

(1964) 08 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 276 of 1961

Bawa Maharaj Singh

APPELLANT

Vs

Bawa Gurmukh Singh and Others

RESPONDENT

Date of Decision : 27-08-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 15

Citation : (1964) 08 P&H CK 0005

Hon'ble Judges : Shamsheer Bahadur, J

Bench : Single Bench

Advocate : Tirath Singh Manjral, for the Appellant; S.L. Puri and Raj Kumar Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

Shamsheer Bahadur, J.—The substantial question for determination in this execution appeal is whether one of the three members of a family in whose favour there is a subsisting decree can give a valid discharge for its satisfaction :

Various disputes arose between the descendants of Bawa Parduman Singh, whose relationship is shown in the following pedigree-table.

The disputes were referred to the arbitration of Dr. Mehar Chand Mahajan, Ex-Chief Justice of India. In the first reference of 21st of November, 1955 the two branches of Gurmukh Singh and Maharaj Singh referred the main question of division of assets of Bawa Parduman Singh and sons between themselves. Broadly speaking this reference is concerned with disputes regarding the accounts of joint Hindu family property and business of Bawa Parduman Singh and Sons before its conversion into a partnership concern. The second reference also of 21st of November, 1955 was made by the sons of Gurmukh Singh and Maharaj Singh and his two sons. Gurmukh Singh was not a party to this reference. This dispute related to the partnership of Bawa Parduman Singh and Sons and its dissolution. The arbitrator was called upon to decide the question of

good will of the several businesses of this partnership business.

2. There were two separate awards given by the arbitrator the first one on the 31st of March, 1956 and the second on the 4th April, 1956. It is the first award with which the dispute in this appeal is concerned. This award was made a rule of the Court on the 7th of February, 1957 at the instance of Gurmukh Singh and his sons who made an application for this purpose. This application was opposed only by Sat Pal Singh son of Maharaj Singh who absented himself on the date of hearing when the decree was passed in accordance with the award of Dr. Mehar Chand Mahajan. The second award of the 4th of April 1956 was made a rule of the Court on the 22nd of August, 1960. All the properties belonging to Bawa Parduman Singh and Sons, which is called a Joint Hindu Family throughout in the two awards, were disposed of between the two branches one of Gurmukh Singh and the other of Maharaj Singh, the latter two being uniformly described as branches" of Gurmukh Singh and Maharaj Singh. We are concerned in this appeal only with the property at Amritsar mentioned in Schedule B2 of the award of the 31st of March, 1956. The property in category "B" of this schedule is described as non-agricultural property. The property consists of "four and a half storeyed shop pucca built in Katra Ahluwalian, Amritsar, with all fittings and fixtures, Motor Pump, Telephone, Electric Energy and bearing Municipal No. 1025 Division 2," All the property mentioned in Schedule B2 including the shop in Katra Ahluwalian was allotted to Maharaj Singh and his two sons, Satpal Singh and Kandhir Singh. It appears that the execution of the award so far as this property is concerned took place immediately after the 1st of April, 1956. There are letters "A" "B" and "C written by Gurmukh Singh to all the tenants of this property including the firm of Bawa Parduman Singh and Sons asking them to attorn in favour of "Shri Bawa Maharaj Singh", the same having been allotted to him under the award of the 31st of March, 1956. These letters were written on the 13th of April, 1956. Randhir Singh, son of Maharaj Singh by two separate rent notes of the 4th of July and 11th of July, 1956 gave this property on rent on behalf of the branch of Maharaj Singh. Reference may also be made to clause (v) of Article 3 of the second award where mention is made of the property of Katra Ahluwalian, Amritsar. It was stated in the award that "Be it noted that shop at Katra Ahluwalian is the property of Bawa Maharaj Singh and this will be vacated within three months of the award or taken on lease" if the landlord is willing and if business is to be carried on therein." In the award of 31st March 1956 it was also mentioned under Article 13 that the partnership located in Katra Ahluwalian shop "will arrange to remove goods within three months of the award, but the tenants in all these properties will attorn to the branch to whom they had been allotted in the award."

3. Maharaj Singh did not seem to approve the lease which had been accepted by his son Randhir Singh and made an application for execution of the decree of the 7th of February 1957 passed in accordance with the award. The objections were taken by Harbhajan Singh and supported by Randhir Singh that the property in Katra Ahluwalian had been validly given on lease under appropriate authority of

the decree-holder. It was alleged in this petition by Maharaj Singh that he remained joint with his two sons and he alone was entitled to deal with the property, which had been allotted to his branch by virtue of the two awards. He complained that his relations with Randhir Singh had not been cordial and the latter had conspired with the sons of Gurmukh Singh to deprive him of the right of possession. According to Maharaj Singh, his sons are not entitled to any separate possession and he alone could take out the execution as karta of the joint Hindu family. In the objection petition filed by Randhir Singh on the 10th of January, 1958, mention was made of the rent notes of the 4th of July and 11th of July, 1956. It is also stated in this objection petition that Randhir Singh had been managing this property on the authority of the other members of the family. On these pleadings the following two issues were framed :

(1) Whether the possession of the property for which execution has been taken out by Maharaj Singh decree-holder has been delivered to Randhir Singh and is this valid satisfaction of the decree being executed ?

(2) Whether Maharaj Singh alone has the right under the award on which the decree is based, to take out execution for possession of the property in dispute?

Both these issues having been found in favour of Randhir Singh, the application of Maharaj Singh was dismissed and he alone has filed this appeal from the order of the executing Court. Both his sons Sat Pal Singh and Randhir Singh are respondents along with the sons of Gurmukh Singh. Satpal Singh is supporting the appellant while Randhir Singh along with the other contesting respondents is being represented before me by Mr. Shambu Lal Puri and Mr. Raj Kumar.

4. On behalf of the appellant it has been submitted by Mr. Tirath Singh Munjral that Randhir Singh had no valid sanction according to law to attorn in favour of the lessees and the rent notes are not binding on the decree-holder. The relevant provision of the CPC is rule 15 of Order 21 which says that-

Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

Mr. Tirath Singh submits that the decree having been given in favour of the joint family of Maharaj Singh as a whole, the appellant as the karta could have executed it and not the other sons without specific authority. Reliance is placed on a Division Bench of the Patna High Court in Kumaid Kumar Singh v. Amar Nath Singh ILR 21 Pat 322. This is a judgment of Chief Justice Harries and Dhavle, J. in which it was held that-

A payment of the amount of a decree to one of a number of joint decree-holders cannot be treated as satisfaction of the decree even in part, unless it is admitted by the other decree-holders or unless it is proved that he and the others to

whom the money was due owned separate and definite shares in the joint decree.

It was also held that-

Where a joint decree is owned by a joint Hindu family, a payment to a junior member, who is neither the karta nor is authorised by the family to receive such payment will not operate as satisfaction of whole or in part of the decree or of the share of that particular member in decree.

The principle enunciated in this authority in my opinion has no application to the present case as the award has been made in favour of "Maharaj Singh and his branch," and wherever reference is made to "joint family" it is to the "joint family business of Bawa Parduman Singh and Sons. "The parties in whose favour the award has been given are referred to as the separate branches of Gurmukh Singh and Maharaj Singh. It is important to observe that all the sons of Gurmukh Singh and both the sons of Maharaj Singh entered into the two references and have signed in token of their acceptance. The sons of Gurmukh Singh and Maharaj Singh had not been referred as members of separate joint families of Gurmukh Singh and Maharaj Singh respectively. It cannot, therefore, be said that the award was being executed by Randhir Singh as a member of the joint Hindu family. Moreover the executing Court has gone into the question whether Randhir Singh had authority to execute the decree and after a consideration of the evidence has reached the conclusion that he had. The reference has been made to this evidence by the counsel for the parties, who argued the case mainly on the legal propositions. The findings of the executing Court on these matters must be regarded as final. Mr. Tirath Singh has also referred to a Bench decision of the Bombay High Court of Bakar and Rangnekar, JJ. in Umakant Balkrishna and another v. Martand Keshav AIR 1923 Bom 245, where it was held that -

In the case of a joint Hindu family it is only the manager who can bind the family in such thing such as discharge of a debt. A discharge given by any other member of the family is not therefore a valid discharge binding on the family.

The ratio of this authority is inapplicable for the same reason which I have mentioned in discussing the Patna case.

5. Mr. Shambu Lal Puri on the other hand has relied on a bench decision of the Calcutta High Court in Mudit Narayan Singh v. Ranglal Singh ILR 29 Cal. 797, in which Pratt and Mitra, JJ. held that -

Hindu law authorizes a younger member of a Mitakshara joint Hindu family to alienate or otherwise deal with immovable property belonging to the family, for family necessity, whenever he is put forward to the outside world by the elder members of the family, as the managing member.

Here again it is important to note that on the evidence adduced by the parties, the finding of the executing Court is that Randhir Singh was regarded by the persons who had attorned in his favour as an authorised member of the family in whose favour the decree stood. This judgment of the Calcutta High Court has

been followed subsequently in a Full Bench decision of the Madras High Court in Sankaranarayanan Iyer Vs. Sri Poovananathaswami Temple and Others, The Full Bench presided over by Chief Justice Rajamannar observed at page 181 that-

In the case of a joint Hindu family, the father, if alive, or in his absence, the senior member of the family is the de jure "manager" of the family property and entitled to sue as such manager on behalf of the family. * * * It sometimes happens that a junior member of the family assumes management of the family affairs and the management of the family properties with the consent or acquiescence of the other members often inferred from their conduct (Mudit Narayan v. Ranglal ILR 29 Cal. 797 and Ramkrishna Mudaliar v. Manika Mudaliar (1937) 72 M.L.J. 587, being relied).

6. Mr. S.L. Puri has further contended that Order 21 rule 15 is not concerned with disputes inter se the decree-holders and has relied on a passage in Chitaley's Code of Civil Procedure, Vol. III, 7th edition at page 2920. It is thus stated there:

A decree for joint possession in favour of two or more persons is to be executed in the manner laid down in this rule. But this rule contemplates execution by the joint decree-holders against the persons liable under the decree. Execution of such a decree by one of the joint decree-holders against the other is not contemplated.

It is urged by Mr. Puri that the application for execution made by Maharaj Singh is nothing more than an execution of decree against the other decree holder Randhir Singh. It was held by a Bench of the Calcutta High Court of Chief Justice Chakravarti and S.C. Lahiri, J., in Sree Sree Iswar Sridhar Jew Vs. Jnanendra Nath Ghose and Others, that "the execution of a decree for joint possession by one of the joint decree-holder against the other is an impossible notion." The remedy in such cases is to obtain possession by way of partition and not in execution proceedings.

7. In my view the decree which is sought to be executed by the appellant cannot proceed being virtually against a joint decree-holder. Even if the application be regarded to be that of a karta of a joint Hindu family, there is evidence in my opinion that Randhir Singh had authority to proceed with the execution on behalf of the other decree-holders. A brief reference to the evidence has been made by both the counsel from the judgment of the trial Court itself and on a consideration of it I do not think that it has been wrongly appraised. This appeal therefore fails and is dismissed with costs.