
(1964) 07 OHC CK 0005
In the Orissa High Court
Case No : First Appeal No. 36 of 1962

Manu Biswal and Others

APPELLANT

Vs

Mst. Lata Biswalani and Others

RESPONDENT

Date of Decision : 27-07-1964

Acts Referred:

Evidence Act, 1872 — Section 114

Citation : AIR 1965 Ori 13 : (1965) 31 CLT 1074

Hon'ble Judges : S. Barman, J;G.K. Misra, J

Bench : Division Bench

Advocate : Raghunath Das, for the Appellant; A.K. Tripathy, for the Respondent

Final Decision : Dismissed

Judgement

Barman, J.—Defendants 1 to 4 are the appellants. The suit out of which this appeal arises was a suit for partition of joint family properties.

2. The parties are members of a family governed by Hindu Mitakshara Law. One Bhagaban Biswal had two sons Cheru and defendant No. 1 Manu. In Cheru's branch are his son defendant No. 5 Debadhi; plaintiff No. 1 Lata, wife of Debadhi, and plaintiff No. 2 Jayananda and plaintiff No. 3 Gayadhar who are the sons of Debidhi. In Manu's (defendant No. 1) branch are defendant No. 1 Manu himself; Manu's son defendant No. 3 Jugal and defendant No. 4 Gurucharan who are sons of defendant 2 Dolgobinda. The plaintiffs claim partition by metes and bounds in respect of A and B Sen. lands into two equal shares and allotment of one share to the plaintiffs and pro forma defendant No. 5. It is said that defendant No. 5 Debadhi had previously in 1959 filed a partition suit being T. S. No. 3 of 1959 against defendant No. 1 Manu Biswal in the Court of Munsif, Bonaigarh claiming one half share in the suit properties. In the said suit Defendant No. 1 Manu Biswal had taken a plea that defendant No. 5 Debadhi had been adopted by his (Debadhi's) maternal grandfather Mahan Sahu. The plaintiffs' case is that defendant No. 1 Manu Biswal in the previous partition suit got defendant No. 5 Debadhi intoxicated and fraudulently made him enter into a

compromise giving up his right to the suit properties; the said compromise was thus fraudulently obtained and was against the interest of the plaintiffs, and therefore not binding on the plaintiffs. The plaintiffs filed the present suit for partition.

3. In defence defendants 1 and 2 in their written statement denied that the parties are of a Hindu joint family. Their case is this; after the death of Cheru (defendant No. 5's father), defendant No. 5 Debadhi had been duly taken in adoption by his maternal grand-father Mohan Sahu as early as November 18, 1919 on which date a document of adoption is also said to have been executed. The natural mother of Debadhi took a second husband. Debadhi ceased to be a member of the family. The suit properties are self-acquired properties of defendant No. 1 Manu Biswal; he is in possession of the same to the exclusion of the plaintiffs and defendant No. 5 Debadhi. As regards the compromise in T. S. No. 3 of 1959 the defence case is that the plea taken therein by defendant No. 1 Manu Biswal, namely that Debadhi had been adopted by Mohan Sahu, was quite correct and Debadhi is the adopted son of Mohan Sahu; the said suit ended in a compromise through the intervention of respectable gentlemen of the locality and a sum of Rs. 800/- was paid to Debadhi by way of family settlement and to avoid further troubles; the compromise is valid and binding on the plaintiffs as they all benefited by the compromise and they cannot challenge the same.

4. On this pleading, several issues were raised including issue No. 8 which is this:

"8. Are the plaintiffs bound by the compromise in T. S. No. 3 of 1959 of the Court of the Munsif, Bonai? is the same valid and binding? Have they been benefited?"

On this issue the trial court could not believe that defendant No. 1 Manu Biswal got the compromise executed by defendant No. 5 Debadhi after making him drunk as alleged; accordingly it found that there was no foul play in the matter and that no fraud had been perpetrated in the matter of execution of the compromise petition by defendant No. 5 Debadhi Biswal. The learned trial Court however found that the consideration of Rs. 800/- was inadequate consideration for half share of the suit property which defendant 1 Manu Biswal himself had valued at more than Rs. 10,000/-. The learned Judge took the view that the father could not thus barter away the rights-and interests of his sons in the ancestral properties that there is no evidence that the plaintiffs had benefited by the compromise and accordingly the learned Judge held that the plaintiffs are not bound by such an invalid compromise. The learned Judge decreed the suit in favour of the plaintiffs and defendant 5 Debadhi Biswal for partition as prayed for in the plaint.

5. The only point pressed in this appeal is; is the compromise in T. S. No. 3 of 1959 executed by defendant No. 5 Debadhi binding on his sons and wife the plain-tiffs herein? It is well settled that if a compromise has been entered into in good faith by the manager of a joint Hindu family or by a father in such family, a minor member of the family cannot be allowed to disturb it on the ground of

inequality of the benefit, unless there was fraud or some other ground which in law vitiates it. This rule proceeds upon the principle that the minor was properly represented by the father or the manager of the family and he was therefore a party to the compromise. In determining the question of fairness of such a compromise, one has to keep in view that this is not a matter of balancing values which can be actually ascertained. For example, family settlements on proper legal advice have been considered reasonable even though from pecuniary point of view the son's position is greatly prejudiced. Members of a family can be generous to one another upon the occasion of family arrangement without its being proper or possible in equity merely on the ground to suggest that the arrangement is an unfair one and ought to be set aside. It would indeed be strange if an agreement entered into by parties of full contracting capacity could be set aside in equity because regarded from the standpoint of the family, it was just in the particular situation, AIR 1938 181 (Privy Council) ; *Martin Cashin v. Peter J. Cashin* AIR 1938 PC 103

6. In the present case the learned trial Court found that there was no fraud in the matter of the compromise. It appears that defendant 5 Oebadhi found difficulties in fighting the alleged plea of his having been taken in adoption by his maternal grand-father Mohan Sahu and having thus ceased to have any interest in the joint family property. Presumably in order to avoid protracted litigation and buy peace defendant 5 Debadhi entered into the compromise. He as father and head of his branch of the family thought it prudent to compromise the suit on the terms as stated in the compromise decree Ex. E dated December 12, 1959. The difficulties which Debadhi had to face in the said R. S. No. 3 of 1959 will be apparent from the written statement of defendant Manu Biswal in that suit where he took the plea of Debadhi's adoption by his maternal grand-father. The relevant portion of Manu Biswal's written statement in the said suit Ext. 1 are these :-

"5.....The parties do not form a joint Hindu family as alleged. The plaintiff having left his natural family as long back as 1919 and having been adopted away has absolutely no connection with the defendant or his family."

"8. That the facts of the case are:

(a) That after the death of the plaintiff's father his mother gave away the plaintiff in adoption to her father Mohan Sahu of Kadopada in Dist. Sambalpur and herself remarried to one Takana Sahu of village Hadapada and got issues through her second husband. The plaintiff was duly adopted as a son by the said Mohan Sahu according to the custom of the caste to which they belong, the parties being Sudras Khandayats. The said Mohan Sahu also gave a writing to the defendant in evidence of adoption of the plaintiff, which has been subsequently admitted by the plaintiff by another document.

(b) That since 1919 the plaintiff lived in the house of said Mohan Sahu and was brought up by him as his adopted son and after the death of Mohan Sahu, the

plaintiff has inherited his properties as his adopted son and has been residing in villa Kadopada in the district of Sambalpur which is at a distance of 35 miles from the village of the defendant.

(c) That the plaintiff was never in possession of the suit properties at any time since 1919 and never exercised any act of possession nor did he assert his title any time since 1919 till the date of this suit. As such the plaintiff's suit for partition is only a colourable pretense and cannot be entertained.

(d) That the properties mentioned in Schedule A (2) are no doubt the ancestral properties of the defendant, but after the death of Cheru Biswal, the plaintiff having been adopted away and plaintiff's natural mother having incurred a Civil death by her remarriage the defendant has all along been in possession of these properties to the total exclusion of the plaintiff. The defendant has been all along paying rents and cesses for those lands solely and has been possessing the same on his own right to the full knowledge of the plaintiff exclusively and uninterruptedly since 1919 and has acquired an indefeasible title to the entire extent of ac. 8.26 decimals of land and has effected much improvement to the same and as such those properties are not liable for partition in this suit."

7. Apart from this plea in the written statement in T. S. No. 3 of 1959, there was a document, said to have been signed by Debadhi (also known as Dambarudnar), described as a deed of relinquishment in favour of defendant No. 2 Dolgovinda (son of defendant 1 Mami) dated as early as April 18, 1952 where there is a reference to the maternal grand-father having taken charge of bringing up (lalan-palan) Debadhi since his very child-hood. Besides, the document purports to be a deed of relinquishment by Debadhi of his interest in the joint family property in favour of defendant No. 2 Dolgovinda. In these circumstances, defendant 5 Debadhi was rightly advised to compromise the suit and to accept Rs. 800/- as consideration for the same, and he wisely compromised the suit. In our opinion such a compromise by way of family arrangement is not unreasonable.

8. In this connection we cannot do better than to quote from Halsbury's Laws of England (Hailsham Edition Vol. XV page 2 as to what "family arrangement" means. It is this:-

"A family arrangement is a transaction between members of the same family which is for the benefit of the family generally, as, for example one which tends to the preservation of the family property, to the peace or security of the family and the avoiding of family disputes and litigations or to the saving of the honour of the family."

9. It is in this view of the legal implication of a family arrangement that courts have supported an agreement for the division of the family property by way of compromise of a family quarrel or litigation about a disputed right or any arrangement as to division of property where the claim on an alleged right is doubtful.

10. The plaintiffs harped upon much on the position that property worth Rs. 12,000/- was bartered away by defendant No. 5 Debadhi for a sum of Rs. 800/- only, under the compromise in the said T. S. No. 3 of 1959. In support of this the plaintiff relied on the undisputed position in Hindu Law that a compromise does not bind the other members of the family including minors unless-a compromise is entered into by the manager bona fide for the benefit of the family, that it is not open to the manager to sacrifice the family property for inadequate consideration; such transaction is improvident. The plaintiff's point is that the extent of the suit land is 15 acres; their value would be Rs. 12000/- and accordingly the compromise of the suit for a consideration of only Rs. 8,00/- which was an inadequate consideration is invalid. This line of argument relying on mere inadequacy of consideration for the compromise overlooks the difficulties in which defendant 5 Debadhi was placed in his previous suit T. S. No. 3 of 1959. Apart from the defence that he was adopted by his maternal grandfather and thereby ceased to have any right in the joint family property, several points of law were also taken in the written statement in the said T. S. No. 3 of 1959 Ext, 1 that the suit properties had been purposely undervalued in order to bring the suit within the jurisdiction of the Court of Munsif and to avoid payment of proper court-fees: that the suit properties are valued at more than Rs. 10,000/- and the plaintiff being out of possession is liable to pay ad valorem court fees on the plaint; that the suit though filed in the garb of a simple partition suit, is substantially one for declaration of title and recovery of possession and as such the plaintiff is liable to pay ad valorem court-fees. Debadhi had hardly any hope of success in the said suit. The said suit, if fought out, could have failed either on the point of want of jurisdiction or on merits on the question of alleged adoption of defendant No. 5 Debadhi by his maternal grandfather or on any of the several other points. Realising these difficulties and apprehending that his suit is very likely to fail, defendant 5 Debadhi entered into the compromise to avoid protracted litigation. In any event the plaintiffs should have called defendant No. 5 Debadhi to explain: the circumstances in which he entered into the compromise. Unfortunately defendant No. 5 Debadhi, who himself was a party to the compromise was not examined in this suit. The Court can rightly draw an adverse inference from the non-examination of defendant No. 5 Debadhi who was a material witness.

11. We are, therefore, of opinion that the compromise entered into by defendant 5 Debadhi in the said T. S. No. 3 of 1959 in the circumstances hereintofore discussed is binding on the plaintiffs and defendant 5. In this view of the position, the plaintiffs' suit must fail. In the result the plaintiffs' suit is dismissed and the defendants' appeal is allowed with costs throughout.

Misra, J.

12. I agree.