
(1981) 09 CAL CK 0002
In the Calcutta High Court
Case No : A.O.D. No. 245 of 1980

Arun Kumar Bhakat and Others	Vs	APPELLANT
State of West Bengal and Others		RESPONDENT

Date of Decision : 07-09-1981

Acts Referred:

Constitution of India, 1950 — Article 133, 226, 227
General Clauses Act, 1897 — Section 3(42)
West Bengal Estates Acquisition Act, 1953 — Section 10, 12(2), 4, 6, 6(1)
West Bengal Land Reforms Act, 1955 — Section 14K(c)

Citation : 86 CWN 202

Hon'ble Judges : Sarma, J;Chittatosh Mookerjee, J

Bench : Division Bench

Advocate : Sudhis Das Gupta and Nirendra Krishna sic, for the Appellant;Amar Nath Banerjee and Asim Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

Chittatosh Mookerjee, J.—This appeal is at the instance of the plaintiffs. They had instituted a suit in the Subordinate Judge's Court, Murshidabad inter alia, for a declaration that since 12th Magh 1358 B.S. the plaintiffs and the defendant Nos. 1-3 to 6 were no longer co-parcenars and that the persons mentioned in the schedule below the plaint owned the lands exclusively allotted to them and in the alternative also for partition of the plaintiffs 5|6th share, if it was found that there had been no previous partition by metes and bounds. The plaintiffs' case. inter alia. was that their ancestors were residents of village in the District of Aran Bihar and they were governed by Mitaksharn School of Hindu Law. Their ancestor Haralal Bhakat migrated from Bihar and settled in village Nayansukh within P.S Farakka in the District of Murshidabad According to the plaintiffs, Haralal Prasad and his descendants including the plaintiffs have all along retained their original personal law and at all material times they have been continued to be governed by Mitakshara School of Hindu Law. On the death of Haralal, the properties acquired by him had devolved upon his son. Nityananda. Nityananda had three

sons, Bhagabanprasad, Jagadish and Jainarayan. who used to live in co-parcenery the year 1344 BS. when the said three sons of Nityananda separated themselves and partitioned their joint properties, the plaintiffs further case was that Jagadish was the Karta of the Mitakshara co-parcenerv consisting of himself and his sons. the plaintiffs 1 to 3 were the sons of jagdish The plaintiff No. 4 is the widow of Jagadish. The plaintiff No. 5 and the defendant No. 1, the daughters of Jagadish The plaintiffs averred that Jagadish and his co-parceners amicably partitioned the co-parcenerv properties and on 19th Magh. 1358 B.S. a memo of partition was drawn up showing the allotments of trip properties to the different co-sharers. Some of the co-sharers did not follow or obey the partition effect and the matter could not be settled amicably. Therefore on 6th October, 1958 a. suit for partition was instituted in the Court of the Subordinate Judge. Murshidabad. Same was disposed of by, a solenama decree which acknowledged that the previous partition has been effected in 12th Magh. 1358 B.S. and that since the said date there had been a disruption of the co-parcenary and each, party had been holding the land. allotted to him as his exclusive property The state of West Bengal, however, disputed the said partition among the plaintiffs and their co-parceners and treated them as members of a Mitakshara undivided joint family. Therefore, the plaintiff had been compelled to file the suit.

2 The State of West Bengal who alone contested the said suit denied that the predecessors of the plaintiffs or the plaintiffs themselves were governed by Mitakshara School of Hindu Law and that jagdish Chandra Bhakat and his sons held any property as co-paceners The State also denied that there had been a partition on 12th of Magh. 1358 B.S, as alleged by The plaintiffs. According to the State, Jagadish Chandra Bhakat had 18 annas right, title and interest and he had retained lands within the ceiling limit by filing a Beorm and his surplus lands had vested in the State. After notices u/s 12(2) of the West Bengal Estates Acquisition Act was served for taking possession of his vested lands. Jagadish and others had filed an application in the High Court under Article 227 of the Constitution of India which was discharged The heirs of Jagdish Chandra Bhakat had also unsuccessfully moved this Court under Article 226 of the Constitution of India. Thereafter, they filed the instant suit.

3. The learned Subordinate Judge, Murshidabad has decreed in part the aforesaid suit. He has declared that the plaintiffs and the defendant No. 1 have got 16th share each in the retained properties left by Jagadish Chandra Bhakat and has granted a decree for partition in preliminary form in respect of the said properties left by Jagadish. The learned Subordinate Judge has disbelieved the factum of severance amongst the co-parcenary properties on 12th Magh, 1358 B.S. and according to the learned 1 Subordinate Judge lands mentioned in paragraph (16) of the written statement are vested in the State by reason of nonreftention by Jagadish Chandra Bhakat, and the, plaintiffs had no subsisting title therein.

4. Mr. Sudhis Dasgupta, the learned advocate appeared on behalf of the

appellants, has submitted before us that the learned Subordinate Judge, Murshidabad was entirely wrong in holding that there had been no severance among the plaintiffs and their co-parceners on 12th of Magh, 1358 B.S. His another submission is that Jagadish Chandra Bhakat and his co-parceners including the plaintiffs and the defendants 1-3 and 6 were individually entitled to retain u/s 6(1) of the West Bengal Estates Acquisition Act their co-parcenary properties and the respondent. State, had acted illegally by treating them as one single unit and by vesting the lands described in paragraph (16) of the written statement filed by the state Mr. Dasgupta, learned advocate appealed on behalf of the appellants, has also submitted that the Division Bench in Fatechand Mahesri and others v. State of West Bengal and others A.I.R, 1972 Calcutta 177, wrongly decided that a Mitakshara undivided joint family is a legal entity and as one single unit was entitled to retain the joint properties u/s 6(1) of the West Bengal Estates Acquisition Act.

5. The learned Subordinate judge accepted the plaintiffs' case that they were governed by Mitakshara School of Hindu Law. The learned Subordinate Judge has rightly observed that the evidence on the said issue was practically one sided and the defendant, State did not adduce any evidence to controvert the evidence given by the six witnesses on the side of the plaintiffs. The plaintiffs ancestors were residents of Bihar and therefore. It must be presumed that they were governed by Mitakshara School of Hindu Law. When their ancestor, Haralal, had migrated from Bihar to Nayansuk village in the district of Murshidabad. the presumption would be that he had carried with him his personal law and customs as to succession then prevailing in Bihar, The State did not adduce any evidence to show that Haralal or his descendants had adopted the law and usages of Bengal (vide paragraphs 17 (A) and 14 of Mulla's Hindu Law 14 Edn.).

6. The learned Subordinate Judge rejected the case of the plaintiffs that since Magh, 1358 B.S. there had been a severance among the members of the co-parcenary consisting of Jagadish prasad and his linear descendants. In support of their said case of disruption in the co parcenary in Magh 1358 B.S., the plaintiffs had relied mainly upon the oral evidence and also upon a purported memo of partition dated 12th Magh, 1358 B.S. (Ext, 14).

7. We agree with finding of the trial court that the said alleged memo. of partition (Ext. 14) appeared to be an antedated document and was apparently created after the date of vesting. In this connection, the learned Subordinate Judge has referred to the evidence of P.W. 3, Satyanarayan Karmakar, who claimed to be the scribe of the said document. P.W. 3. Satyanarayan had claimed that he had written the said memo of partition on the basis of settlement record and other papers and deeds and R.S. Records (Ext. 13 series) which were attested in the year 1956, i.e. 1362; 63 B.S. and, therefore, the memo of partition could not have been written in Magh. 1358 B.S.

8. The learned Subordinate Judge has also referred to another significant fact. In the said Memo of partition not only Ramsakhi the wife of Jagadish. but also his

two daughters. Arati, the defendant No. I and Gayatri, the plaintiff No. 5. were mentioned as coparceners, who had been given allotments. Atleast the said two married daughters of Jagadish were neither his heirs nor could be considered as his co-parceners according to Mitakshara School of Hindu Law as prevailing in the year 1951" Only after the Hindu Succession Act came into force on 17th June 1956 female relatives of a male Hindu who dies after the commencement of the Act could claim share in the interest of the deceased Mitakshara co-parcenary property. In the event in the 1358 B.S. really a partition among Jagadish Prasad Bhakat and his lineal descendants in the male line up to four degrees took place, the wife of Jagadish could obtain a separate allotment in lieu of maintenance payable to her, but the unmarried daughters, if any, of Jagadish could at best claim to be maintained out of the co-parcenary properties but they could not get allotments as coparceners.

9. The learned Subordinate Judge rightly discarded the post-cards (Exts 2 and 2a) as evidence of severance among Jagadish Prasad and his co-parceners. Jankiram Mahadeoprasad and Ganeshprasad Bhakat, who had written the post cards (Exts. 2 and 2a) dated 3rd November, 1953, 7th January, 1956 and 7th February, 1956 respectively were not examined as witnesses. Therefore the contents of these post-cards (Ex's 2 to 2a) were not admissible for the purpose of proving the plaintiffs case of alleged severance. The defendant State had no opportunity to cross examine Jankiram Mahadeoprasad and (sic) prasad Bhakat, who had allegedly Written the post-I-cards and therefore, their assertions in these postcards could not be relied upon to prove the intention of Arun Kumar Bhakat to separate the joint properties. In the instant case there is no reliable evidence that, before the date of vesting of the West Bengal Estates Acquisition Act any of the members of the co-parcenary had given definite and unequivocal indication of his intention to separate himself and to enjoy his share in severalty. We have already affirmed the finding of the trial court that the memo of partition was ante-dated. There was no other explicit declaration by any of the coparceners. The parties by their conduct did not also manifest their intention to sever their joint status. At this stage, we may point, out that upon consideration of the evidence adduced, the Division Bench in Tarapada Roy and others v. State of West Bengal and others 32 C.W.N. 331 , found as a fact that an unequivocal declaration, of intention to separate was made before the date of vesting and. therefore, the Mitakshara joint family could not be considered as a single unit for the purpose of retaining lands u/s 6 of the West Bengal Estates Acquisition Act. The learned Judges in Tarapada Roy's case (supra), distinguished on facts the earlier Division Bench Decision in Fatechand Mahesri and Others Vs. State of West Bengal and Others,

10. In the instant case the plaintiffs appellants have failed to establish that before the date of vesting of intermediary and raiyati interests under the West Bengal Estates Acquisition Act there was severance among the co-parceners and therefore, on the authority of the decision of the Division Bench in Fatechand Mahesri's case (supra). We are bound to hold that the entire body of co-

parceners constituting the co-parcenary was one person and the said members of the co-parcenary only as one single unit was entitled to retain in terms of the different clauses of section 6(1) of the West Bengal Estates Acquisition Act.

11. We find no substance in the submission of Mr. Dasgupta, learned advocate for the appellants, that the view taken by the Division Bench in *Fatechand Mahesri's case* (supra), is contrary to the pronouncements made by the Supreme Court in *Commissioner of Income Tax, Poona Vs. H.H. Raja of Bhore*, and in *Ram Laxman Sugar Mills Vs. Commissioner of Income Tax, Uttar Pradesh and Another*, . In *Commissioner of Income Tax, Poona v. H.H. Raja of Bhore* (supra), the Income Tax Officer had held that certain securities being properties of an undivided family, the individual members could not claim the said securities as their private properties. Both the Bombay High Court and the Supreme Court overruled this view and held that the respondent Raja of Bhore and his brothers, who were members of the said undivided family, as a ruling prince and the princes respectively were "entitled to claim proprietary rights in the said securities for obtaining exemption from payment of tax. *Ramaswami, J.* in *Commissioner of Income Tax v. H. H. Raja of Bhore* (supra), at page 637 held that although Hindu undivided family is treated as a separate unit of assessment, it does not follow that in the eye of Hindu Law the property of the undivided family belongs to it as a corporate unit with separate legal personality, as distinct from individual family members composing it. Reference was made to the opinion of the Judicial Committee in the cases of *Katama Natchiar v. Raja of Shrivangana* (1863) M.I.A. 539 and of *Appovier v. Ramasubha Iyer* (1866) 11 M.I.A. 75 and observed that the ownership of the co-parcenary property is in the whole body of co-parceners. Further, the interest of an individual member in the co-parcenary property is a fluctuating one in capable of being enlarged by death and liable to be diminished by birth in the family. *Ramaswami, J.*, recognised that these principles had given rise to the concept of aggregate ownership in *Mitakshara School of Hindu Law* and till partition co-parceners have got rights extending over the entirety of the co-parcenary property.

12. The Supreme Court in *Ram Laxman Sugar Mill v. Commissioner of income Tax, U.F.* (supra) had observed, that although a Hindu undivided family is undoubtedly a person within the meaning of Indian Income Tax Act, 1922, it is, however, not a juristic person for all purposes and cannot enter into an agreement of partnership with either another undivided family or individual. On interpretation of a deed it was held that the intention disclosed by the deed was Unit the person who signed the documents had acted as the manager of the family and therefore, the form could be granted renewal of registration u/s 26A of the Indian Income Tax Act, 1922.

13. It may be noted that the Supreme Court in both of the reported decisions noted above had considered only certain aspects of the Hindu undivided family in the context, of the provisions of the Indian income Tax Act and did not express disagreement with the long settled judicial views about the nature (sic) co-

parcenary and the rights of Ms members. In fact, their lordships had with approval quoted the judicial committee pronouncements in; Katana batcguar's case (supra) and Approvier case (supra), upon which the Division bench of this Court in Fatechand Mahesri's case (supra), had relied

14. Even if a Hindu co-parcenary is not a juristic person with separate legal personality of its own, it has been repeatedly recognised as a corporate body or a family unit capable of acquiring holding and disposing of property subject to limitations laid down by law. in this connection, we may refer to the Supreme Court judgment in Bhagwan Dayal Vs. Mst. Reoti Devi, . Subba Rao, J. in paragraph 47 of his judgment In Bhagwan Dayal's case (supra), stated as follows;

Co-parcenary is a creature of Hindu Law and cannot be created by agreement of parties except in the case of re-union in a corporate body or a family unit.

We may also add that by adoption also a stranger may be introduced as a member of the co-parcenary. It is also settled law that the ownership of the co-parcenary property is in the whole body of the co-parceners having community of interest and unity of possession and so long as there is no severance, individual members constituting the co-parcenary have no separate share in the undivided properties. Only upon severance, the interest of the members become ascertained.

15. The definition of the word "person" given in section 3(42) of the General Clauses Act is not an exhaustive one and includes "any company or association or body of individuals whether incorporated or not". Thus, both a single individual or a unincorporated group of individuals may be treated as a person in the particular facts and circumstances of a case. therefore even if it be accepted that coparcenary itself has no personality of its own, there could be no bar to treating the entire body of its members as a person.

16. We have already found that at the date of the vesting of intermediary and raiyati interests there was no severance among the members of the undivided family consisting of Jagadish Prasad Bhakat and his lineal descendants in the male line up to four degrees. Accordingly, individual members had both community of interest and unity of possession in their properties which were within the mischief of the West Bengal Estates Acquisition Act. It was not possible for the individual members to predicate any definite share therein and the same was a fluctuating one. It is quite possible that the extent of the interests of each of the individual members in undivided Mitakshara joint family property subsisting on the date of the vesting might be reduced before the said members submit their return in Form-"B". In view of the very nature of their interests and possession in the undivided properties, individual members cannot conceivably separately exercise their option to retain their said undivided interests in terms of different clauses of sub-section (1) of section of the West Bengal Estates Acquisition Act The Division Bench in Fatechand Mahesri's case

(supra), also correctly pointed out that the West Bengal Estates Acquisition Act has not made any provision in respect of the body of persons constituting a Mitakshara no-parcenary in the manner done in case of co-operative societies and companies coming within the ambit of clause (j) of section 6(1) of the West Bengal Estates Acquisition Act. The members of these incorporated bodies like co-operative societies and companies have distinct and definite shares and, therefore, it was possible to allow the society or the company to retain not exceeding in area the number of acres which their members would have been individually entitled to retain in the aggregate. But as already stated the members of a Mitakshara undivided family have only a conflicting interest and, therefore, it was not possible to make an aggregate of the total area individually retainable by the members.

17. We also agree with the view taken in Fatechand Mahesri's case (supra), that upon issue of a notification u/s 4 of the West Bengal Estates Acquisition Act there was no automatic severance among the members of Mitakshara coparcenary owning agricultural lands. The West Bengal Estates Acquisition Act did not expressly or impliedly provide for disruption in a Mitakshara co-parcenary owning lands which are subject to the provisions of the West Bengal Estates Acquisition Act. The said Act does not prevent Mitakshara coparceners from having community of interest and unity of possession in the compensation payable in respect of their joint properties which vest in the State. Similarly, until severance they would continue to be co-parceners in respect of their undivided properties which are allowed to be retained u/s 6 of the West Bengal Estates Acquisition Act. But we have already pointed out that in view of the very nature of their interest the West Bengal Estates Acquisition Act has treated the entire body of Mitakshara co-parceners as one single family unit for the purposes of retention u/s 6(1) of the said Act.

18. Mr. Dasgupta, learned advocate for the appellants, has drawn our attention to the definition of family in the West Bengal Land Reforms Act. But the expression family in section 14K(c) of the West Bengal Land Reforms Act is not prima facie synonymous with the concept of Mitakshara co-parcenary. For the purpose of Chapter IIB of the West Bengal Land, Reforms Act the family in relation to a raiyat shall be deemed to consist of the persons specified therein.

19. it may be pointed out that the defendant respondent, State held produced in the trial court the proceedings u/s 10 of the West Bengal Estates Acquisition Act and also the records of the Bio, Raiyat Case conducted against Jagadish Chandra Bhakat which were marked as Exts. A and "C". It appeared therefrom that Jagadish Prasad Bhakat by submitting return in Form -B had exercised his option to retain his khas lands. He did not then assert that the said lands were owned as separate units by himself and the plaintiffs or that each one of them as separate units was entitled to retain all the lands which stood recorded in the name of Jagadish Chandra Bhakat; A Revenue Officer had allowed Jagadish to return 24.79 acres of agricultural lands. 1.92 acres of non-agricultural lands, 101

acres of homestead lands and 1.73 acres of other categories of land. The rest of the lands standing in the name of Jagadish were ordered to be vested. Khanda Khatians were purported to be opened for entering the consequential changes. The appellants and others had unsuccessfully instituted proceedings under Articles 226 and 227 of the Constitution and they ultimately did not press Appeal from Original Decree Nos. 620 and 621 of 1071 and 280 and 282 of 1972 and by an order of the Division Bench dated December 22, 1976 these appeals were dismissed for non prosecution without prejudice to the lights and contentions of the appellants in any action that may be brought by them against the State of West Bengal.

20. Accordingly, we hold that the learned Subordinate Judge has rightly refused to grant any relief to the plaintiffs in respect of the properties of Jagadish Chandra Bhakat which were ordered to be vested in the State. The appeal is accordingly dismissed. There will be no order as to costs. Let the records be sent down immediately.

21. After the judgment is delivered, Mr. Mitra has prayed for a certificate under Article 133 of the Constitution of India. We do not consider the case lit for decision by the Supreme Court. Accordingly, we refuse the prayer.

Sharma, J.

I agree.