

(1957) 09 MP CK 0035
In the Madhya Pradesh High Court
Case No : C.F.A. No. 42 of 1952

Onkar Bahadur Singh

APPELLANT

Vs

Raghuraj Singh

RESPONDENT

Date of Decision : 16-09-1957

Acts Referred:

Central Provinces Court of Wards Act, 1899 — Section 10, 12, 15, 16, 23

Citation : (1958) JLJ 440

Hon'ble Judges : T.C. Shrivastava, J;G.P. Bhutt, J

Bench : Division Bench

Advocate : R.S. Dabir, for the Appellant; K.B. Sinha, for the Respondent

Final Decision : Allowed

Judgement

1. The suit out of which this appeal arises was filed by the appellant for partition and separate possession of certain joint family properties and in the alternative for maintenance at Rs. 10,000/- per year, The suit has been dismissed on a preliminary point and hence this appeal.

2. It is undisputed that the Imlai Estate belonged to Raja Vishwanathsingh who left three sons- Raja Drig Bijayasingh, Raja Bijaya Bahadursingh and Onkar Bahadursingh, After the death of Vishwanathsingh the Estate passed to his eldest son Raja Drig Bijaysingh He died in 1929 leaving three sons, and the Estate was recorded in the name of Bijaya Bahadursingh There was some dispute between Rani Kirtibai, widow of Raja Drig Bijayasingh but ultimately it was amicably settled. On the death of Bijaya Bahadursingh, the Estate was recorded in the name of Raja Raghurajsingh in 1939. The estate had been taken over under the superintendence of Court of Wards in 1930 and was relinquished in 1944. Raja Raghurajsingh is the defendant No. 1 in the suit and the widow of Bijay Bahadursingh and her two minor sons are the other defendants.

3. The plaintiff's case is that the estate formed a joint Hindu family property of the three brothers. He demanded a partition of the share in 1944 but this was

refused by the defendant No. 1. He therefore filed the pre sent suit for partition and if this could not be done for any reasons, for maintenance.

4. The defendant stated that the estate was impartible and was governed by the rule of primogeniture. It was hence pleaded that the plaintiff could not claim any share in the property. The claim was further resisted on the ground that it was barred u/s 12 of the Central Provinces Court of Wards Act. 1899, hereinafter called "the Act", Some other objections to the maintainability of the suit were also raised but we need not refer to them as they are not material for the decision of this appeal.

5 The lower Court found that the claim of the plaintiff was discharged u/s 12 of the Act and therefore the suit was not maintainable. Accordingly the suit was dismissed without any trial on the merits of the claim. It is this finding of the trial court that is contested in this appeal.

6, Sub-section (2) of Section 12 of the Act is as follows: -

Every such claim (other than a claim on the part of the Government) not submitted to the Court of Wards in compliance with the provisions of sub-section (1), shall, save in the case provided for by Section 16, sub-section (2), clause (c) be deemed for all purposes and on all occasions, whether during the continuance of the management or afterwards, to have been duly discharged.

The scheme of the Act is that after the Court of Wards has assumed superintendence of the property of a Ward, a notification is issued u/s 10 and all persons having claims against the Ward are called upon to submit their claims in writing within six months from the date of such notification. After the claims have been received they are scrutinised by the Court of Wards u/s 15, and an offer is made to the claimants in accordance with the terms which the Court of Wards considers reasonable. If the Court of Wards does not admit the claim or the claimant does not accept its offer, he is free to institute a suit for the recovery of his claim, The consequence of failure to file a statement of a claim results in the discharge thereof altogether and the claimant is prevented from asserting it even after the estate has been relinquished by the Court of Wards,

7 It was urged on behalf of the respondents that the word "claim" in Section 12 of the Act is comprehensive enough to include a claim for partition and maintenance. On the other hand, the contention of the appellant was that the word is used in a restricted sense to cover only claims of creditors in respect of amounts to be recovered for loans.

8. It appears from the language of Section 15 that the intention is to restrict Section 12 of the Act to money claims, as in other cases there would be no question of reducing the claim or the rate of interest. The same intention appears to be borne out by Section 36 which provides that after the claims have been investigated, the Court of Wards shall submit to the State Government a schedule of debts and liabilities of the Ward. The word "liabilities" has to be read

in juxtaposition of the preceding word "debts" and, therefore, means only such claims as create a monetary liability on the ward. This schedule cannot obviously include a claim for partition or future maintenance, though it may extend to a claim for arrears of maintenance, which would be deemed to have ripened into a liability within the meaning of Section 16 of the Act. The object of all these provisions seems to be to ascertain once for all the financial position of the estate of the ward and to determine the question whether it would be profitable to continue the estate under the management of the Court of Wards. In case the estate is beyond all hope of extrication, it would be liable to be relinquished u/s 16(a). In view of this scheme it appears that the claims referred to in Section 12 do not include claims for partition or for future maintenance. This view is strengthened by Section 23 which provides separately for determination by the Court of Wards, of the sums to be allowed for the expenses of the ward and of his family and dependents.

9. The same conclusion is reached on other considerations as well. A claim for partition arises only when a demand for it is made by an unequivocal declaration of the intention to separate. Such a claim cannot arise so long as the coparceners concerned choose to continue joint and the necessary declaration has not been made. The coparceners have a right under the Hindu Law to continue joint with the ward and if they do not wish to question the right of the Court of Wards to assume superintendence of the whole joint family property, they need not claim partition. It is not necessary that all coparceners of the ward should immediately assert their claim for partition as soon as a notification u/s 16 of the Act has been made. If the provisions of the Act are interpreted in the manner in which the respondents contend, this would be the necessary effect. We do not think that this could be intended by the Act.

10. Similarly, the claim for maintenance is a recurring right and may not be enforced until a coparcener chooses to do so. Accordingly, even though the claim to past maintenance may be barred on any account, it cannot be defeated in respect of future maintenance unless the right to it has been extinguished under the provisions of the Indian Limitation Act, 1908,

11. In view of the above, we allow the appeal and set aside the decree passed by the trial Court, and direct that the case be remitted to it for trial on merits with advertence to the above remarks in accordance with law. Costs of appeal shall abide the result.