
(1956) 03 AHC CK 0022

In the Allahabad High Court

Case No : Letters Patent Appeal No. 23 of 1950

Junnoo Singh

APPELLANT

Vs

Ram Narain Singh and Others

RESPONDENT

Date of Decision : 30-03-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1956 All 580

Hon'ble Judges : Desai, J; Agarwala, J

Bench : Division Bench

Advocate : A.P. Pandey, for the Appellant; Kedar Nath Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Agarwala, J.—This is a special appeal against an order of a learned single judge of this court dismissing a second appeal.

2. The facts of the case, briefly stated, are as follows. One Smt. Rajpatti and certain other persons executed a sale deed of certain zamindari property on 25-11-1943 in favour of Jhunnoo Singh appellant. Lalta Singh plaintiff who is now dead and is represented by respondents 1 and 2 instituted a suit for pre-emption of the property conveyed by the sale deed. He impleaded Munnoo Singh brother of Jhunnoo Singh as a defendant in the suit.

It was alleged in the plaint that the sale had taken place in favour of Munnu Singh. Jhunnoo Singh was not impleaded in the suit. There was no allegation in the plaint that Jhunnoo Singh was merely a benamidar for Munnu Singh or that Munnoo Singh was the karta of the joint Hindu family of which Jhunnoo Singh was a junior member. In the plaint it was alleged that the sale consideration was much smaller than that shown in the sale deed.

3. Munnoo Singh contested the suit. He did not contest the allegation that he was the transferee of the property but he alleged that the consideration shown in the sale deed was true and that the sale had taken place with Lalta Singh's

consent and that therefore the suit was barred by the principle of estoppel. In spite of the contest raised by Munnoo Singh the suit was decreed. When Lalta Singh executed his decree for being put in possession of the property, he was resisted by Jhunnoo Singh who claimed that he had purchased the property and Munnoo Singh had nothing to do with it.

Thereupon Lalta Singh instituted the suits which has given rise to this appeal against Jhunnoo Singh, Munnoo Singh and three other persons and it was alleged that all these persons were members of a joint Hindu family of which Munnoo Singh was the karta, that the sale deed though taken in the name of Jhunnoo Singh was really in favour of the entire joint family and that in the previous suit Munnoo Singh represented the joint family, and that all members of the joint family were bound by the decision of the suit. The relief claimed was for a declaration that the defendants were bound by the decree passed in the pre-emption suit.

4. Jhunnoo Singh contested the suit on the ground that he was not a member of the joint Hindu family but was separate from it and that in any case the sale in question was a separate acquisition. The learned Munsif held that although the family was joint the sale in question was a separate acquisition of Jhunnoo Singh, and dismissed the suit.

5. On appeal the lower appellate court held that the sale was for the benefit of the joint family, that Munnoo Singh as Karta represented the whole family in the pre-emption suit and that the whole family was bound by the result of the pre-emption suit. He therefore allowed the appeal and decreed the plaintiff's suit. Jhunnoo Singh then came up to this Court in second appeal which was dismissed, as already stated, by the learned single Judge.

6. Before the learned Single Judge several points were raised. It was urged that the suit was barred by Section 47, Civil Procedure Code. The learned single judge held that it was not so barred firstly because Jhunnoo Singh's name did not appear in the decree in the array of parties and secondly because an objection u/s 47 could be treated as a suit, the intention of law being that a decision must be given on the merits. Then it was urged that the family was not joint.

The learned Judge held that this point was concluded by a finding of fact of both the courts below and could not be challenged in second appeal. Yet another point urged before the learned single Judge was that Jhunnoo Singh did not acquire the property for the benefit of the family but for his own personal benefit. The learned Judge held that this point also was covered by a finding of fact of the lower appellate court. He further observed that there was no reliable evidence to show that Jhunnoo Singh had any separate property of his own with which he could pay the sale consideration.

Lastly it was urged that the decree was not binding on the defendants as Munnoo Singh was not impleaded in the suit as representing the joint family. The learned Judge overruled this contention on the ground that since Munnoo Singh was the

karta it was necessary to state in the plaint that he was karta and that since Munnoo Singh resisted the suit in the interests of the joint family, the joint family must be deemed to be bound by the decision of the suit.

7. In this special appeal only two points have been urged before us namely that the suit was barred by Section 47, CPC and that the decree of the pre-emption suit was not binding on the appellant.

8. Section 47, Civil P. C. provides that "All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit."

9. The section applies only when two conditions are fulfilled, first, that a point in dispute has arisen between the parties to the suit and, second that the question relates to the execution, discharge or satisfaction of the decree. When these two conditions are fulfilled the question raised must be determined by the court executing the decree and not by a separate suit.

10. A party to a suit ordinarily means a person who is on the record of the suit as a party named in the suit. A person may be bound by the result of a suit, though he is not arrayed as a party in the suit. Such is the case when a person sues or is sued in a representative capacity. Then he represents those on whose behalf he sues or is being sued and those so represented in the suit by their representative are bound by the result of the suit. Section 11, Civil P. C. read with Explanation 6 makes this clear.

11. Does that mean, however, that parties so represented are parties to the suit within the meaning of section 47? Judicial opinion on this point is divided.

12. In *Raghubar Dayal Vs. Bibi Kulsumunnissa*, , it was held by Allsop, J., of this court that though for the purposes of Section 11 a minor member of a joint Hindu family not impleaded in the suit might be bound by the decision in the suit, he would not be considered as a party to the suit for" the purposes of Section 47.

13. In *A. Narayanan Nambudri Vs. Puthisseri Theva Amma and Others*, , a decree was obtained against a Karnavan of a tarwad. In execution of the decree certain moveables were attached on the ground that the property belonged to them separately. Anantakrishna Ayyar J., observed that:-

"The circumstance that a money decree obtained against the tarvad karnavan as such is binding on all the members of the tarvad does not make the other members parties to the suit It appears to me that it does not follow that because a decision is binding upon a person, therefore, he must be taken to be a party to the suit. Prima facie only those are parties to the suit within the meaning of Section 47, Civil P. C. whose names appear in the decree.

If any persons" name so appears then all questions raised by him relating to the

execution, etc., of the decree should be determined in the execution department and not by a separate suit. If his name does not appear, then the next Question is: were his interests (that is, those put forward by him) represented in the suit? He may have his own separate or private interests and he may have his common interests in the tarvad.

If only his common interests in the tarvad were represented then it seems to me that it is impossible to hold that his other interests (separated and private interests) should also be taken to have been represented in the suit, with the result that if in execution proceedings occasion arises for putting forward such separate and private interests, he should be treated not as a stranger qua such interests but as a party to the suit within the meaning of Section 47, Civil P. C.

It seems to me that in cases where such members were not eo nomini parties to the decree and where only the karnavan of the whole tarvad was sued as such the claims that might be put forward in the course of execution of such decree by the joint co-owner members or the tavazhi members aforesaid should not be dealt with as put forward by persons who are parties to the suit."

Phillips, C. J. put the matter thus:

"Where a person is an actual party to the suit), his rights in any other capacity must be deemed to be rights of a party to the suit and he must consequently come u/s 47. But when he is not an actual party, but is merely a constructive party represented by another, he can only be deemed to be a party or representative of a party in the capacity in respect of which he was represented. In any other capacity, more especially when such capacity is adverse to the person who represented him, he can in no sense be deemed to be a party to a decree or representative of a party".

14. The Full Bench ultimately held that an objection by a member of a tarvad that certain property belonged to him exclusively and was not liable to be sold in execution of a decree against the tarvad was not an objection u/s 47, Civil P. C.

15. In Lakshmana Chettiar by receiver A.L.V.R.S.T. Veerappa Chettiar Vs. Muthu Chellia Goundan by guardian Chinnappa Goundan alias Muthuswami Goundan and Another, , it was held:

"The question of the binding character of the debt as against other members of the joint family --at any rate if they are not sons or descendants of the judgment debtor could not be gone into execution proceedings."

On the other hand in Pandyappa Arasu Binnani Vs. Chennappa Hegde and Others, , Abdur Rahman J., held that--

"Where a karnavan of a Malabar tarvad is sued in his capacity as manager, the whole of the tarvad consisting of all its members, whether major or minor, should be held to have been sued and the decree consequently passed against all of

them. Therefore, the executing Court cannot be said to be going behind the decree if it holds an enquiry with the object of making other persons, whose names do not appear in the decree liable. This is really a matter of execution and falls within the purview of Section 47, Civil P. C."

16. The learned Judge adhered to the above view in Vankadari Somappa Vs. Chippagiri Nagi Reddy, .

17. It appears to me that when a decree is passed against a manager of a joint Hindu family the junior members of the joint family are constructively parties to the suit in so far as their interests as members of the joint family are concerned, but are not parties to the suit qua their personal interests. Consequently Section 47 can apply only to a dispute between the decree-holder and themselves when such dispute is raised by them in the capacity of members of the joint Hindu family, but cannot apply to a dispute raised by them in their individual capacity.

The prohibition contained in Section 47 against the decision of a dispute mentioned in the section by means of a separate suit cannot therefore apply to a dispute between the decree-holder and the junior members of a joint Hindu family who are not named in the suit, when they claim a personal right in the property and do not claim a right as members of the joint family which was represented in the suit through the karta of the family.

18. In the present case the dispute raised by Jhunnoo Singh was in his personal capacity.

19. The first contention raised by the appellant therefore fails.

The second contention of learned counsel for the appellant that the decree in the pre-emption suit was not binding on the appellant must also be rejected. It was found by the lower appellate court that the family was joint, that the property was acquired for the benefit of the joint family, that Munnoo Singh represented the joint family and that though it was not stated in the plaint that he was being sued as karta of the joint family, he in fact was the karta and resisted the suit in the interest of the joint family. On these facts it must be held that the decision in the previous suit is binding on the appellant (See Mayne's Hindu Law 11th Edition page 374 and the cases collected therein under foot note(v)).

20. There is therefore no force in this appeal and I would dismiss it with costs.

Desai, J.

21. I agree with the order proposed by my brother Agarwala. The appellant was not expressly a party to the suit. His objection that the property belonged to him and he was not bound by the decree itself shows that he did not consider himself to be party to the suit. In the face of that objection he could not be heard to say that the suit of the respondent was barred by Section 47.

22. If the property was owned by the joint Hindu family of which the appellant is a member the respondent was entitled to take possession of it in execution of

the decree. The appellant's contention is that the property was his self acquired property. The principle that a suit by a party, against whom a decree was passed in respect of certain property is barred by Section 47 even if he claims the property in a right other than that in which he had litigated the suit, cannot be extended to a person who, though he might be bound by the decree, was not expressly a party in the suit in which it was passed. The appellant, in respect of the right in which he claimed the property, was not represented by Munnu Singh defendant in the suit, he was, therefore, not a party to the suit and Section 47 did not bar the respondent's suit. BY THE COURT:

23. We dismiss this appeal with costs.