
(1914) 07 CAL CK 0004

In the Calcutta High Court

Case No : Appeal From Original Decree No. 413 of 1912

Januki Persad Jha and Others

APPELLANT

Vs

Babu Lal Jha and Others

RESPONDENT

Date of Decision : 20-07-1914

Acts Referred:

Citation : (1914) 07 CAL CK 0004

Judgement

1. This is a partition suit brought by the Plaintiffs against their uncles, Defendants Nos. 1 and 2, and their descendants who are Defendants Nos. 3--10. Joyram Dutt, the grandfather, died in 1295, leaving three sons Babulal, Surjee and Dinobandhu. These, three brothers remained joint up to about 1302, when they separated in mess, and the income of the family properties which remained joint used to be divided in three equal shares. In this state of things Surjee died about 1308 leaving four sons who are the Plaintiffs. Of these, Plaintiffs Nos. 1 and 2 have attained majority and the other Plaintiffs are minors. So far the facts may be taken as established. The Plaintiffs state that on the death of their father the family properties remained in charge of their uncles, Defendants Nos. 1 and 2, who used to pay them small amounts for the bare necessities of life and were therefore liable to render accounts for the period subsequent to the death of their father. Barring the question of accountability which he denies, Defendant No. 2 more or less supports the case of the Plaintiffs. Defendants Nos. 1, 3 and 4 really oppose the suit. They say that property No. 2 being the zamindari interest in 5 as. 4 ps. thereof was acquired by Defendant No. 1 with his own money in the name of his father and the mokarari of 10 as. 8 ps. in his own name; that he has been recorded in the settlement records as the proprietor and mokararidar and the suit is barred by limitation under Regulation III of 1872 in respect of this property and properties Nos. 5 and 8. They say that Defendant No. 1 had no objection to divide property No. 2 at the time of the partition, but the father of the Plaintiffs and Defendant No. 2 gave up their share and took the whole of property No. 7 instead. They repudiate their accountability and claims contribution to some debts alleged to be due from the family.

2. The learned Subordinate Judge has held that the suit for properties Nos. 2, 5 and 8 is barred by the provisions of Regulation III of 1872 : he has decreed partition of the other properties and dismissed the claim for accounts : he has also made the Plaintiffs liable to pay 1/3rd share in certain debts. It is contended in appeal before us :--

(1) That the Defendants who plead the Regulation in bar of the suit have not proved that the notices required by the Regulation were duly served and cannot therefore invoke the aid of the Regulation :

(2) That the notices required, by the Regulation could not even if served affect the minors who could not in law be considered as cognizant of any proceedings taken :

(3) That the Plaintiffs were minors when the record-of-rights was made and the Defendant No. 1 who was then the karta of the family was recorded as such karta and the Regulation does not bar the present suit :

(4) That the orchard in Mauza Rouga which was added at the instance of the Defendants as joint property should have been included in the decree :

(5) That if Defendants' case as to properties Nos. 2, 5 and 8 was allowed, the share of the Plaintiffs in property No. 7 should have been ? instead of 1/3rd :

(6) That the Defendants should have been held to be accountable since the death of the Plaintiffs' father :

(7) That the debts incurred after partition should not have been thrown upon the Plaintiffs:

(8) That the expenses of the sradh should not have been divided equally in the absence of a contract to bear the same in equal shares.

3. The first three questions raised by the Appellants would have been of great force if it were not for the peculiar provisions of Regulation III of 1872. The policy of this Regulation was to have a complete record-of-rights and interests in land in the Sonthal Parganas and to exclude the jurisdiction of Civil Courts except in certain matters. Sec. 5 lays down that from the date on which the commencement of a settlement is notified to the date on which the settlement is notified as completed no suit will lie in the Civil Court in regard to any land or any interest in or arising out of land, etc. Sec. 14 lays down that a general notice would be given to the people of the village so that all persons interested may bring forward their claim and the Settlement Officer would enquire into, settle and record all rights in or claims to the lands of a village even if no one appears to urge his claim. Sec. 11 is that except as provided in sec. 25A no suit shall lie in any Civil Court regarding any matter decided by. any Settlement Court under these rules : but the decisions and orders of the Settlement Courts under these" rules regarding the interests and rights above mentioned shall have the force of a decree of Court. Sec. 25 lays down that after the expiry of 6 months from the

date of the publication of the record-of-rights of any village, such record shall be conclusive proof of the rights and customs recorded except rights mentioned in sec. 25A, etc., and then sec. 25A says "Where only the rights of zamindars and other proprietors as between themselves are concerned, a suit may unless it is barred by sec. 13 of the CPC be brought in a Court established under the Bengal Civil Courts Act of 1887 to contest the record within three years of the date of the publication of the record-of-rights. But no such suit shall be brought in any Court after the expiration of three years from that date. This being the nature of the restrictions on the jurisdiction of the ordinary Civil Court this suit so far as it is regarding the proprietary rights in property No. 2 is barred by limitation. It is true that the general Limitation Act is applicable to the Sonthal Parganas, but sec. 29, Act IX of 1908, saves all provisions of local laws as to limitation and does not therefore affect the three years" rule under sec. 25A, Regulation III of 1872. This Regulation does not make any exception in favour of minors and the minority provisions of the general Limitation Act have reference to the periods of limitation prescribed in that Act. The Settlement Officer is supposed to investigate all sorts of claims whether preferred to him or not and although it seems to be against all principles of justice and equity that the claims of minors and others who are supposed not to know their interests should be finally settled in their absence and although it is impossible for any man, however intelligent and efficient he may be, to know of all kinds of claims that may be made by all kinds of men, known and unknown, sane and insane, major and minor, the Settlement Officer is required to investigate, decide and record his decisions on such claims and the record is conclusive evidence. There is the law, and we have to administer it as we find it and leave it to the party aggrieved to bring his grievances to the notice of the Local Government which is the only authority that can mend matters.

4. It has been argued that the record may at best operate as a decree of a Civil Court under sec. 11 of the Regulation and therefore minors who are not parties cannot be bound. The analogy, however, must be subject to the restrictions under the Regulation and we have seen that the Regulation makes no exception in favour of minors and the notice is to the people of the village irrespective of age or intelligence. As the law makes the record-of-rights conclusive proof of the rights and interests therein recorded and the record is in evidence in favour of Defendant No. 1 he could hardly be called upon to prove the service of the required notices. In this view of the case the first three grounds fail. The claim for properties Nos. 5 and 8 also fails on the same grounds.

5. The Defendants pleaded that the orchard in Mauza Rouga had not been included in the claim and the suit was therefore defective and liable to dismissal. This property was accordingly added to the plaint and has been left out of the decree by mistake. This property will be considered as one of the properties to be divided into three equal parts--one part to be allotted to the Plaintiffs.

6. As the property No. 7 stands in the names of Surjee and Dinobandhu and the

patta was given to them and as the contending Defendants admit that they have no share in the same, it may be allotted, half to Plaintiffs and half to Dinobandhu.

7. Admittedly the parties had been dividing the profits of the family properties up to 1308. We do not think it is made out that the Defendants did not go on making over Plaintiffs' share. The Plaintiffs say that they did not get the whole of the income in their share. We do not think that this is established.

8. Upon the admitted facts the parties are not the members of a joint family and the Defendants are found not to have been managers on behalf of the Plaintiffs. If they paid any joint debts they may sue for contribution. That is a separate cause of action and cannot be decreed as a counter-claim in a suit which is one for partition by metes and bounds of lands held in common, but not as joint family property.

9. As regards the expenses of the *sradh*, there is no sufficient evidence of a contract by the Plaintiffs to pay one-third share. They paid what they could and in the absence of such a contract the Defendants cannot compel them to pay an equal share with themselves. Taking into consideration the circumstances of the case and the success and failure of their respective claims, We think that each party should bear his own costs in both Courts. The decree of the Court below is accordingly modified.