
(1928) 06 PAT CK 0001
In the Patna High Court

Ram Das Singh

APPELLANT

Vs

Tanak Singh and Others and Gorakh Singh and Others

RESPONDENT

Date of Decision : 15-06-1928

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : 111 Ind. Cas. 51

Hon'ble Judges : Macpherson, J;Kulwant Sahay, J

Bench : Division Bench

Judgement

Kulwant Sahay, J.—This is an appeal by the defendant No. 1 and it arises out of a suit brought by the plaintiffs for a declaration that a deed of sale, dated the 27th of April, 1922, executed by the defendant No. 7, a member of the joint family of the plaintiffs, in favour of the defendant No. 1 in respect of the land in dispute was illegal, void and inoperative, and for recovery of possession with me see profits of the land conveyed under the said deed of sale.

2. Plaintiff No. 1 Tanak Singh and the defendant No. 6. Chaturbhanjsn Singh, are full brothers. The plaintiffs Nos. 2, 3 and 4 are the eons of the plaintiff No. 1. Plaintiff No. 5 is the son of the plaintiff No. 3. Defendant No. 6 is Chaturbhanjan Singh the brother of the plaintiff No. 1. Plaintiffs Nos. 6 and 7 and the defendant No. 7, Ram Nandan Singh, are the sons of Chaturbhanjan Singh. Plaintiffs" case is that all these persons form members of a joint Hindu family.

3. It appears that one Bhikhari Raut had 142 bighaa of land in Sitab Diara under the Dumraon Raj. There is a contest between the parties as regards the nature of his interest. The plaintiffs allege that Bhikhari Raut was the occupancy raiyat in respect of this land. The case of the defendant No. 1 is that he was a tenure-holder and the defendant No. 1 and other members of his family were the raiyats in respect of a portion of this 142 bighas of land under Bhikhari Raut. After the death of Bhikhari Raut his widow Jatna Kuar and the widow of his predeceased son Musammat Basmato Kuar sold the interest of Bhikhari Raut of which they

were in possession by two deeds of sale, both dated the 24th of September, 1919, to the defendant No. 1 and to the plaintiffs and certain other persons. The pale to the defendant No. 1 was of a five annasshare of Bhikhari Raut's interest and by the other deed of sale the remaining eleven-annas was sold to the plaintiffs and three other persons, the deed of sale standing in the name of Ram Nandan Singh, the defendant No. 7 as representing the "plaintiffs" joint family. The share of the plaintiffs in this purchase was 2 annas 9 pies and the balance out of the eleven-annas belonged to the other, three purchasers. There was, however, a dispute as regards possession and a proceeding u/s 145 of the Code of Criminal Procedure took place wherein it was found that the defendant No. 1 and the members of his family were in actual possession as raiyats of the land, purchased by the plaintiffs. In 1921 Title Suit No. 178 of that year was instituted. in the Court of the Subordinate Judge of Chapra by the four purchasers under the deed of sale of the 24th of September 1919, for a declaration that the lands purchased by them formed, the occupancy-holding of Bhikhari Raut and they were entitled to direct possession as purchaser of that holding. The defendants Nos. 1-5 in that suit were some of the raiyats who claimed occupancy right along with Rani Das Singh the present defendant No, I and Ram Das Singh himself was the defendant No. 6 in the suit. The defendant No. 7 was Chaturbhanjan Singh the present defendant No. 6 and the vendors Musammat Jatna Kuar and Musammat Basmato Kuar were also impleaded as defendants. In that suit it was held that the interest of Bhikhari Raut in the 142 bighas was that of a tenure-holder and not of an occupancy raiyat. Since then it appears that civil as well as criminal litigations are going on between the plaintiffs and their joint family and the defendant No. 1 and the members of his family, and in 1922 we find that there was a small Cause Court suit pending against the defendant No. 1 Ram Das in which Chaturbhanjan Singh, the defendant No. 6, was the plaintiff ; and there was a criminal case of theft pending in which the defendant No. 6 was the accused and the defendant No. 2 a cousin of the defendant No. 1 was the complainant. It further appears that a number of zarpeshgi deeds had been executed by the defendant No. 1 in the name of the defendant No. 6. One of the zarpeshgi deeds related to the occupancy holding in dispute, All the disputes between the parties appear to have been settled by a compromise, the terms of which were incorporated in a sulahnama filed in the Small Cause Court suit on the 21st of April, 1922. Under this compromise the defendant No. 1 was to pay a sum of Rs. 5,000 to the defendant No. 6 in settlement of the dues of the defendant No. 6 under the zarpeshgi bonds, the Small Cause Court suit was to be dismissed and the criminal case was not to be prosecuted and the defendant No. 7 had to execute a deed of sale in respect of 2-annas out of the 2-annas 9 pies share purchased under the deed of the 24th of September, 1919. Accordingly a deed of sale was executed by the defendant No. 7 in favour of the defendant No. 1 on the 27th of April, 1922, whereby 17 bighas 15 kathas of land representing a 2-annas share out of the 11 annas purchased by the plaintiffs and others on the 24th of September, 1919, was conveyed to the defendant No. 1. The present suit was instituted by the plaintiffs for a declaration that this deed of

sale was illegal, void, inoperative inasmuch as it was executed by a junior member of the joint family without their knowledge or consent.

4. The defence of the defendant No. 1, who was the sola contesting defendant, was that this deed of sale was a perfectly legal and valid conveyance. He alleged that Tanak Singh's branch of the family was separate from Chaturbhanjan Singh's branch, and that the purchase of the 2 annas 9-pies share out of the 142 bighas Under the deed of sale of the 24th of September, 1919, in the name of the defendant No. 7, Ram Nandan Singh, was not a purchase for the benefit of the joint family consisting of the plaintiffs and the defendants Nos. 6 and 7. He further contended that the interest of Bhikhari Raut was that of a tenure-holder and he was himself the occupancy raiyat of the land, and what was purchased was the tenure-holder's interest and even if his deed of sale be found to be invalid the plaintiffs were not entitled to direct possession inasmuch as the defendant No. 1 was entitled to remain in actual possession as the occupancy-raiyat of the land.

5. The learned Munsif held that the plaintiffs and the defendants Nos. 6 and 7 formed members of a joint Hindu family and that the plaintiff No. 1 Tanak Singh was the karta of the family. He further found that the purchase of Bhikhari Raut's interest in the name of the defendant No. 7 under the deed of the 24th of September, 1919, was a purchase by the joint family and not the exclusive purchase of the defendant No. 7. He held that it was not proved that the conveyance of the 27th of April, 1922 executed by the defendant No. 7 in favour of the defendant No. 1 was with the consent of the other members of family or for the benefit of the family and it was not taken after bona fide enquiry and was, therefore, not binding upon the plaintiffs. As regards the petition of compromise filed in the Small Cause Court suit the Munsif found that the compromise was not bona fide and not binding upon the plaintiffs or on the defendant No. 6. He framed no issue and came to no conclusion as regards the nature of the interest of Bhikhari Raut purchased by the plaintiffs ; and he made a decree for delivery of possession to the plaintiffs with mesne profits.

6. On appeal by the defendant No. 1 the learned Subordinate Judge has affirmed the decree passed by the Munsif. The findings of the learned Subordinate Judge are that the plaintiffs and the defendants Nos. 6 and 7 were the members of a joint Hindu family ; that the purchase of the disputed property in the name of the defendant No. 7 was not his self acquisition but was the purchase by the plaintiffs and the defendants Nos. 6 and 7 jointly as representing the joint family. He next found that the sale deed, dated the 24th of April, 1922, executed by the defendant No 7 in favour of the defendant No. 1 was not a valid alienation which was binding on the joint family inasmuch as the defendant No. 7 was a junior member of the family, the karta of the family being the plaintiff No. 1 Tanak Singh, and as a junior member, he had no right to alienate the joint family property. As regards the compromise he found that it was entered into by the defendant No. 6 and it was for his benefit, but that the compromise did not

relate to the joint family property and that the plaintiffs had nothing to do with it, and the sale by the defendant No. 7 in pursuance of the compromise was not a sale binding on the joint family of the plaintiffs. He also found that the defendant No. 1 had no kashtkari right, in the disputed property. He, accordingly, affirmed the decree of the Munsif awarding direct possession to the plaintiffs.

7. Against this decree the defendant No. 1 has come in second appeal to this Court. The findings of the learned Subordinate Judge that the plaintiff a and the defendants Nos. 6 and 7 formed members of a joint family and that the purchase of the 24th of September, 1919, in the name of the defendant No. 7 was a purchase by the joint family are findings of fact which cannot be interfered with in second appeal. The question for consideration is, whether the conveyance under the deed of sale dated the 27th of April, 1922, executed by the defendant No. 7 in favour of the defendant No. 1 is binding on the joint family.

8. The reasons given by the learned Subordinate Judge for holding that the conveyance under the deed of sale, dated the 27th of April, 1922, is not binding on the joint family, are not satisfactory or convincing. The learned Subordinate Judge seems to be under the impression that an alienation by a member of a joint family who is not the karta of the family is under no circumstances binding on the family. He says that in order to bind the family the alienation must be by this managing member of the family and it must be for antecedent debt or for legal necessity of the joint family and he finds that the plaintiff No. 1 was the managing member of the family and the defendant No. 7 was not the managing member and for this reason the sale was invalid. The broad proposition of law acted upon by the learned Subordinate Judge is not correct. It cannot be said that under no circumstances can an alienation of a joint-family property by a junior member of the family be binding on the family. In *Inder Chand v. Bidyadhar Pandey* 60 Ind Cas 282 : 5 P.L.J. 744 : 2 P.L.T. 111 : (1921) Pat. 107 a mortgage-bond was executed by Bidyadhar who was one of the members of a joint family. The family consisted of two branches who were members of a joint Hindu family, but each branch was represented by the eldest member of that branch and whenever any transaction had to be entered into, both these two persons representing their respective branches acted jointly. Bidyadhar was the eldest member of his branch and represented that branch, but he executed the mortgage in suit alone. The lower Courts held that the members of the other branch of the family were not bound by this mortgage inasmuch as Bidyadhar acting alone had no authority to bind the interest of the other branch of the family. Das, J., in dealing with this point observed as follows:

It was, however, urged on behalf of the respondents that there is no finding that Bidyadhar was the karta of the joint family and that, therefore, the family is not liable for the debt incurred by one who was not karta of the joint family. With this contention I do not agree. If the debt was a debt binding on the joint family we must assume that there was an authority vested in Bidyadhar to borrow the money for what must now be considered to be a joint family necessity.

9. This case is, therefore, an authority for the proposition that an alienation of a joint family property by a member who is not the managing member of the family may be binding on the family if the alienation be for the joint family necessity. The same view was taken, by this Court in *Dhanukdhari Singh Vs. Rambirich Singh*, where it was held that any member of a joint family is entitled to deal with the family property and to incur debts binding upon it provided the act is done in times of distress and for family necessity. The learned Subordinate Judge, therefore, was not right in holding that the deed of sale executed by the defendant No. 7 was invalid simply on the ground that, it was executed by a member of the family who was not the karta of the family.

10. In passing it may be noticed that the learned Subordinate Judge has said that the allegation in the plaint was that the plaintiff No. 1 was the karta of the joint family and that there was no denial of this allegation in the written statement of the defendant. This is clearly an error of record. In para. 5 of the written statement of the defendant No. 1 there is a clear allegation that Tanak Singh was not the karta of the family. Evidence appears to have been given on the side of the defendant to show that the plaintiff No. 1 was ignorant of certain important transactions relating to the family and that he had ceased to act as the karta, of the family. One does not know how far the learned Subordinate Judge was influenced in his finding that the plaintiff No. 1 was the karta of the family on account of his misapprehension that there was no denial of the fact in the written statement.

11. Next, in dealing with the question of the compromise in the Small Cause Court suit instituted by the defendant No. 6 against the defendant No. 1 the learned Subordinate Judge says that although the compromise was for the benefit of the defendant No. 6 it was not for the benefit of the plaintiffs. His view was that the *sulahnama* related to the compromise of the Small Cause Court suit and the criminal case, to neither of which the plaintiffs were parties and which did not relate to the family property. He further says that there was nothing to show that the Small Cause Court suit was brought by the defendant No. 6 in his representative capacity. In this connection it has to be borne in mind that the learned Subordinate Judge had himself come to the finding that purchases made in the name of any one of the members of the family are presumed to be purchases by the joint family. In the case of every transaction relating to a joint family the presumption is that although the transaction may be carried on in the name of one or another member of the family it is a family transaction and the members in whose name the transaction is carried on represents the joint family. It was for the plaintiffs to show that the transaction which led to the Small Cause Court suit was not a joint family transaction. The learned Advocate for the appellant has referred to certain evidence in the case which goes to show that the Small Cause Court suit was a transaction of the joint family. He refers to the evidence of the defendant No. 6 where he stated that both he and his brother were looking after the Small Cause Court suit and that at the time the compromise was effected the plaintiff No. 1 was at Bhagalpur. One of the

members of the family was implicated in a criminal case and if a compromise was effected whereby it was agreed that a portion of joint family property was to be sold in consideration of all the disputes between the family and the defendant No. 1 including the criminal case, being settled, the ordinary presumption would be that the joint family is bound by such compromise and the sale will be a valid sale. The learned Subordinate Judge, however, does not discuss the evidence on this point and he seems to have thrown the onus upon the defendant to prove that the transaction relating to the Small Cause Court suit was a joint family transaction and that the criminal case also related to the joint family property.

12. Lastly, in dealing with the question of the status of the plaintiffs the learned Subordinate Judge admits that in Suit No. 178 of 1921 it was found that the defendant No. 1 had the kashtkari or the occupancy right in the land, but did not accept the contention of the defendant that the decision in that suit operated as an estoppel for the reason that the plaintiffs were not parties to that suit and that it was a suit which was not brought by the defendant No. 7 in his representative capacity so as to be binding on the plaintiffs. Here also the reasons given by the learned Subordinate Judge do not appear to be sound. The defendant No. 7 was one of the plaintiffs in that suit, the other plaintiffs were the persons in whose favour the deed of sale of the 24th September, 1919, had been executed. Suit No. 178 of 1921 was, therefore, a suit instituted by all the persons in whose name the deed of sale of September, 1919, stood. If the purchase in the name of the defendant No. 7 was for the benefit of the joint family and if the defendant No. 7 represented the joint family in the transaction of the purchase, the ordinary presumption is that he re-presented the joint family in the suit of 1921 also. No reason has been given by the learned Subordinate Judge for holding that the suit by the defendant No. 7 was not in his representative capacity except that the plaintiffs were not parties to the suit. Under the circumstances of the present case it has to be presumed that the defendant No. 7 represented the joint family in all transactions arising out of the purchase which was made in his name and, I am of opinion that the decision in Suit No. 178 of 1921 operates as *res judicata* and it is not open to the plaintiffs to assert that the interest purchased by them under the deed of sale of September, 1919, was that of an occupancy-raiyat and not that of a tenure-holder. As was pointed out by the Privy Council in the recent case of AIR 1927 56 (Privy Council) in the case of a Hindu family where all have rights it is impossible to allow each member of the family to litigate the same point over and over again and the Court has in each case to look to *Expl. VI* to Section 11 of the CPC to see whether or not the leading member of the family has been acting either on behalf of minors or in their interest or if they are majors with the assent of the majors. It is true that in the present case the defendant No. 7 was not the leading member of the family but he was the member who admittedly represented the family in the transaction of the purchase and it is natural to assume that in subsequent transactions also he represented the entire family.

13. It will thus appear that the decision of the learned Subordinate Judge on the

question of the binding nature of the sale by the defendant No. 7 to the defendant No. 1 is not satisfactory. It is, however, a finding of fact which, however erroneous, this Court may not be justified in interfering with in second appeal, I must, therefore, accept the finding that the sale-deed of the 27th of April, 1922, is not binding on the joint family of the plaintiffs and the defendants Nos. 6 and 7. The question, however, of the status of the plaintiffs is concluded by the decision in the previous Suit No. 178, of 1921 and it is not open to the plaintiffs to contend that their interest is that of an occupancy-raiyat, and it must be held that their interest was that of a tenure holder. The decree of the learned Subordinate Judge, therefore, awarding direct possession to the plaintiffs must be set aside.

14. It is contended on behalf of the appellant that if the sale is not binding on the joint family, then he is entitled to a refund of the purchase-money paid by him. Under the circumstances of the case, I am of opinion that the contention is just and the Court can make an order for refund under Order XLI, Rule 33, Civil Procedure Code.

15. Having regard to all the circumstances of the case, the decree of the learned Subordinate Judge is varied. It is declared that the deed of sale, dated the 27th April, 1922, executed by the defendant No. 7, in favour of the defendant No. 1 is void and inoperative as against the joint family of the plaintiffs and the defendants Nos. 6 and 7. The plaintiffs are entitled to recover possession of the property sold, but the possession will be of the interest of a tenure-holder and they will not be entitled to eject the defendant No. 1 from the lands in dispute. They will only be entitled to recover rent from him. The decree awarding mesne profits will stand, but the mesne profits will be calculated on the basis of the rent payable by the defendant No. 1. It is declared that the defendant No. 1 is entitled to a refund of the consideration money paid by him under the deed of sale of the 27th April, 1922, viz., the sum of Rs. 1,082 and a decree will be made in his favour for the recovery of this sum with interest thereon at 9 per cent, per annum from the date from which mesne profits is awarded to the plaintiffs up to realization as against the defendant No. 7. Having regard to the fact that the defendant No. 1 has obtained a substantial amount of success in the present appeal each party will bear his own costs throughout. If the plaintiffs have taken direct possession, the defendant No. 1 will be entitled to restitution.

Macpherson, J.

16. I agree.