

(2007) 05 AHC CK 0159
In the Allahabad High Court
Case No : Second Appeal No. 903 of 1973

Jagannath Prasad (Dead) Through L.Rs.and another	APPELLANT
Vs	
Shyama Prasad (Dead) Through L.Rs.and others	RESPONDENT

Date of Decision : 08-05-2007

Acts Referred:

Citation : (2007) 05 AHC CK 0159

Hon'ble Judges : S.P.Mehrotra, J

Judgement

S.P. Mehrotra, J.—List has been revised.

2. Sri S.K. Rai holding brief for Sri Sankatha Rai, learned Counsel for the defendantsappellants is present.

3. A perusal of the Office Report dated 20th April, 2007 shows that the Substitution Application filed consequent to the deaths of the defendantsappellants No. 1 and 2, as also the deaths of the respondent Nos. 1/1, 1/2, 2 and 8 have already been allowed, and the necessary amendments have been made in the memorandum of Second Appeal.

4. As the Second Appeal is an old one being of the year 1973, the Court is proceeding to pass appropriate order on merits of the case.

5. It appears that Shyama Prasad (plaintiffrespondent No. 1) filed a suit for partition of his 1/3 share in respect of certain properties mentioned in the said suit (namely, Joint House No. 53/68 and joint Khandhar No. S 2/101, situate in Mohallah Orderly Bazar, Varanasi), and also for recovery of Rs. 207.8 paise being the 2/3 proportionate amount of the decretal amount of the Execution Case No. 143 of 1959 of the Court of City Munsif, Varanasi from the defendants.

6. The said suit was registered as Original Suit No. 478 of 1962..

7. Two sets of the defendants in the said suit filed their written statements.

8. The defendant Nos. 1 to 4 in the said suit, interalia, alleged that besides

property Nos. S 3/68 and S 2/101, Premises Nos. S 2 /235A, S 3/65, 66 and 67 were joint family properties having been acquired from joint family funds; and that the suit was barred by Articles 142 and 144 of the Indian Limitation Act.

9. The defendant Nos. 5 to 7 in the said suit, interalia, alleged that separation in the family took place after the death of Sheolal in 1927; and that Premises No. S 3/68 was partitioned along with moveable including ornaments etc.; and that only S 2/101 was joint property; and that House No. S 2/235A was the separate property of the plaintiff (Shyama Prasad).

10. The Trial Court framed several issues.

11. The parties led evidence in support of their respective cases.

12. By the judgment and order dated 23.12.1970, the Trial Court decreed the said suit filed by Shyama Prasad (plaintiffrespondent No. 1), and directed for preparation of preliminary decree accordingly.

13. The Trial Court, interalia, held that House No. S 2/235A, belonged exclusively to the plaintiff's wife Smt. Barsati Devi; and that Houses Nos. S 3/65, S3/66 and S 3/67 were purchased in 1947 and 1951 after separation between the parties, and the same belonged to Lakshman Prasad, and thereafter, the defendants No. 5 to 7 were the sole owners of these houses.

14. It was, interalia, further held that the Houses in dispute, namely, House Nos. S 3/68 and S 2/101, situate in Mohallah Orderly Bazar, Varanasi City were joint ancestral properties.

15. It was, interalia, further held that the suit was not bad for partial partition, and that the suit was not barred by Articles 142 and 144 of the Indian Limitation Act.

16. The Trial Court further found that the plaintiff was entitled to 1/3rd share in the decrial amount of the Execution Case.

17. Against the said judgment and preliminary decree passed by the Trial Court, the defendants Nos. 1 and 2 only filed Appeal being Civil Appeal No. 136 of 1971.

18. The Lower Appellate Court by its judgment and order dated 30th November, 1972 dismissed the said Civil Appeal No. 136 of 1971.

19. The Lower Appellate Court, interalia, agreed with the finding recorded by the Trial Court that House No. S 2/235A was not joint family property.

20. The Lower Appellate Court rejected the plea of the defendants Nos. 1 and 2 that Houses Nos. S 3/65, S 3/66 and S 3/67 were joint family property, thereby confirming the finding recorded by the Trial Court on the said question.

21. The Lower Appellate Court further agreed with the finding of the Trial Court that the suit was not bad for partial partition.

22. Again, the Lower Appellate Court agreed with the finding of the Trial Court that the...said Shyama Prasad (plaintiffrespondent No. 1) was entitled to receive 2/3rd share in the decretal amount of the Execution Case.

23. Thereafter, the defendants Nos. 1 and 2 filed the present Second Appeal.

24. As noted above, various parties to the Second Appeal expired during the pendency of the Second Appeal, and necessary substitution has already been made.

25. I have heard Sri S.K. Rai holding brief for Sri Sankatha Rai, learned Counsel for the defendantsappellants and perused the record.

26. It is submitted by Sri S.K. Rai that the findings recorded by the Courts below on various questions are erroneous.

27. Having considered the submission made by Sri S.K. Rai, I find myself unable to accept the same.

28. In my opinion, the Courts below have recorded findings of fact on various questions after consideration of the entire material on record. No illegality or perversity has been shown to have been committed by the Courts below in recording the said findings.

29. The Second Appeal is thus concluded by the findings of fact, and is liable to be dismissed with costs.

30. The Second Appeal is, accordingly, dismissed with costs.