

RAJASTHAN HIGH COURT

Fateh Singh

Vs.

Narendra Singh

C.F.A. No. 106 of 1982

(Ashok Parihar, J.)

21.02.2008

ORDER

Ashok Parihar, J.

1. This appeal is directed against the judgment and decree dated 13-5-1982 passed by the trial Court by which the suit for partition and manse profits filed by the plaintiff-appellant has been dismissed.
2. The dispute is in regard to plot No. O-1-B, measuring 1171 square yards at Hospital Road, C-Scheme, Jaipur. The defendant No. 2 in the suit, Har Lal Singh (since deceased) was father (hereinafter referred as defendant H). The defendant No. 1, Narendra Singh (hereinafter to be referred as defendant N) was elder son of defendant H. The plaintiff-appellant, Fateh Singh (hereinafter to be referred as plaintiff F) was the younger son of defendant H. It has been alleged that defendant H purchased the plot in dispute in the name of defendant N from his own income and raised the construction as per contribution from the joint family. Thus plaintiff F is also entitled for - share of the property in dispute as also share of the profit earned by defendant N from rent of the above property. Though defendant H supported the claim of his younger son plaintiff F, however, the elder son defendant N disputed the allegations made by the plaintiff F in his written statement. While giving details of his sources of income defendant N has further stated that the entire property in dispute was purchased by him from his own income and no contribution was ever made either by his father or the younger brother.
3. As per pleadings of the parties, five issues were framed as to whether property in dispute was a joint family property and plaintiff F has - share in the same? If the above issue is decided in favors of plaintiff F, whether he is entitled for partition and

possession of his share ? An issue in regard to an agreement executed by plaintiff F in favors of defendant N on 14-12-1978 to show the declaration of plaintiff F not having any right whatsoever over the property in dispute had also been framed. Four witnesses were examined on behalf of plaintiff F whereas defendant N and defendant H examined only themselves on their behalf. Issue in regard to the Court-fee was not pressed. However, other relevant material issues were decided in favor of defendant N and the suit has been dismissed accordingly by the trial Court.

4. Mr. Agarwal, learned counsel for plaintiff F submitted that the property in dispute in fact was purchased by defendant H in the name of his elder son defendant N. It has been alleged that though it was a benami transaction, however, the entire money in purchasing the plot and construction of house was spent by defendant H from his own sources of income. While heavily relying on a letter dated 7-11-1963 (Exhibit-13) allegedly written by defendant N in favor of his father defendant H, Mr. Agarwal submitted that a valid inference should be drawn that the property belonged to defendant H. He has also submitted that even plaintiff F and his own source of income from business and trucks and money was pooled in to run the whole family including father, mother and two sons and their families. So far as execution of document dated 14-12-1978 (Exhibit-A-2) is concerned, it has been submitted that at the time of marriage of daughter of plaintiff F, he had to execute the agreement (Exhibit-A-2) under compelling circumstances. It has also been submitted that at a young age defendant N was not supposed to have sufficient money to purchase this plot and make constructions and statement of father defendant H cannot be disbelieved that he committed mistake in purchasing the plot in the name of his elder son defendant N.

5. Mr. B. L. Mandhana, learned counsel for defendant N, while supporting the judgment and decree passed by the trial Court, has submitted that the entire matter has to be considered and decided on the basis of pleadings. All legal documents in regard to the plot in question are in the name of defendant N. Benami transaction by father defendant H in the name of elder son has neither been pleaded nor proved. The entire story of benami transaction has been developed later on. The alleged letter dated 7-11-1963 (Exhibit-13) was not mentioned in the plaint or even in the reply filed on behalf of father defendant H. Admittedly, the rent throughout had been received by defendant N and no objection was ever raised by lather or younger son. Even the story of duress and compulsion has been developed subsequently in regard to Exhibit-A- 2. The stamp papers on which Exhibit-A-2 had been executed, in fact had been purchased by plaintiff F himself much prior to the date of alleged marriage of his daughter. It has

further been submitted that part of the plot allotted to defendant N by the UIT measuring 945 square yards was sold to one Dr. KD Gupta in the year 1961 itself by defendant N through a registered sale deed and no objection was ever raised either by father or the younger brother, whereas, admittedly the entire sale proceed was received and utilized by defendant N. Mr. Mandhana has further submitted that different respective employments of defendant N prior to the allotment and lease agreement have duly been proved. Even the loan of Rs. 8000/- from State Government by defendant N on mortgage of the suit property has not been disputed so far. Even otherwise, the initial amount and the installments were so small, which could easily be managed by defendant N at the relevant time.

6. After having considered the submissions of learned counsel for the parties, I have carefully gone through the material on record as also the judgments cited at bar.

7. Admittedly, the allotment of plot in dispute originally measuring 2116 square yards was made by UIT in the name of defendant N. Regular installments were also deposited by defendant N and receipts were given accordingly in his name. Final lease deed had also been executed in favour of defendant N on 31-8-1961. In the meanwhile, a loan of Rs. 8000/- was also taken by defendant N from the State Government mortgaging the plot in dispute. It is also admitted that part of the plot so allotted in the name of defendant N was sold by him to one Dr. K. D. Gupta in the year 1961 measuring 945 square yards on consideration of Rs. 18,000/-. The sale deed was duly executed by defendant N after receiving the amount from Dr. K. D. Gupta. The partition has been sought by plaintiff F only in regard to remaining plot measuring 1171 square yards and no claim has been made on the portion sold to Dr. K. D. Gupta.

8. The Supreme Court in the case of *Appasaheb Peerappa Chamdgade v. Devendra Peerappa Chamdgade and others*,¹ while referring to various judgments of the Supreme Court, has observed that whenever a suit for partition and determination of share and possession therein is filed, then the initial burden is on the plaintiff to show that the entire property was a joint Hindu family property and after initial discharge of the burden, it shifts on the defendants to show that the property claimed by them was not purchased out of the joint family nucleus and it was purchased independent of them.

9. The plaintiff F has stated that he was only 18 years of age when the plot in dispute was purchased by his father defendant H, He has also stated that he was having some earnings from the trucks registered in his name. Plaintiff F has also stated that his

father defendant H was a freedom fighter and Member of Legislative Assembly and defendant H had his own income from agriculture, salary as MLA as also pension for being a freedom fighter. Plaintiff F has also relied on ration card and the voters list to show that the whole family was treated as single unit residing on the same premises. He has also alleged that defendant N was not earning anything and not only the plot was purchased by father but even the entire construction was also made from the joint family pool. Father defendant H has not deposed as witness of the plaintiff F but has made his statement as defendant No. 2. Be that as it may, both defendant H and plaintiff F in their cross examination have admitted that they did not have any account of income of father of even younger son plaintiff F nor any account of purchase of plot and constructions made thereon. The statement of both father defendant H and plaintiff F are absolutely vague so far as the joint nucleus of the family is concerned. On the other hand, elder son defendant N has submitted the proof of his employment prior to the allotment of plot by UIT in his name and even his subsequent employments and earnings. As has already been referred above, the original allotment letter, installment receipts, loan agreement against the plot in dispute with the State Government and the final lease deed were all in the name of defendant N. Even the part of the plot had been sold by defendant N to Dr. K. D. Gupta in December, 1961 by a registered sale deed. The execution of agreement in regard to the family arrangement on 14-12-1978 (Exhibit-A-2) has not been disputed either by defendant H or plaintiff F. Though it has been alleged that the above agreement was executed under compulsion on the date of marriage of daughter of plaintiff F, however, plea of compulsion or duress cannot be accepted because the stamp papers had been purchased by plaintiff F much earlier on 21-10-1978 itself. There is no mention of the agreement dated 14-12-1978 (Exhibit-A-2) in the plaint, however, in spite of the same, been clearly mentioned in the written statement submitted on behalf of defendant N, plaintiff F has not been able to satisfactorily explain the circumstances under which the above agreement was executed by him. The language of the agreement in regard to the ownership of defendant N on the plot in dispute speaks for itself. The alleged letter written by defendant N on 7-11-1963 (Exhibit-13) also does not help plaintiff F so as to prove that the plot in dispute was purchased from the income of the joint family nucleus. It is simply a letter alleged to be written by defendant N intending to transfer the plot in dispute to his father defendant H w.e.f. 7-11-1963. However, there is no explanation, whatsoever, as to why no steps were taken for execution of the above letter dated 7-11-1963 either by father defendant H or the younger son plaintiff F. Even otherwise, transfer of property through such an

unregistered letter was invalid. It is also not known as to why plaintiff F did not claim any part of the sale proceed in regard to the plot sold by defendant N to Dr. K. D. Gupta whereas it has throughout been claimed that the entire plot measuring 2116 square yards was purchased by father defendant H though in the name of elder son. It has also not been disputed that the rent from the tenants in the property in dispute has always been received by defendant N.

10. The allotment was made in the year 1952. The lease deed was executed in the name of defendant N in the year 1961. Thereafter part of the plot was sold by defendant N to one Dr. K. D. Gupta in the year 1961 itself, whereas, the suit for partition has been filed only in the year 1979, From the conduct of plaintiff F for about 27 years and as per the documents available on record, there can be no other inference drawn except that the property in dispute legally belonging to defendant N only right from the beginning. Apart from plaintiff F and even defendant H having failed to discharge their initial burden of proving that the property in dispute had been purchased and constructed out of the joint family income, the defendant N on the other hand has been able to prove his source of income right from the beginning and further all the legal documents also been executed in his name. Living together in the same premises for some time and ration card as also the voters list are not conclusive proof of joint family nucleus. Since on the basis of findings of fact, after due consideration all the relevant issues have been decided in favour of the defendant N, I find no error or illegality in the impugned judgment and decree passed by the trial Court.

11. The appeal is dismissed accordingly as having no merit. There will be no order as to costs.

Appeal dismissed.

Cases Referred.

1. (2007) 1 SCC Page 521: (AIR 2007 SC 218)