all the fields, meaning including those in suit, appears from the evidence of Sukhdeo (D.W. 3), Ramsanehi (D.W. 5) and Kawalprasad (D.W. 6) who were examined by the defendants out of the Panchas. Sukhdeo (D.W. 3) is the plaintiff's brother-in-law, and although he had stopped dining relations with him for some time, it does not mean that he is a hostile witness. The father of Ramasanehi (D.W. 5) had doubtless filed a suit for possession of a field, but that suit was filed not only against the plaintiff but also against Ramlal. In spite of that suit, the plaintiff had appointed him as one of his own Panchas : see Ex. D-22. His evidence, therefore, is not suspect. So also Kawalprasad (D.W. 6) was appointed by the plaintiff as one of his panchas in spite of the fact that the plaintiff had once prosecuted him and he and Ramlal had instituted a civil suit against him. We are not disposed, therefore, to reject his testimony. The plaintiff, on the other hand, examined Loknath (P.W. 4) who was also one of the Panchas appointed by him. His evidence that nothing came out of the Panchayat as the plaintiff refused to sign the award is belied by the fact that the Panchas had delivered an award and it was signed by the plaintiff : see Ex. D-26.

11. Thereafter, the defendants made an application to Additional Naib Tahsildar, Janjgir, for partition of the tenancy holdings. This application was dismissed on the objection of the plaintiff that the holdings were already divided in the partition of 1921 and again in 1933 : see Ex. D-21.

12. Thus frustrated again, the defendants instituted civil suit No. 7-A of 1946 for partition : see Ex. D-24. In his written statement, Ex. D-23, the plaintiff set up the partitions of 1921, 1933 and 1940 as a defence. This suit was dismissed in a default of appearance. The defendants alleged that they did not prosecute the suit as the plaintiff agreed to divide the fields in accordance with the directions in the award of 1940. The witnesses on the point are Sukhdeo (D.W. 3), Ramsanehi (D.W. 5) and Kawalprasad (D.W. 6) whose evidence, in another connection, has already been relied upon by us. They ultimately divided the fields in the year 1947. Thereafter the village records were amended according to possession on the plaintiff's own application : see para 5 of the evidence of the plaintiff Ramdin (P.W. 2). His contention that more fields were recorded in the names of the defendants without enquiry is not supported by any independent evidence. We, therefore, see no reason to doubt the testimony of the defendant's witnesses that the division was made, in two equal shares, according to the award of 1940, to which the plaintiff had given his consent.

13. The dispute relating to the fields in suit was of a contentious nature, and its final outcome could not be predicted. When, therefore, the parties agreed in the year 1946-47 to divide the fields according to the directions in the award of 1940, the settlement is binding on the plaintiff. Accordingly, the question whether the plaintiff and Ramlal remained joint in the partition of 1921 or reunited contemporaneously, does not in fact, arise. However, we shall briefly consider this question as it was canvassed by both the parties.

14. When members of a coparcenary appoint arbitrators to decide shares or divide the joint family property, the agreement amounts to severance of joint status : see *Harikishan Singh v. Partap Singh*,¹ Even when one member of a joint Hindu family separates, there is no presumption that the remaining members remained united; an agreement to remain united or to reunite must be proved like any other fact : see *Mst. Jalti v. Banwarilal*,² Accordingly, there is no doubt that, in the absence of proof of an agreement between the plaintiff and Ramlal to remain united in spite of the partition of 1921, their joint status must be deemed to have been severed. The question, therefore, is whether they reunited after the partition. It is not correct that the plea of reunion was

not taken by the defendant. That plea was specifically raised in para 3 of the written statement.

15. In order to constitute reunion, there must be an agreement, express or implied, on the part of the members who separate, to reunite in estate and interest : see *Balabux v. Rukhmabai*,³ *Manorama Bai v. Rama Bai*,⁴ In the absence of a registered document, the agreement has to be inferred from subsequent conduct of the parties : see *Pratul Chandra v. Puma Chandra*,⁵ *Mahalakshmainnsa v. Suryanarayana*, AIR 1928 Madras 1113; AIR 1957 Madras 269 (supra)'. The onus of proving the agreement is doubtless heavy: see *Reoti Devi v. Bhagwan Dayal*,⁶ but joint record of the land in the village papers and unity of cultivation and enjoyment of the produce, coupled with joint acquisition of other lands, should afford sufficient proof of the intention and agreement to reunite. In such a case, if a member purchases some land in his own name, the presumption would be that it was acquired from joint family funds and would, therefore, partake of the nature of joint family property.

16. In the present case, the lands, including those which were acquired in the plaintiff's name, continued to be recorded jointly in the village papers and were also cultivated jointly. The plaintiff and Ramlal also made joint acquisitions in 1927 and 1928. The attempt of the plaintiff to prove that the parties used to contribute separate agricultural cattle and servants and divide the produce, has, as discussed by the learned Judge of the lower Court failed. His witnesses, Loknath (P.W. 4) and Horil (P.W. 5), said, contrary to his own evidence, that the parties had separate cultivation. On the other hand, it appeal's from the evidence of Bala (P.W. 7) that there were common servants for cultivation which was carried on jointly. This continued even after the death of Ramlal in May 1933 without, as already discussed, any change in his status during his lifetime. It is no doubt true that during the minority of the defendants, their mother sued the plaintiff in the year 1936 for partition but in the absence of a decree of the Court, there could be no disruption of the family. It was only in the year 1945-46 that defendant No. 1. Gokulprasad, attained majority and sued the plaintiff for partition. But then the parties amicably settled the dispute and divided the lands. The defendants must, therefore, be deemed to have had a joint interest in the fields in suit, and consequently the declaration sought by the plaintiff that they belonged to him exclusively was rightly refused.

17. The result is that the appeal fails and is dismissed with costs.

Appeal dismissed.

Cases Referred.

1. AIR 1938 PC 189
2. ILR 4 Lah 350
3. ILR 30 Cal 725
4. AIR 1957 Mad 269
5. AIR 1938 Cal 284
6. AIR 1954 All 801