

(2004) 03 RAJ CK 0015
In the Rajasthan High Court
Case No : Civil First Appeal No. 46 of 2000

Gopi Chand

APPELLANT

Vs

Bhonri Lal and Another

RESPONDENT

Date of Decision : 04-03-2004

Acts Referred:

Citation : (2004) 3 RLW 1365 : (2004) 2 WLC 673

Hon'ble Judges : A.C. Goyal, J

Bench : Single Bench

Advocate : Resham Bhargawa, for the Appellant; G.P. Kaushik, for the Respondent

Final Decision : Dismissed

Judgement

A.C. Goyal, J.—This appeal by the appellant-defendant No. 2 has been filed against the judgment dated 18.12.1993 whereby the learned District Judge, Jaipur District, Jaipur passed a preliminary decree of partition of one joint shop.

2. The relevant facts for disposal of this appeal are that the plaintiff-respondent No. 1 filed a civil suit for partition of one shop against his two brothers Gyarsi Lal and Gopi Chand with the averments that the suit shop as described in para 1 of the plaint was jointly purchased by all the three brothers vide a registered sale deed dated 17.12.1969 for a consideration of Rs. 3,901/-. Thereafter, the shop was repaired with constructions over first and second floor. The plaintiff asked the defendants for partition of the shop on 20.2.1993 and also served a notice dated 22.2.1993 by registered post but with no result. Hence the suit with prayer for 1/3rd portion of the shop.

3. The defendant No. 1 Sh. Gyarsi Lal in his written statement admitted the prayer made by the plaintiff. The defendant No. 2- the appellant while denying the allegations of the plaint pleaded that they are four brothers and a partition took place between them in "Miti-jet-sudi 10 Samwat 2025" (in the year 1968). This shop was purchased only by the defendant No. 2 three or four months after

the partition between them. The stamps were purchased in his name but the plaintiff being the eldest brother approached the office of the Sub-Registrar for registration of the sale deed and got the registration of the sale deed in favour of all the three brothers. On coming to know of this fact the defendant No. 2 raised an objection but the plaintiff told him that he would remain owner of the shop and the sale deed has got been registered in the name of all the three brothers only to keep family's reputation intact. It was also pleaded that all the expenses in the repair and construction of the shop were incurred by the defendant No. 2.

4. On the basis of the pleadings of the parties following issues were framed.

1? vk;k m?rjokn ds [k.M la[;k&1 ds vuqlkj izfroknh uEcj &2 us oknxzLr IEifr ?; dh o oknh o izfroknh la[;k &1 dk uke fo?; i= fnukaad %17-12-69 ea xyr ntZ djf fy;k x;k A

2? vk;k oknh o izfroknhx.k us lfEefyr :i ls okn i= ds [k.M la[;k &1 eaas of.kZr IEifr ij okn i= ds [k.M la[;k &2 esa of.kgzr rkehjkr djok;h A

3? vk;k okn oknh mRrjokn ds [k.M la[;k&7 esa of.kZr dkj.k ls fe;kn ckgj gS A

4? vk;k oknh fcjnhpUn vko";d i{kdkj gS A

5? vk;k oknh dk oknxzLr IEifr esa ,d frgkbZ fgLlk gS A

6?nknjlh A

5. Evidence was recorded and vide impugned judgment the learned District Judge held that all the three brothers were the joint owners of the suit shop. Hence, declaring 1/3rd share of the plaintiff passed a preliminary decree of partition.

6. I have heard learned counsel for the parties. On the basis of the submissions made before this Court, following points arise for consideration.

(i) Whether the plaintiff and both the defendants were joint owners or the appellant-defendant No. 2 alone was the owner of the suit property.

(ii) Whether the suit was within limitation.

7. It is not in dispute that registered sale deed Ex.A1 dated 17.12.1969 is in the name of all the three brothers. According to the statement of the plaintiff Sh. Bhonri Lal this shop was jointly purchased by all the three brothers and all of them got the shops repaired with new constructions. In cross-examination, he admitted this fact that stamps of Ex.A1 were purchased in the name of the appellant-defendant and it was also admitted that he did not file any bills with regard to expenses in construction over the shop and that the appellant-defendant was carrying on his business in the suit shop. He pleaded ignorance about the facts that light and water connections in the shop are in the name of the appellant-defendant. It was also admitted by him that he was eldest brother and the defendant-appellant had faith in him but he denied the suggestion that when their brother Birdhi Chand was separated, all of them started living

separately. P.W.3 Gopal-son-in-law of the plaintiff and P.W.4 Hari Narayan are the attesting witnesses of the sale deed Ex.A1. While supporting P.W.1, they stated that this shop was jointly purchased by all the three brothers P.W.2 Sh. Ganga Ram supported the plaintiff's statement with regard to repair and construction of the shop by all the three brothers. The defendant-appellant Sh. Gopi Chand of course stated before the trial court that a partition took place between them all the four brothers in Samwat 2025 and in partition a sum of Rs. 4,000/- was given to him as his share and this shop was purchased by him out of this money. He made the payment of the price of the shop to Sh. Baksh and since the purchase he is occupying this shop by carrying on his business in the suit shop. D.W.2 another defendant Sh. Gyarsi Lal has supported the plaintiff's case. D.W.3 Sh. Ram Gopal, D.W.4 Sh. Ganga Ram and D.W.5 Sh. Sanwarmal stated that this shop is in possession of the defendant Sh. Gopi Chand for last about 30 years and it was Gopi Chand who got the shop repaired with new constructions over it.

8. Learned counsel for the appellant submitted that the plaintiff was the eldest brother and he himself admits that the appellant-defendant had faith in him; that stamps of Ex.A1 were purchased in the name of the appellant; that there are no pleadings as well as evidence regarding contributions of the plaintiff as well as the defendant No. 1 Sh. Gyarsi Lal in making the payments of the sale price and expenses incurred in repair and new constructions; that the shop throughout was in possession of the appellant; that the licenses to carry on business, water and light connections and bills, all are in the name of the appellant; that prior to 1993 as pleaded by the plaintiff himself both the plaintiff and the defendant No. 1 never made any attempt to exercise their rights as owner; that Ex.A20 notice was given by Gram Panchayat, Goner on 12.8.1983 only to the appellant for removal of his unauthorized possession over public way and thus all these facts go to show that the shop was purchased only by the appellant and this shop cannot be taken to be in the joint ownership of all the three brothers only on the ground that the sale deed was got registered in the name of all the three brothers. Per contra learned counsel for the respondents contended that the learned trial Judge having considered the entire evidence rightly held that the suit shop belongs to all the three brothers and there is no reason to interfere with the said findings.

9. I have considered the rival submissions. The submissions made by learned counsel for the appellant, though prima facie appear to be attractive but all the circumstances taken together by themselves are not sufficient to set aside the decision of the trial court. A careful consideration of the entire evidence goes to show that all the three brothers were rightly held to be the joint owners of the suit shop. According to the statement of the appellant this sale deed was executed in his absence and after about two and half years of the execution of the sale deed he came to know that this sale deed was got registered by the plaintiff in the name of all the three brothers. On further cross-examination, he stated that sale deed Ex.A1 was given to him after a period of five years of its execution and then he read it over and came to know. Thus, two versions of the

appellant are self contradictory. Assuming that he came to know about this sale deed after a period of five years i.e. 1974, there appears no good reason as to why he kept mum for such a long period. The explanation given by the appellant is that when he came to know that the sale deed is in the name of all the three brothers, he raised the objection but the plaintiff told him that he would continue to be the owner of the suit shop and only to intact the reputation of the family, all the three names were got entered in the sale deed. Another explanation given by him in cross-examination is that on non-delivery of the sale deed to him by the plaintiff for a period of five years he did not raise any objection because all the three brothers having much affection with each other and in the next breath he stated that although he made a demand for delivery of the sale deed but Bhonri Lal did not do so. On the question of the payment of the sale price the appellant stated that a sum of Rs. 3,900/- as sale price was already paid by him to Sh. Baksh-the seller. This oral statement is contrary to the contents of the sale deed wherein it is mentioned that a sum of Rs. 401/- was received by the seller from the purchasers at the time of the execution of this document while the remaining amount of Rs. 3,500/- was paid to the seller by the purchasers at the time of the registration of the sale deed in presence of the Sub-Registrar. It is also significant to say here that before filing the present suit, the plaintiff served a notice by registered post. The appellant-defendant in his written statement admitted this notice with a plea that he gave a reply of this notice, while in his statement he admitted this fact that he did not give any reply of the notice of the plaintiff. It is also significant to say here that no documentary evidence with regard to expenses incurred in repair of the shop with new constructions has been produced by either party. According to the statement of the appellant he maintains the account book but he did not produce the account books with regard to payment of the sale price and expenses incurred in repair and constructions. There is one more important fact that according to the written statement of the appellant the partition in between all the brothers took place in the year 1968 while contrary to it he admitted in cross-examination that the plaintiff and both the defendants were living jointly till June, 1969. Merely the light and water connections are in the name of the appellant and licenses to carry on the business being in the name of the appellant are not by themselves sufficient to hold that it was the appellant who was the sole owner of this shop. The notice Ex.A20 is also not relevant to hold that the appellant alone purchased the shop and he was carrying on his business in the shop only as a sole owner of this shop. Mere possession of the appellant in the shop and carrying on business is not by itself sufficient to hold that the appellant was and is sole owner of this shop. He admitted this fact that he did not made any entry in his account books with regard to purchase of the shop or expenses in repair and constructions over the shop while according to his own statement he incurred expenditure of rupees about 1,50,000/- in new construction of the shop.

10. Thus, in view of the entire discussion made hereinabove, the decision of the trial court on the first point does not call for any interference. Learned counsel

for the appellant contended that the appellant was in possession of the shop for a period of more than 22 years at the time of filing the suit hence, the suit was beyond limitation. This contention was also rightly rejected by the learned trial court because this property being in the joint ownership, every co-owner has a right to demand partition and the cause of action arose when the other co-owners did not agree to partition. It is not in dispute that the plaintiff vide registered notice dated 22.2.1993 made a demand for partition but the defendants did not agree, hence the suit was filed in March, 1993 which was well within limitation.

11. Consequently, this appeal is hereby dismissed with no order as to costs.