

(1965) 06 BOM CK 0005

In the Bombay High Court

Case No : Special Civil Application No. 2061 of 1963

Arjandas Dayaram Vachhani

APPELLANT

Vs

J.S. Bajaj and Others

RESPONDENT

Date of Decision : 16-06-1965

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 40

Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 19, 19(3)

Citation : AIR 1966 Bom 133 : (1965) 67 BOMLR 721 : (1966) ILR (Bom) 307 : (1966) MhLj 22

Hon'ble Judges : Patel, J; Bal, J

Bench : Division Bench

Advocate : H.G. Advani, S.Gursahani and J. Ramchandani, for the Appellant;
G.N. Vadiya, for the Respondent

Judgement

Patel, J.

(1) The petition is one of the sons of respondents No.3. The petitioners and respondents Nos 4, 5 and 6, who are the other sons of respondents No.3, along with 2 others sons of the respondents No.3 framed a joint Hindu family before the partition of 1947 and a were residing in sindh. The petitioner and respondents Nos. 4 to 6 are the sons to respondents No.3 by the one wife. The the two Sobhraj and Lokumal were the sons by a predeceased wife. In 1944 respondents No.3 and his sons, who are now before the court, filed a suit for partition of the court of First Class sub - judges, Nawabshah, against the two sons Sobharaj and Lokumal. Large number of the properties were included in the suit. It resulted in a decree on the 2nd December, 1944, whereby one property described as item No.A of schedule "D" to the plaint was awarded to one of his sons and the properties which fell t the share to the plaintiff were awarded to them jointly. After their migration of they filed claims in respect of the properties left in sindh. The claims were processed after verification. The original application was made by respondents No.3 and the application was made by respondent family of respondents No.3 and this sons who are now on record, was verified.

Thereafter, the present petitioners made an application for being granted the benefit of R. 20 framed under the Displaced person [compensation and Rehabilitation] act of the 1954. This prayer was rejected and it was observed by the Assistant settlement office that the son's may apply for apportionment of the compensation under S. 9 of the act. Thereafter an application came to the be made commissioners. He rejected the same in appeal which was field before the chief settlement commissioners he matters was remanded for reconsideration by the settlement commissioners with delegated powers of the chief settlement commissioner and not be his delegated. Again the matters was head by the Regional settlement commissioner who rejected the application. An appeal was filed against the judgment which was heard by the deputy chief settlement commissioners who allowed the appeal holding that Dayaram and his four son get the property jointly and hard remained joint and as such they were entitled to apportion according to the rules. While processing the claim the petitioner made a claim that the joint family was entitled to the benefit of the Rules 20 and in any even of Rules 19 of the Rules framed under aforesaid act. Both these prayers were rejected by the Assistant settlement office at Bombay by his order dated 12th June 1963. The orders were confirmed in appeal and revision by the settlement officer with delegated powers the Regional settlement commissioners and by the Deputy chief settlement the orders made by the authorities below.

(2) In view of the fact that the decree of the sub - judge with regard to the share of the plaintiff in suit for partition. Mr. Advani fairly enough did not press his contention that the petitioners is entitled t to claim the benefit of Rules 20, that portion of the order therefore must be confirmed. He has however pressed the contention that the joint and family of the petitioners and his brother and father is entitled to the benefit of rules 19.

(3) Rule 19 so far as is relevant is as follows:

"Where a claim relates to properties left by the members of an undivided Hindu family in west Pakistan [hereinafter referred to as the joint family] compensation shall be computed in the manner hereinafter provided in this rule.

(2) Where on the 26th September 1955 [hereinafter referred to as the relevant date] the joint family consisted of:

(A) two or three member entitled to claim partition the compensation payable to such family shall be computed by dividing the verified claim to into three equal share and calculating the compensation separately on each such share.

(B) four or more members entitled to claim partition, the compensation payable to such family shall be computed by dividing the verdict claim into three equal share and calculating the compensation separately each such shares.

(3) For the purpose of calculating the number of the member of a joint family under sub = rule (2), a person who on the relevant date:

(a) was less than 18 years of age, or

(b) was a lineal descendant in the male line of another living member of joint Hindu family entitled to claim partition of shall be excluded:

The proviso has no application and need not therefore be referred to.

Explanation - for the purpose of this rule, the question whether a family is joint or separate shall be determined with reference to the status of the family on the 14th day of August 1947, and every member of joint family shall be deemed to be joint notwithstanding the fact that he had separated from the family after that date."

(4) The authorities below have not given the benefit to the joint family of sub-rule (2) of rule 19 of the ground that sub (3) is applicable to them. The reasoning is that inasmuch as the four sons being the lineal descendants of the father of them must be excluded from the computation of the number of members of the family under sub - rules (2) Clauses, (b). Mr. Advani contends that this construction is erroneous and does not take into account the words used in this provision.

(5) It is not denied and it cannot be denied that Dayaram and his sons formed a joint family. Inasmuch as the explanation of put the relevant date as 14th day of August 1947 and as it is admitted that on the 14th August 1947 the family continued as it was under the partition decree it must be held that it was a joint family decree whether or not the members separated subsequently after that date. If sub - clauses (3) of Rule 9 cannot apply then it also cannot be doubted that the joint family consisted of more than four members entitled to claim partition inasmuch as it is settled law that every member of the joint family is entitled to claim partition except in Bombay where during the lifetime of the father entitled to claim partition - father [see Sir Dinshaw Mulla's, Hindu Law, page 479, article 307]. Now sub - rule (3) lays down two alternative conditions for the exclusion of the member of joint family. One is that the member must be less than 18 years of age and the second is that he must be lineal descendant in the male line of another living member of a joint Hindu family entitled to claim partition. It is clear that this condition is intended to apply to a case where a joint family consists of more than two persons where each one of them is entitled to claim partition and the members sought to be excluded are lineal descendants of the one of such members. It is only in such a case that it could be said that they are such as that it could be said that they were lineal descendants of a member who was entitled to claim partition against another.

(6) In the present case the father and each of the sons is entitled to claim partition against each other. If the lineal descendants are to be excluded even in a case like the present it only means that all the descendants of the father must be excluded even though there is no other member against the whom the father can seek to enforce partition. Having regard to the words used the only interpretation which can be placed on Clauses (b) of sub - rules (3) of the Rule 19, is the one adopted by us.

(7) Mr. Vadiya on behalf of the respondents has emphasized the words lineal descendants in the male line and has argued that the sons being descended from the argued from the fathers must be considered as only one unit. It is this arguments that appealed to the authorities below but then we must construe a provision giving meaning to every word that is used in the rule unless it leads to manifest absurdity. The context in which the expression issued is that he must be a descendant in the male line of another living member of the joint family. The sons are no doubt that lineal descendants of the father but then there is no other living member of the joint family. The contention that is being pressed, therefore on behalf of the respondents cannot possible be accepted.

(8) In the result we set aside the orders of the authorities below and hold that the joint family is entitled to the benefit of Rule 19 and we direct that the claim be processed accordingly.

(9) The petitioner to get his costs.

(10) Petition allowed.