(1978) 07 MP CK 0003

In the Madhya Pradesh High Court

Case No : Civil Revision No. 269 of 1976

Kamalchandji Chauthmalji Jain and others APPELLANT

Vs

Chhaganlal Sadhawsa Jaiswal and others RESPONDENT

Date of Decision : 03-07-1978

Acts Referred:
Partition Act, 1893 — Section 4

Citation : (1980) ILR (MP) 607 : (1980) JLJ 472

Hon'ble Judges : A.P. Sen, C.J

Bench : Single Bench

Advocate : B.C. Verma, for the Appellant; R.P. Verma for non-applicant No. 1, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Sen, C.J.—In this revision, the short question involved is whether the valuation of the plaintiff''s share to be determined u/s 4 of the Partition Act, 1893, should be fixed on the basis of the market value as prevailing on the date of the suit or on the basis of the market value as prevailing on the date of offer.

2. In the instant case, the plaintiff Prabodhchandra brought the suit for partition of a dwelling house on 23-4-1960. On 27-11-1962 there was a consent decree passed defining the plaintiff''s share to be one half and demarcating the said share by a partition by metes and bounds. The plaintiff sold his half share to the present plaintiff Chhaganlal by a registered sale deed, dated 7-6 1967, for Rs. 34,301. The trial Court by its order dated 25-2-1971, rejected an application made by the plaintiff transferee Chhaganlal to draw up a final decree. He accordingly preferred Civil Revision No. 469 of 1971 (Smt. Rajkumari Bai and 6 others v. Chouthmal). This Court by its order dated 5-10 1974, set aside the order of the trial Court and directed it to draw up a final decree. While allowing the revision, the Court also allowed an application filed by the defendants Nos. 4, 5 and 6, Kamalchand, Kailaschand and Shikharchand, i. e., the other members of the erstwhile joint family, for exercising their option to purchase the plaintiff''s

share u/s 4 of the Partition Act. In compliance with the direction of this Court, the Civil Judge, Class II, Khandwa, by his order dated 16-1-1976, has held that the value of the plaintiff''s share has to be determined in relation to 28-8-1974, i.e., the date when the defendants expressed their desire to purchase the plaintiff''s share, observing--

The proper time and date for the determination of the value of the suit property to decide the defendants'' right of pre-emption would be the date when for the first time the defendants 4 to 6 expressed their willingness to purchase the share of the plaintiffs.

3. The view taken by the learned trial Judge accords with the trend of judicial opinion.

4. Section 4 of the Partition Act, 1893 reads:

4, Partition suit by transferee of share in dwelling house. -- (1) Where a share of a dwelling house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the Court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such share-holder, and may give all necessary and proper directions in that behalf.

(2) If in any case described in sub-section (1) two or more members of the family being such share holders severally undertake to buy such share, the Court shall follow the procedure prescribed by sub section (2) of the last foregoing section.

5. In Subal Chandra Modak v. Gostha Behari Das (1956) 60 C W N 829, it was held that the sale by the stranger to the co-sharer being in the nature of a forced sale, the valuation has to be fixed with great care and caution so as not to cause any hardship to the parties. There is nothing in section 4 from which it may be possible to draw an inference that the section restricts the discretion of the Court to fix the value of the plaintiff''s share with reference to the date of the institution of the suit. In Kashi Nath Bhatt and Others Vs. Atma Ram and Others, , it is observed:

The emphasis, on the other hand, which has been placed in section 4, is on the fixation of a fair value of the plaintiff''s share for which the defendant is to buy out the plaintiff''s interest in the property sought to be partitioned. This would be apparent from the use of the words ''in such manner as it thinks fit'' .... The purpose of section 4 is only to safeguard the defendants from a stranger being forced upon them into their dwelling house, and not to provide either party with an opportunity of unjust enrichment.

In Kashi Nath and others v. Atma Ram and others (supra), reference was made to an earlier Division Bench decision in Ilias Ahmed A I R 1917 All. 2, laying down that since section 4 involves statutory interference with the legal rights of the plaintiff, it is reasonable that it should be strictly construed so as to limit that interference. The clear import of the words "make a valuation of such share in such manner as it thinks fit" is that at the time of preparation of the final decree when the equities are to be adjusted, the value of the plaintiff''s share has to be fixed and while fixing the valuation the Court has to take into consideration the circumstances of each case, the conduct of the parties and other relevant factors which may be necessary in order to fix the valuation of the plaintiff''s share for which be may be forced to sell his share to the defendants. In Sumitra and another v. Dhannu and another 1949 N L J 333 : I L R (1949) Nag. 370. J. Sen, J. observed:

The land values had gone up during these six years. In the plaint, the plaintiff stated the value of the share at Rs. 30, presumably because he had purchased it at Rs. 30. That, however, was not the real market price of the share at the date of the institution of the suit.

In that case, the sale took place for Rs. 30 in the year 1937, whereas the suit was filed in 1943. With a view to do justice to the parties, His Lordship observed that the valuation has to be made so as to be fair both to the stranger purchaser as also to the co-sharer of the erstwhile undivided joint family. He accordingly fixed the market value of the suit property at Rs. 75 having regard to the rise in the land value in recent years. The decision in Sumitra and another v. Dhannu and another (supra) has been followed with approval by a Division Bench of the Orissa High Court in Bhikari Behera Vs. Dharmananda Natia and Others, .

6. Section 4 of the Partition Act does not speak of any date which is to be taken into consideration for fixing the valuation. The trend of judicial opinion, however, is that the valuation has to be fixed with great care and caution so as not to cause any hardship to the parties. The contention that section 4 refers to the market value as prevailing on the date of the suit has been repelled in Sumitra and another v. Dhannu and another (supra), Bhikari Behera v. Dharmananda Natia and others (supra), Subal Chandra Modak v. Gostha Behari Das (supra) and Kashi Nath and others v. Atma Ram and others (supra). In Kashi Nath and others v. Atma Ram and othtrs (supra) the Court has taken the date of the passing of the final decree, while in Lal Kejriwal and Others Vs. Bhawanath Jha, the Court has taken the date of exercise of option by a co-sharer to purchase the plaintiff''s share to be the date for valuation u/s 4 of the Partition Act.

7. Shri B. C. Verma, learned counsel for the applicants, with his usual fairness, has brought to my notice all the decisions on the point. He frankly concedes that the use of the words "make a valuation of such share in such manner as it thinks fit" in section 4 of the Partition Act leaves a discretion to the Court to adjust the equities, and while fixing the value of the plaintiff''s share, it may take into account the fact that the stranger purchaser Chhaganlal purchased the plaintiff''s share by registered sale-deed, dated 7-6-1967, for Rs. 34,301. The plaintiff''s share cannot therefore, be valued at less than Rs. 34,301 unless the condition of the house has deteriorated in the meanwhile. Conversely, that would not be the

value if there is an appreciation in value of property. The Court below will afford the parties an opportunity to adduce evidence as to the value of the plaintiff''s share on 28-8-1974, i. e., the date when the defendants made an offer to purchase his share, while taking into account the relevant factors.

8. With these directions, the revision fails and is dismissed. No order as to costs.

