
(1910) 12 CAL CK 0016
In the Calcutta High Court

Arjun Ram Pal and Others

APPELLANT

Vs

Sadananda Sarma and Another

RESPONDENT

Date of Decision : 15-12-1910

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 102

Citation : 9 Ind. Cas. 1

Hon'ble Judges : Caspersz, J

Bench : Single Bench

Judgement

Caspersz, J.—This is an appeal in a suit to obtain a declaration that a certain hut (together with doors, door frames etc.), is liable for the dues on account of a decree which the plaintiffs had recovered against the defendant No. 1, who is the father of defendant No. 2. Both the lower Courts have found that the hut is the property of defendant No. 2, and this fact cannot be assailed in second appeal. But it is urged on behalf of the plaintiffs-appellants, first, that the defendant No. 1 is entitled under the Hindu Law to a half share of the self-acquired property of his son the defendant No. 2, and, secondly, that the hut, being the joint family property of both the defendants, the father is the owner of half of it which can be sold in execution of the decree.

2. A preliminary objection that no appeal lies has been abandoned by the learned Vakil for the defendants-respondents. The suit was not one of the nature cognizable by Courts of Small Causes and a hut is immovable property. Thus Section 102, Civil Procedure Code, has no application to the facts of this case, and a second appeal lies.

3. The second contention is concluded by the finding that the hut was never treated as joint family property by the defendant No. 2; it was, and remains, his self-acquired property. It was not erected out of any joint funds.

4. In support of his substantial contention, the learned Vakil for the plaintiffs-appellants has cited the following authorities: Dayabhaga, Chapter 2, Sections

65-71; Dayatatwa of Raghunandan, Chapter 5, Sections 8-9; Sastri's Hindu Law, 3rd Edition, page 282, and the case of Dharmadas Kundu v. Amulya Dhone Kundu 10 C.W.N. 765 : 33 C. 1119.

5. The short answer to the argument advanced for the plaintiffs is that the authorities relied upon contemplate partition which is not the case here. The title of the father, the defendant No. 1, cannot arise except upon gift or succession, and neither contingency is here presented for consideration. The son is maintaining his father but without any intention, expressed or implied, to create any title to the property in suit in his father. The kindness and affection shown by the defendant No. 2 towards his father does not confer any present right on the defendant No. 1; see Lala Muddun Gopal Lal v. Khikhinda Koer 18 I.A. 9 : 18 C. 341 where the facts were stronger than in the case under appeal. The son may outlive his father, and if so, no question will ever arise as to the latter's rights on succession.

6. In Dhama Das Kundu v. Amulya Dhone Kundu 10 C.W.N. 765 : 33 C. 1119, where the subject is discussed, the facts were very different, because, there, the son had made additions and improvements to the family dwelling-house. It was held that the father had absolute control of the family property and that his disobedient son could be restrained from entering the house. An injunction, therefore, was directed to issue, but this order was without prejudice to any decree that the son might obtain.

7. The contention is overruled and this appeal is dismissed with costs.