
(2004) 07 JH CK 0033
In the Jharkhand High Court
Case No : SA No. 2 of 2003

Moin Khan and Others

APPELLANT

Vs

Amin Zema Khan and Others

RESPONDENT

Date of Decision : 07-07-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2004) 4 JCR 72 : (2005) 2 CivCC 126 : (2005) 1 RCR(Civil) 753

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : S.N. Das, for the Appellant;

Final Decision : Dismissed

Judgement

Narendra Nath Tiwari, J.—This appeal has been preferred against the judgment and decree of affirmation. The defendants are the appellants-appellants. The plaintiffs filed the suit for partition of their 1/4th share in Schedule-B property mentioned in the plaint. The plaintiffs case was that the suit land which is described in Schedule-B was recorded in the names of Md. Zama Khan, Md. Ali Zama Khan, Md. Rasul Zama Khan and Sowam Bibi in the cadastral survey records of right each having equal share. There was no partition by metes and bounds. The plaintiffs purchased 1/4th undivided share of Sowam Bibi by virtue of registered sale deed dated 6.8.1963 and claimed their continuous joint possession. It was stated that in due course it became difficult for the plaintiffs to enjoy joint possession and as such they requested for partition of their share and on refusal by the defendants, partition suit was filed in the trial Court in which they claimed partition of their 1/4th share.

2. The defendants contested the suit by filing joint written statement on the grounds, inter alia, that the partition suit was actually a suit for declaration of title ? and recovery of possession and ad valorem Court fee is required to be paid. It is averred that the sale deed dated 6.8.1963, which is said to be executed by Sowam Bibi, was not genuine and valid as Sowam Bibi died on

5.4.1962 and there was no question of execution of sale deed on 6.8.1963. It was further stated that some persons including Heyat Khan have been in possession of the suit land and they were necessary party in the suit.

3. The trial Court on the basis of the said pleadings framed as many as ten issues. Among the issues, the issue No. (vi) was main issue. Issue No. (vi) was as to whether Sowon Bibi was alive on 6.8.1963 when the sale deed is alleged to have been executed in favour of the father of the plaintiffs and whether the same is genuine and valid transaction. Besides the same other issues of importance was issue No. (vii) as to what was the interest of Sowon Bibi in the suit property and issue Nos. (iv) and (v) as to whether the suit was bad for non-joining of necessary party and the suit was properly valued and the Court fee paid was sufficient. The learned trial Court after considering all the relevant evidences and materials on record decided all the said issues including other issues against the defendants and decreed the suit in favour of the plaintiffs holding that the plaintiffs have got valid cause of action for filing the suit and they are entitled to get decree for partition of their 1/4th share in the suit property described in Schedule-B of the plaint except the land appertaining to plot Nos. 733 and 808 of village Pargha. But it was held that they are liable to pay deficit ad valorem Court fee on the value of their 1/4 share of the suit property.

4. The defendants preferred regular appeal challenging the correctness of the judgment and decree of the trial Court. In the said appeal the defendants-appellants had, taken almost the same objections and contended that the judgment and decree of the trial Court was erroneous for non-consideration of materials on record. The appellate Court having perused the evidences and materials on record and heard the parties, concurred with the findings of the trial Court and answered the objections raised by the defendants-appellants accordingly. It was, inter alia, held by the appellate Court that the sale deed executed by Sowon Bibi dated 6.8.1963 is valid and genuine and the story made out by the defendants-appellants appears to be concocted story. The lower appellate Court further held that there was unity of title and possession among the parties and Md. Heyat Khan was not a necessary party. The appellate Court affirmed the judgment and decree of the trial Court holding that the plaintiff was entitled to 1/4th share of the suit property described in Schedule-B of the plaint except the land appertaining to plot Nos. 733 and 808 of village Pargha.

5. The learned counsel appearing on behalf of the appellants has taken almost the same grounds in this second appeal which were canvassed by them in lower appellate Court. The learned counsel firstly contended that the suit for partition by the purchaser from a co-sharer after a long time is not maintainable unless the relief for declaration of his title and recovery of possession are prayed. The second point which has been raised by the learned counsel is that since Md. Heyat Khan was in possession of some portion of the suit land, he is a necessary party in the partition suit. The third point which has been urged by the learned counsel for the appellants is regarding limitation as according to him, after a

lapse of long time a suit for partition by a purchaser is barred by limitation. In my considered opinion, all the said points raised by the learned counsel for the appellants are devoid of any substance. A purchaser from the co-sharer is entitled to joint possession or partition and for seeking partition of his share by remaining in joint possession, there is no prescribed period of limitation. Further a person claiming himself in permissive possession of certain portion of joint property without any independent interest is not a necessary party in the partition suit and as such the suit in question is neither bad for non-joinder of Md. Heyat Khan and others nor it is barred by limitation. The said questions which have been raised by the learned counsel for the appellants, have already been answered by concurrent findings of facts by both the Courts below. No new point has been argued leading to any substantial question of law which requires any consideration in this appeal.

6. In that view of the matter, I find no merit In this appeal which is, accordingly, dismissed.