
(1998) 12 OHC CK 0037
In the Orissa High Court
Case No : First Appeal No. 292 of 1989

Babul Sahu alias Mantu Sahu	Vs	APPELLANT
Smt. Laxmi alias Sabitri Sahu and Others		RESPONDENT

Date of Decision : 04-12-1998

Acts Referred:

Citation : (1999) 1 OLR 277

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : P. Kar, N.K. Sahu, M. Mohanty and J.K. Mishra, for the Appellant; S. Mishra-2, S. Mohanty, R.C. Rath, A.K. Mishra (Rs-2, 3, 6 and 7) and P.R. Barik (R-12), for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—The plaintiff in a suit for partition is the appellant.—In the suit the plaintiff claimed partition on the footing that he is the son of Balabhadra. Radhamohan and Balabhadra were admittedly two brothers. Defendant No. 6 in the present suit is the son of Radhamohan and Nishamani, the widow of Radhamohan. However, there was some dispute relating to parentage of present plaintiff. In a previous suit (O.S.No. 34/66-1) filed by Balabhadra and Kshirodamani. the widowed mother of Balabhadra and Radhamohan. it had been alleged that the present plaintiff and defendant No. 7 were the son and daughter of Radhamohan through Nishamani. In the said suit for partition, a decree on the basis of compromise was passed whereunder one-third property was allotted to Nishamani and Siba Sahu, son of Radhamohan and Nishamani, whereas two-third properties as per the present plaint "Kha" Schedule were allotted to Balabhadra and Kshirodmani. The plaintiff claims that in Clause-2 of the said compromise, it had been indicated that the present plaintiff who was defendant No. 4 in the said suit, shall be treated as the son of Balabhadra and Balabhadra would look after his maintenance and education expenses et cetera. It was further indicated that present plaintiff will have the same right like that of a son

in all the properties of Balabhadra. It is, therefore, claimed that the plaintiff should be given a share in the property of Balabhadra.

In the present suit, Balabhadra and his wife Gouri filed joint written statement and some other defendants filed separate written statements. The main contention in the various written statements was that the present plaintiff was born after death of Radhamohan and was the son of Nishamani through some other person. During the pendency of the suit, original defendant No. 1 Balabhadra having expired, his other sons and daughters were impleaded as defendants.

2. The trial Court held that there was no evidence on record to prove that the present plaintiff was the son of Balabhadra. The trial Court also observed that the present plaintiff was possibly the son 1999(1) BABUL V. Suit, .LAXMA t " 279 of Radhamohan and Nishamani. Since the status of plaintiff was negated, the suit was dismissed on the finding that the plaintiff had no right in the properties of Balabhadra.

3. The learned counsel appearing for the appellant has contended that in view of the compromise decree, it is not open to Balabhadra to take a different stand in the present proceeding. In Ext. 1, the compromise decree, it appears that one-third property had been given to Nishamani and Siva Sahu, son of Radhamohan, whereas two-third properties had been given to Balabhadra and his mother Kshirodmani and though the present plaintiff was defendant No. 4 and had been described as son of Radhamohan, no separate share had been given to him. On the other hand, it had been specifically mentioned that he will have the same right in the properties of Balabhadra like a son. The trial Court ignored the said compromise decree on the ground that since no decision had been rendered, the said compromise decree cannot operate as *res judicata*. For the aforesaid purpose, the trial Court relied upon the decision of the Supreme Court reported in Pulavarthi Venkata Subba Rao and Others Vs. Valluri Jagannadha Rao and Others, .

4. There cannot be any dispute that a compromise decree does not operate as *res judicata* in any subsequent proceeding because no judicial decision is rendered in such a compromise decree. However, that does not mean that a compromise decree is not binding on the parties or cannot be enforced in Law. As has been observed by this Court in the decision reported in 11973 (I) CWR 497 (Umakanta Naik and Ors. v. Naba Palai and others) a compromise decree like any other decree is binding on the parties and can be enforced in a Court of law. Even in the decision of the Supreme Court, referred to *supra*, it had been, observed that compromise decree may operate as estoppels In- the previous suit, it was acknowledged by Balabhadra that plaintiff shall be treated as his son and shall have all rights in the properties of Balabhadra like a son. It", is-not open to Balabhadra or other persons claiming through Balabhadra to take a different stand in the subsequent suit and contend that plaintiff cannot claim any right in the properties of Balabhadra. A fair reading of the compromise in the

earlier suit indicates that for all purposes, plaintiff was treated to be a son of Balabhadra and it was specifically stated that he will have similar right to that of a son in the properties of Balabhadra. There is no dispute that present "Kha" Schedule property had been allotted to Balabhadra and Kshirodmani and after death of Kshirodmani, the said property was being enjoyed by Balabhadra and members of his family. Similarly, it is apparent that "Ga" Schedule property had been acquired in the name of Balabhadra. Of course, it is true that nothing has been proved regarding any surplus from the joint family property in the hands of Balabhadra. However, no evidence has been adduced on behalf of the contesting defendants to prove that Balabhadra had any independent source of income. Since Balabhadra was admittedly the Karta of the joint family, in the absence of any evidence to the effect that he acquired the property in his name from out of his own income, it must be presumed that the said property in "Ga" Schedule was also the joint family property. As such, plaintiff is to get share in the joint family property in the hands of Balabhadra as well as subsequent property which may be so treated to be joint family property. Admittedly, Balabhadra had three other sons, a widow and five daughters. Thus taking the share of present plaintiff to be equal to other sons, it must be held that after death of Balabhadra, plaintiff has got 11/60th share in the joint family properties in the hands of Balabhadra.

5. The learned counsel appearing for the contesting respondents, however, contended that the other defendants-successors of Balabhadra were not impleaded in the previous suit and they are not bound by the compromise effected by Balabhadra in the previous suit. The previous suit was brought by Balabhadra for partition evidently as Karta of his branch. Law is well-settled that any compromise effected by the Karta is also binding on other members of the joint family unless fraud or collusion is established. On going through the compromise decree in the earlier suit, it cannot be said that the compromise effected in the said suit was not in the interest of the members of the joint family. At any rate, nothing has been brought on record to show that there was any collusion or fraud. Therefore, the compromise decree effected in the earlier suit is also binding on other members of the family of Balabhadra.

6. For the aforesaid reasons, the appeal is allowed. It is directed that plaintiff will have 11/60th share in the plaint "Kha" and "Ga" Schedule properties and defendant No. 2, the widow of Balabhadra and defendants 3, 4, and 5, sons of Balabhadra each shall have 11/60th share in the suit property, whereas defendant 1-Ka to 1-Una, the daughters of Balabhadra, will have each 1/60th share in the property in plaint "Kha" and "Ga" Schedule. If any property has been sold by Balabhadra from out of "Kha" Schedule property, the same should be excluded from partition and the rights of the purchasers in respect of the said sold property shall be confirmed. This may be done during the final decree proceeding. The parties will bear their respective costs throughout.