

(2009) 04 MP CK 0010

In the Madhya Pradesh High Court

Case No : First Appeal No. 43 of 1992

Choudhary Chhatar Singh (d) and Others

APPELLANT

Vs

Smt. Harsh Kumar and Others

RESPONDENT

Date of Decision : 16-04-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 18
Hindu Succession Act, 1956 — Section 6, 6(1), 8

Citation : (2009) ILR (MP) 2636 : (2009) 3 JLJ 84 : (2009) 3 MPLJ 174

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

Bench : Single Bench

Advocate : Pranay Verma, for the Appellant; Harpreet Ruprah, for Respondents
No. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Jaiswal, J.

This appeal is filed by the Defendants No. 1, 5 to 8 against the judgment and decree dated 30th November, 1991 passed, by Additional District Judge, Narsinghpur in Civil Suit No. 20-A/89 whereby the learned trial Court decreed the suit for partition filed by Respondents No. 1 and 2 and held that they are entitled for 1/8th share in agricultural land and house as per schedule C and D appended along with the plaint.

Respondent No. 1 Smt. Harshkumar, widow of Ramkumar and Choudhary Charanjit Singh, son of Ramkumar filed a suit for partition, possession and mesne profit on the ground that the suit property was an ancestral property of Defendant No. 1 Choudhary Chattarsingh. He had seven sons and two daughters. He had inherited the suit property from his father Choudhary Guljar Singh.

The family tree is as under:

Choudhary	Gulzar	Singh	(Dead)
			Smt.

Nanhi Bai Chhatar Singh Kaushalya Bai (widow of Gujjar Singh) (son of Guljar Singh) (Died on 1.1.1988) (Def.7)(Died on 5.5.2008) (name deleted) (Del 1-Appellant No.1) Kaushalya Bai (widow of Guizar Singh) _____

____ | | | | | | | | Son Son Son Son Son Son Son Daughter Daugther Udai Singh Shiv Kumar Ram Kumar Shiv Kumar Krishna Anil Divesh Mithila Kusum (Def.2- (Def.3- (Died 1976)(Dcf.3- Kumar (Def.5) Kumar (Def.8- (Def.9- res.3 Res.4) | res.4) (Died on (Def.6- App.4) App.5- | 14.5.2000) App.3) Def.9) | (Def.4- (Died on | Res.5 9.3.2004) _____

____ | | | | | | | | Harsh Kurnar Charanjit Prabha Sunil Aashish Vineet Namita Prabhakar Pragya Son Son Son Son (widow) (plff2 (pIff.I- res 2) (widow) [res. [res. [app. [app. [app [app. res. I) (Died on 5(b)] 5(c)] 5(d)] 3(a)] 3(b)] 3(c)] 10.51992)

Undisputed facts are that Defendant No. 1 Chhatar Singh was son of Guljar Singh. Smt. Nanhibai was the mother of Defendant No. 1. She died during the pendency of the suit and her name was deleted by order dated 4.4.1988. Guljar Singh died prior to the date of filing of the suit. Ram Kumar son of Chhatar Singh died nine years prior to the date of filing of the suit. The Respondents No. 1 and 2 filed a suit on the ground that the suit property is a joint Hindu family property. Chhatar Singh inherited the property from his father Guljar Singh, which is an ancestral property. Chhatar Singh was Karta of the family. The ancestral property consists of agricultural land as per Schedule C of the plaint and two ancestral house as per Schedule D. The husband of Plaintiff No. 1 and father of Plaintiff No. 2 had 1/7th share over the suit ancestral property. She and her son are members of the joint Hindu family. The suit property was never partitioned and, therefore, decree of partition be passed and they be declared owner of 1/7th share over the suit property.

The Appellants (Defendants No. 1 and 5 to 8) filed their joint written statement and denied the averments made in the plaint and contended that Plaintiffs and Defendants were members of joint Hindu family prior to 17.6.1983. On 17.6.1983 Chhatar Singh, Karta of the family, partitioned the suit property as per partition deed (Ex.P-2). This partition was effected on 17.6.1983. The Plaintiffs received 2.023 hectares agricultural land in survey No. 168/1. The Plaintiffs were allotted the share in family partition held on 17.6.1983. The house situated at village Aamgaon is self acquired property of Chhatar Singh, who purchased this house on 14.12.1964 (Ex.D- 1) from the income of his wife and mother. It is also contended that partial partition is permissible under law and the suit filed by the Respondents No. 1 and 2 is not maintainable and prayed for its dismissal.

The trial Court after appreciating the oral and documentary evidence came to the conclusion that as per admission made by Chhatar Singh (D.W. 1) of his statement, it cannot be said that the house at village Chiksa is a self acquired property. This witness in his statement very categorically admitted that house at village Chiksa is his ancestral property. In respect of Ex.D-1, it is held that no

statement of wife of Chhatar Singh was recorded to prove that he purchased the house at village Aamgaon from the income of his wife. With the above finding it has been held that agricultural land and two houses as per Schedule C and D are ancestral property. The Respondents are co-parcener and therefore they are entitled for 1/8th share over the suit property and directed that partition be effected by metes and bounds as per rules, i.e., under Order 20 Rule 18 CPC and thereafter Plaintiffs be given 1/8th share over the agricultural land and two houses as per Schedule C and D.

It is not disputed by learned Counsel for the Appellants that the suit property is an ancestral property of Chhatar Singh. It is contended that Chhatar Singh and his mother Nanhi Bai have inherited the estate from Choudhary Guljar Singh u/s 8 of the Hindu Succession Act, 1956. Sons of Choudhary Chhatar Singh had no right, title or interest by birth. It is also submitted that a father was entitled to effect partial partition and partial partition is permitted. In support of the said contention, he drew my attention to Article 328 of the Mulla's Hindu Law and decision of the apex Court in the case of Apoorva Shantilal Shah, HUF Vs. Commissioner of Income Tax, Gujarat-I, Ahmedabad, .

On the other hand, learned Counsel for Respondents No. 1 and 2 has contended that the father of a joint Hindu family has the power to divide the family property at any moment during his life time, provided he gives his sons equal shares with himself and if he does so, the effect in law is not only a separation of the father from the sons, but a separation of the sons inter se. He further submits that in the present case as per partition deed (Ex.D-2) the Respondents No. 1 and 2 had received 2.023 hectares only which is unequal and unfair and therefore they challenged the same by filing a suit for partition and as per the provisions of Hindu Succession Act, 1956 they are entitled for 1/8th share in respect of agricultural land and two houses as per the Schedule C and D and the learned trial Court has not committed any legal error in partly decreeing the suit. With the above, he prayed dismissal of the appeal.

It is well settled that the father of a joint Hindu family has the power to divide the family property at any moment during his life time, provided he gives his sons equal shares over his ancestral property. If the partition is unequal and unfair it is open to the sons to challenge the same. In the case of Apoorva (supra), the apex Court has held that if the father does not act bona fide in the matter when he effects partition of joint family property between himself and his minor sons, whether wholly or partially, the sons on attaining majority may challenge the partition and ask for appropriate relief including a proper partition. In appropriate cases even during the minority the minor sons through proper guardian may impeach the validity of the partition created by father either in entirety of the joint family properties or only in respect of part thereof, if the partition had been effected by the father to the detriment of the minor sons and to the prejudice of their ancestors. Para 23 is relevant which reads as under:

23. We must, therefore, hold that partial pariition of properties brought about by

the father between himself and his minor sons cannot be said to be invalid under the Hindu Law and must be held to be valid and binding. We wish to make it clear that this right of the father to effect a partial partition of joint family properties between himself and his minor sons, whether in exercise of his superior right as father or in exercise of the right as patria potestas has necessarily to be exercised bona fide by the father and is subject to the right of the sons to challenge the partition if the partition is not fair and just.

The apex Court further observed the following in para 27 which reads as under:

27... In our opinion, a partial partition of any joint family property by the father between himself and his sons does not become invalid on the ground that there has been no equal distribution amongst the co-sharers. It is expected that the father who seeks to bring about a partial partition of joint family properties will act bona fide in the interest of the joint family and its members, bearing in mind in particular the interests of the minor sons. If, however, any such partial partition causes any prejudice to any of the minor sons and if any minor son feels aggrieved by any such partial partition, he can always challenge the validity of such partial partition in an appropriate proceeding and the validity of such partial partition will necessarily have to be adjudicated upon in the proceeding on a proper consideration of all the facts and circumstances of the case. Till such partial partition has been held to be invalid by any competent Court, the partial partition must be held to be valid. It is not open to the Income Tax authorities to consider a partial partition to be invalid on the ground that shares have not been equally divided and to refuse to recognise the same.

Para 328 of Mulla's Hindu Law 17th Edn. at para 530 and 531 reads as under:

328. Partial partition.-(1) A partition between coparceners may be partial either in respect of the property or in respect of the persons making it.

After a partition is affected, if some of the properties are treated as common properties, it cannot be held that such properties continued to be joint properties since there was a division of title but such properties were not actually divided.

(2) Partial to property. - It is open to the members of a joint family to make a division and severance of interest in respect of a part of the joint estate, while retaining their status as a joint family and holding the rest as the properties of a joint and undivided family. However, where there is evidence to show that the parties intended to sever, then the joint family status is put an end to, and with regard to any portion of the property which remained undivided the presumption would be that the members of the family would hold it as tenants - in-common unless and until a special agreement to hold as joint tenants is proved. When a partition is admitted or proved, the presumption is that all the property was divided and a person alleging that family property, in the exclusive possession of one of the members after the partition, is joint and is liable to be partitioned, has to prove his case.

From the perusal of the above, it is clear that when under a partition by a father unequal shares are given to the sons and if the partition is unequal and unfair, it is open to the sons if they are majors to repudiate the partition. Here in the present case, Respondents No. 1 and 2 finds that partition was not just and fair or unequal they rightly challenged the same by filing a suit for partition.

It is not disputed by the parties that Ratan Singh one of the sons of Chhatar Singh had taken his share and left from parental house and therefore the learned trial Court in para 24 of the impugned judgment has held that he has no right over the suit property. The Appellants failed to prove that vide Ex.D-1 Chhatar Singh purchased the house in the year 1964 from his income or income of his wife and mother or they gave Rs. 10,000/- for purchasing the house on 14.12.1964. No evidence of Kaushalya Bai wife of Chhatar Singh or Nanhi Bai, mother of Chhatar Singh was recorded before the trial Court. This question was, considered by the trial Court in para 24 of the impugned judgment. In absence of any evidence, the trial Court has not committed any error in holding that the house is an ancestral property. Defendant No. 1 Chhatar Singh in para 2 and 3 of his cross-examination admitted that the house situated at village Chiksa is an ancestral property and in absence of any evidence, it cannot be said that the house situated at village Chiksa is self acquired property of Chhatar Singh. Any one or several members of the joint family is entitled to require partition of joint family property and therefore it cannot be said that Plaintiffs have no right to file a suit for partition.

As per new provision of Section 6 of Hindu Succession Act, 1956, which came into force on 9.9.2005, a daughter of a co-parcener in a joint Hindu family governed by the Mitakshara Law now becomes a co-parcener and thus enjoys right as hitherto enjoyed by a son as co-parcener. The legislature has added a proviso to Sub-section (1), providing that any disposition or alienation, including a partition or testamentary disposition entered into before 20.12.2004 are not affected. Here in the present case decree of partition was passed by the trial Court on 30.11.1991 and therefore the Appellants No. 4 and 5, daughters of late Chhatarsingh will not get any share in the suit property.

The trial Court has not committed any legal error in holding that the Defendant No. 1, his wife and six sons are entitled for 1/8th share over the suit property i.e. agricultural land and two houses as per schedule C and D annexed along with the plaint. The decision cited by learned Counsel for the Appellants in the case of Apoorva Shantilal Shah (supra), and the preposition laid down in para 328 of Mulla's Hindu Law, 17th Edn. will not be applicable in the present facts and circumstances of the case. The apex Court has very specifically held that if partition is unequal and unfair, it is open to challenge it. Here in the present case the partition made on 17.6.1983 was unequal and unfair and therefore it has been rightly held that the partition was not good, fair and just and rightly set aside by the trial Court. The partial partition is permitted, if acquiesced not by the members of co-parceners.

For the above mentioned reasons, the appeal filed by Appellants has no merit and is liable to be dismissed and is hereby dismissed with costs. counsel fee Rs. 3,000/-, if pre-certified.