

(1927) 06 PAT CK 0009

In the Patna High Court

Gajadhar Prasad and Others

APPELLANT

Vs

Lachhuman Lal Sahu and Others

RESPONDENT

Date of Decision : 13-06-1927

Acts Referred:

Bengal Tenancy Act, 1885 — Section 69
Limitation Act, 1908 — Article 91

Citation : AIR 1927 Patna 339

Hon'ble Judges : Ross, J;Kulwant Sahay, J

Bench : Full Bench

Judgement

Kulwant Sahay, J.—The following genealogical table will be of help in understanding the facts of the case:

Bnatan Sahu		_____		_____		
Nirmal Sahu				Girdhari Sahu, (died 25th Asin 1328)		
Jhati Sahu.=Tetro Kuer,		(died) 1st died 27th Jeth 1279).	Chait 1301,			
Mt. Lachho,		(predeceased her mother).				

Ramlal Sahu, Lachhmau Lal Kishun Lal (Defendant 1)		Sahu, Sahu, (Plaintiff 1)				
(Plaintiff 4)				_____	Mahesh, Gopal Saran,	
(Plaintiff 2.) (Plaintiff 3.)					_____	

Gajadhar, Kesho, Mahabir						
(Defendant 2.) (Defendant 3.) (Defendant 4)						

2. The two brothers Nirmal and Tulsi were separate. Tulsi's son Jhari left considerable properties which were inherited by his widow Mt. Tetro Kuer. Jhari's daughter, Lachho Kuer, predeceased her mother, and on the death of Tetro Kuer on the 27th Chait 1301 the entire estate left by Jhari Sahu was inherited by his cousin Girdhari. The property in dispute in the present case, viz., Mauza Kuhri. was one of the properties belonging to Jhari Sahu which was inherited by Girdhari. It is the common cause of the parties that Girdhari and his sons and grandsons lived jointly and were members of a joint Hindu family. The plaintiffs

assert that they had some ancestral joint family property before Girdhari inherited his cousin's estate. The defendants, however, deny that there was any ancestral joint family property.

3. The plaintiffs' case is that Girdhari threw the properties inherited by him into the common stock and all the properties became the joint family properties of Girdhari and his sons and grandsons. On the 11th February 1919 Girdhari executed a deed of gift in respect of the 16-annas mukarrari interest in Mauza Kuhri and certain other properties in favour of Gajadhar, Kesho and Mahabir the sons of his eldest son Ram Lal Sahu. The plaintiffs allege that a dispute cropped up in the family on account of this gift. According to them the properties being joint family properties, Girdhari had no right to make the gift. They further allege that the defendant 1, Ram Lal Sahu, procured the deed of gift in the name of his sons on misrepresentation and that Girdhari executed the deed without knowing that he was executing a deed of gift.

4. However, according to the plaintiffs, the dispute between the different members of the family was settled and a deed of family arrangement was executed on the 13th July 1919, in which all the members of the family were parties, and by means of this family arrangement the deed of gift was practically cancelled and all the properties were divided amongst the three sons of Girdhari, 8-annas share being given to his eldest son Bam Lal and his three sons, 4-annas share to the plaintiff Lachhman Lal and his sons and the remaining 4-annas share to the plaintiff Kishun Lal. Provision was made for the maintenance of Mt. Manki Kuer, the widow of a predeceased son of Girdhari, and of Girdhari himself. The village in dispute, Mauza Kuhri was by this family arrangement given, 8 annas to the plaintiff 1 and his sons and 8 annas to the plaintiff 4. The plaintiffs allege that each party took possession of the properties separately allotted under this deed, but that the defendants dispossessed the plaintiffs from Mauza Kuhri and, at the instigation of the defendants, the tenants of the village made an application u/s 69, Bengal Tenancy Act, and upon an objection of the plaintiffs the price of the landlord's share of the produce was kept in deposit in the collectorate. The plaintiffs thereupon instituted the present suit for a declaration that the deed of gift was illegal, ineffective and void, and that the defendants were bound by the deed of family arrangement, and on a declaration of plaintiffs' title on the basis of the deed of family arrangement the plaintiffs prayed for recovery of possession of the village in dispute and for a declaration that they were entitled to the amount deposited in the collectorate as the price of the landlord's share of the produce in the case u/s 69, Bengal Tenancy Act, and for mesne profits and other reliefs.

5. The defendant 1 did not contest the suit. He was, however, examined as a witness for the plaintiff. The defendants 2-4 contested the suit on the allegation that the properties inherited by Girdhari Sahu from his cousin Jhari Sahu were his self-acquired and separate properties and they were never treated as joint family properties, that there was no misrepresentation or fraud in relation to the

deed of gift which was a valid document and in accordance with which these defendants took possession of the properties given to them; that the deed of family arrangement was vitiated by fraud and undue influence on the part of the sons of Girdhari, and that it was not a valid document, and that the plaintiffs acquired no title under it.

6. The learned Subordinate Judge found that; the deed of family arrangement was binding upon the plaintiffs as well as the defendants that it was a fair settlement of a bona fide dispute that had arisen in the family on account of the deed of gift, and that no fraud or undue influence had been proved in relation thereto. He further found that the deed of family arrangement had been acted upon by the parties and that the properties inherited by Girdhari from Jhari Sahu were thrown into the common stock and became the joint family properties of all the members of the family. He accordingly decreed the plaintiffs' suit.

7. The defendants 2-4 viz., the sons of Ram Lal Sahu have preferred the present appeal; but at the hearing the learned advocate for the appellants frankly admitted that so far as the defendant 2, Gajadhar, was concerned, he had no case, and he pressed the appeal on behalf of the defendants 3 and 4, Kesho and Mahabir, who were minors at the time of the execution of the deed of family arrangement.

8. The contentions raised on behalf of the appellants are:

That the properties inherited by Girdhari were his self-acquired properties and not the joint, family properties; that; Girdhari had full right to execute the deed of gift; that the deed of family arrangement was invalid inasmuch as there was no bona fide dispute; that the deed really amounted to a gift by Girdhari to his sons and grandsons on a revocation of the previous gift of the 11th February, 1919 and that Girdhari had no power to cancel the gift after he had once executed it; and lastly that if the deed of family arrangement goes, then the present suit of the plaintiffs was barred under Article 91, Schedule 1, Indian Limitation Act inasmuch as the suit was instituted more than three years after their knowledge of the deed of gift and no decree could be made for delivery of possession to the plaintiffs without the cancellation of the deed of gift.

9. The learned Subordinate Judge was of opinion that the principal question for decision in the suit was the one raised by issues 7 and 8, viz.

Is the deed of family arrangement, dated 13th July 1919, genuine, valid and binding on the defendants?

and

Did defendant 2 execute the deed of family arrangement under undue influence and fraud without knowledge of its contents?

10. He was of opinion that if it be proved that there was really a family dispute and a bona fide settlement of it by the deed of family arrangement then, apart

from the question as to whether the properties were the joint family properties or not, the deed of family arrangement must be upheld in the absence of any fraud or undue influence. In my opinion, this is the correct view to take in the circumstances of the present case.

11. It is contended that there was really no bona fide dispute, that the properties were the self-acquired properties of Girdhari and he had full right to dispose of them in any way he liked and that the gift to the sons of Ramlal might have given rise to some ill-feeling and the plaintiffs might have considered that they had a grievance against their father, but there was really no dispute and that, therefore, the family arrangement was not a valid arrangement binding upon the parties. Reference has been made to the deed itself, and it is argued that having regard to the recitals in the deed there could be no dispute in the family. Reliance is particularly placed upon para. 13 of the deed where it is stated that the executant 1, Girdhari, was the absolute proprietor of the properties and that he was fully competent to make the dispositions contained in the deed. It is argued that this amounts to the admission by all the parties that the properties were the absolute properties of Girdhari and not joint family properties, and that if that be so, then there could be no dispute in relation to the deed of gift which had been executed by Girdhari.

12. Now, on examining the deed of family arrangement as a whole, it is clear that all the members of the family treated the properties as joint family properties. In para. 2 of the deed it is stated that all the executants of the deed were joint in family and that besides the properties left by Jhari Sahu, the executants had other properties which were acquired out of the income of the properties left by Jhari Sahu. In para. 3, it is stated that) the joint family had no property before the properties left by Jhari Sahu devolved upon it meaning thereby that the properties of Jhari Sahu devolved upon Girdhari alone but upon the whole family. Again in the same para. 2, after reciting the deed of gift and the dispute which arose in consequence thereof it is stated that the executants made an arrangement and effected a partition of all the movable and immovable properties which up to that time belonged to the family of the executants, and then in para. 13, upon which reliance is placed on behalf of the appellants, although the executant 1, Girdhari, claims to be the absolute proprietor of the properties, yet in the same sentence it is stated that the properties "belonged to the family of the executants."

13. Whether the properties actually formed the joint family properties or not is a question which will be dealt with later on but there can be no doubt that there was a dispute amongst the members of the family as regards the validity of the deed of gift on the ground that the properties disposed of thereby were the joint family properties. That there was a dispute is evident, from the facts established in the present suit. It appears that on account of the dispute between the plaintiffs and the defendants the deed of gift was kept in safe custody with the plaintiffs' witness 13, Babu Rameshwar Prasad, a pleader at Gaya. He states that

he was informed that there was a dispute between Ramlal Sahu and Kishun Lal Sahu and that a deed of will was the subject-matter of the dispute, and he was asked to keep it in custody and to produce it when necessary. He went to their house and there he met Ramlal, Kishun Lal and their father Girdhari and Ramlal's son Gajadhar, and one Shashi Bhusan who was sitting there as a witness. The deed of gift was given to him by Gajadhar and he granted a receipt (Ex. G) which also recites the fact of the existence of the dispute. The deed of gift was produced by this witness in the present suit. The defendant Gajadhar, the son of Ramlal, in his deposition does not deny that there was a dispute. He merely says "I do not remember if on account of the deed of gift a dispute or quarrel arose in the family." It appears that there was an irrigation suit relating to the village Kuhri pending in the Court of the Subordinate Judge at the time of the gift, wherein Girdhari was the plaintiff and one Gobardhanlal was the defendant. After the execution of the gift the sons of Ramlal (present defendants 2--4) applied for substitution in the place of Girdhari, and it is alleged that Girdhari supported their application for substitution and the substitution was made. Thereupon the plaintiffs Lachhman and Kishun caused another petition to be filed by Girdhari to the effect that the previous application for substitution had not been filed at his instance and that he should continue as plaintiff, and an affidavit in support of it was filed in Court, and the result was that Girdhari continued as plaintiff and the sons of Ramlal were made defendants in the suit. It is clear, therefore, that there was a bona fide dispute which led to the execution of the deed of family arrangement.

14. But even assuming that there was no such dispute and, that, as argued by the learned advocate for the appellants there was only an ill feeling amongst the plaintiffs who considered themselves aggrieved on account of the execution of the deed of gift, it was competent for the members of the joint family to come to a settlement in order to preserve harmony amongst themselves and to prevent future disputes. It is not necessary to examine as to whether there was any substance in the claim made by the plaintiffs.

15. If there was a bona fide claim although it might turn out in the end that there was no substance in it, an arrangement come to by all the members of the family to settle that claim is a valid arrangement and will be binding upon all the parties concerned:

Stapilton v. Stapilton [1739] 1 Wh. & T.L.C. 234. *Williams v. Wilams* [1867] 2 Ch. 294, *Bhagwati Kuer v. Jagadam Sahay* AIR 1921 Pat 260. *Jagdam Sahay v. Rupnarain Mahton* AIR 1924 Pat 736, and *Khunni Lal v. Kunwar Gobind Krishna Narain* [1921] 33 All. 356.

16. I am, therefore, of opinion that the family arrangement was a valid arrangement and is binding upon all the parties to it.

17. It is next contended that so far as the defendants Kesho Lal and Mahabir are concerned, the deed was ineffective inasmuch as they were minors and their

father who acted as their guardian had no power to enter into the settlement on their behalf which was not to their benefit. In my opinion these two defendants were benefited by the settlement which had the effect of preventing disputes in the family and consequent litigation. The value of the share allotted to these defendants under the deed of family arrangement does not appear to be less than the value of the properties given to them under the gift. Moreover, in considering the question as to whether a deed of family arrangement is a valid deed, one has to consider the benefit to the family as a whole and not to the individual members thereof and there can be no doubt that the settlement was beneficial to the joint family.

18. Next, as to the contention that Girdhari had no power to cancel the gift after he had once executed it, it is true that Girdhari alone had no power to cancel it, but there was nothing to prevent the donees under the gift to come to a settlement with the plaintiffs who were disputing the validity of the gift. The donees were parties to the family arrangement and they were certainly bound by it. The learned advocate for the appellants has conceded that so far as Gajadhar was concerned he did execute the deed of family arrangement and was bound by it. But as regards the two minor defendants, Kesho and Mahabir who have now attained majority, it is contended that their father had no power to execute it on their behalf. I am of opinion that the father, as the natural guardian of the two minors, was fully competent to settle the dispute on their behalf, and as was observed by Lord Chelmsford in *Williams v. Williams* [1867] 2 Ch. 294, in considering whether there was sufficient consideration for the agreement, the Court will not be disposed to scan with much nicety the amount of the consideration.

19. The next point for consideration is as to whether the properties, inherited by Girdhari were thrown into the common stock and treated as joint family properties. It is clear upon the evidence in the present case that the properties were treated as joint family properties. The defendants contended that there was no ancestral property belonging to the family and there was no nucleus of joint family properties and that in the absence of any pre-existing joint family property there could be no blending of the properties acquired by Girdhari with the joint family properties. It is argued on behalf of the respondents that in order to constitute these self acquired properties as joint family properties it was not necessary that there should be a nucleus of joint family property. A separate or self-acquired property of a member of a joint family may become joint family property if it has been voluntarily thrown by him into the common stock with the intention of abandoning all separate claims upon it.

20. The question is, therefore, one of intention, and in this case there is clear evidence of such an intention on the part of Girdhari. Ex. 22(a) is a mortgage bond executed by one Ramlal Pahari on account of a loan advanced to him by Girdhari Sahu. Girdhari Sahu took this bond in the name of his son Ramlal Sahu. The plaint in the suit instituted to enforce this mortgage bond is Ex. 13, and it

appears that not only Ramlal, but Girdhari and all his other sons and grandsons were made plaintiffs and in para. 1 of the plaint it is stated that the plaintiffs were the mortgagees and that although the mortgage was executed in the name of Ramlal alone, all the plaintiffs had a right to the money advanced. A decree was obtained on the basis of this mortgage and the mortgaged properties were sold. The decree was, however, not satisfied and for the balance another mortgage-bond was taken which is Ex. 22. This bond, which is dated the 18th March 1918, i.e., before the date of the gift, was taken in the name of Girdhari and his three sons Ramlal, Lachhumanlal and Kishanlal. By the family arrangement this bond (Ex. 22) was allotted to the share of Ramlal and his sons, and a suit was instituted on the basis thereof by Ramlal (Ex. 13(a) is the plaint). This shows a clear intention on the part of Girdhari of throwing the properties into the common stock.

21. It further appears that Girdhari opened four shops, one was a cloth shop standing in the names of Kishunlal and Gajadhar, another was a Pathri shop standing in the name of Kishunlal alone, the third was a silver and gold shop standing in the name of Lachhumanlal alone, and the fourth was a shop for selling utensils and it stood in the name of Lachhumanlal and Maheshlal. The sons of Girdhari managed these shops. Kishnnlal in his evidence states that Girdhari and Ramlal managed the cloth shop, he himself worked in the Pathri shop and later in the cloth shop, Lachhuman worked in the silver and gold shop, and Maheshlal in the utensil shop, and that all the shops belonged to the joint family. In para 8 of the deed of family arrangement these shops are mentioned, and there is no denial of this fact on the part of the defendants.

22. It is contended on behalf of the respondents that, even if the capital for these shops was advanced by Girdhari out of his separate funds, on account of the fact that the sons managed these shops and worked therein and by their labour and exertion helped to carry on the shop the income from these shops must be treated as joint "family income, and reliance is placed upon *Bampershad Tewarry v. Sheochurn Doss* [1864] 10 M.I.A. 490 and *Haridas Narayandas Bhatia Vs. Devkuvarbai Mulji*, . There is good deal of substance in this contention and upon the evidence I am inclined to hold that even if the properties acquired by Girdhari were his separate and self-acquired properties the income from the shops must be considered as income of the joint family, and as it is admitted on behalf of the defendants that there was blending of the income from these shop with the income from the properties inherited by Girdhari there was a clear intention of treating those properties as joint family properties *Rajani kanta Pal v. Jagamohan Pal* AIR 1923 P.C. The evidence leaves no doubt in my mind that all the members of the family treated all the properties as joint family properties and there was no intention on the part of Girdhari to keep his self-acquired properties as his separate properties. If the properties were treated as joint family properties then the deed of gift was void and the question of limitation under Article 91, Indian Limitation Act, does not arise.

23. Next, there is clear evidence that the deed of family arrangement was acted upon by all the parties concerned, Manki Kuer was registered in respect of the house given to her for her maintenance. Ramlal executed a deed of sale (Ex. 1) in respect of one of the properties allotted to him and the deed of family arrangement is referred to therein. Gajadhar executed a bazidava (Ex. 2) in respect of the same house in favour of the purchaser and the deed of family arrangement is referred to therein also. Ratnlal executed a deed of are (Ex. 3) in respect of another property he got under the family arrangement and there it is clearly recited that the properties acquired by "Girdhari were the joint family properties and that the property covered by the deed of are was given to him under the partition effected by the deed of family arrangement. The title deeds of the parties allotted to the different members appear to have been made over to them, and there can be no doubt that all the parties to the deed of family arrangement accepted the same as valid and binding upon them and acted in accordance therewith,

24. Having regard to all the circumstances of the case and the evidence on the record am clearly of opinion that the decree of the learned Subordinate Judge is correct and that the plaintiffs are entitled to a declaration of their title in respect of the village in dispute and to the other reliefs granted to them.

25. This appeal is dismissed with costs.

Ross, J.

I agree.