

(1963) 08 PAT CK 0011

In the Patna High Court

Case No : Civil Revision No. 158 of 1961

Ram Dayal Mahton and Others

APPELLANT

Vs

Jagarnath Sahay and Others

RESPONDENT

Date of Decision : 28-08-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 17

Citation : AIR 1964 Patna 79

Hon'ble Judges : V. Ramaswami, C.J;N.L. Untwalia, J

Bench : Division Bench

Advocate : Awadh Kishore Prasad, for the Appellant; Janeshwar Singh, Jagdish Pandey, Ashwini Kumar Sinha, Chandi Prasad and Md. Wakiluddin, for the Respondent

Final Decision : Allowed

Judgement

1. In this case the Plaintiffs instituted, a suit for partition with respect to 39.89 acres of land in the district of Hazaribagh, described in Schedule A of the plaint, and 3 decimals of land situated in village Danwar in Sasaram Sub-division of Shahabad District, described in Schedule B of the plaint.

The case of the plaintiffs is that the family of Bhrigunath Sahay and of the plaintiffs and. defendant No. 15 constituted a joint Mitakshara family at the time of Survey Operations, but some time after-wards there was disruption in the joint family status and there was partition by meter and bounds with regard to a portion, of the joint family properties by virtue of a registered deed. With regard to the remaining properties the par- tics continued to be tenants in common with specified shares therein. It was further alleged that in 1940 Bhrigunath Sahay made a gift of his 8 annas share to Harihar Prasad from whom defendants 1 to 4 claim title. The Plaintiffs also alleged that defendants 1 to 4 had made settlements in favour of defendants 5 to 14 on the one hand and defendants 16 to 28 on the other hand. But the allegation of the plaintiffs is that these settlements" were not bona fide but they have only been made to derive

wrongful gain and to harass the plaintiffs and put them to loss. The case of the Plaintiffs is that these transactions are sham and farzi and defendants 5 to 14 and 16 to 28 have derived no title by these settlements. The plaintiffs accordingly asked for a decree for partition of half share of Schedule A and B properties. They also asked for further relief that defendants 5 to 14 and 16 to 28 should be ejected from the portions of the disputed land of which they alleged to have taken settlement from defendants- 1 to 4.

2. The suit was instituted by the plaintiffs in the Court of the Munsif, 1st Court, Sasaram. An objection was raised on behalf of the Defendants. 2nd Party that the Munsif, 1st, Court, Sasaram, had no territorial jurisdiction to try the suit. The objection was overruled by the Munsif, 1st Court, Sasaram, by his order dated the 6th February, 1961. The defendants 2nd Party have obtained a rule from the High Court against this Order of the Munsif, 1st Court, Sasaram.

3. On behalf of the petitioners it was sub-mitted that the Munsif, 1st Court Sasaram, had no territorial jurisdiction in this case and the provisions of Section 17 of the CPC have no application to this case.

Reliance was placed by learned Counsel on behalf of the petitioners to a decision of the Allahabad High Court, in *Karam Singh v. Kunwar Sen*, AIR 1942 All 387. It was held by the Allahabad High Court in that case that the provisions of Section 17 of the CPC are intended to solve the difficulty which would naturally arise if there was a dispute about some Immovable property which was situated partly within one jurisdiction and partly within another : but before the provisions of Section 17 come into play there must be one property which is situated in different jurisdictions, and "the property must, in the particular circumstances of the suit, be capable of being described as a single entity".

The opposite view point was put forward by learned Counsel on behalf of the Plaintiff-Opposite party. It was submitted that the decision of the Allahabad High Court in *Karan Singh and others Vs. Lala Kunwar Sen and others*, has been doubted by a Full Bench of the Nagpur High Court in AIR 1952 303 (Nagpur). It is true that the soundness of the view expressed by the Allahabad High Court in *Karan Singh and others Vs. Lala Kunwar Sen and others* has been doubted by the Full Bench of the Nagpur High Court in AIR 1952 303 (Nagpur), but, in our opinion, the ratio decidendi of the Nagpur case does not apply to the present case.

Reference was also made on behalf of the Plaintiff-Opposite party to the decisions in *Basanta Priya Dei and Another Vs. Ramkrishna Das and Others*, , *C.S. Govindaraja Mudaliar, Receiver, Sri Komaleswara Temple Properties Vs. Alagappa Thambiran and Others*, , *(Velugubantla) Papamma Vs. Ravula Ramaswami and Another*, and *(Vadlamudi) Bhimayya and Others Vs. (Putcha) Lakshminarayana*, . In our opinion the material facts of the present case are different from those dealt with in these authorities, and the present case does not fall within the ambit of the principle laid down by these authorities. On the

other hand we are of opinion that the present case is governed by the principle laid down by the Judicial Committee in AIR 1932 172 (Privy Council) . In that case the plaintiff filed a suit in an Oudh Court to recover one Immovable property within its jurisdiction and two Immovable properties situated in the Punjab without its jurisdiction. The Plaintiff claimed to be entitled to all these properties under a will. He also joined in the suit a prayer to declare him Mutawalli of a waqf in another property situated in the Punjab called the Khalikabad estate. It was held by the Privy Council that the Plaintiffs had a right to include the first two properties in the Oudh suit but as regards the Khalikabad property the Privy Council said as follows :

"There remains the question of the Khalikabad estate. Here the respondent cannot succeed unless he shows that under the terms of the deed creating the waqf he is the trustee. That question depends upon the construction of the deed. It is a separate and different cause of action from those which found the proceedings in respect of the other three properties.

Their Lordships are unable to find any justification for bringing the suit in respect of this property else-where than in the Court of the district where the property is situate. Such justification cannot in their Lordships" judgment be found in Section 17 of the CPC upon which the respondent relied."

In our opinion the principle of this decision governs tile present case. It is manifest on a perusal of the plaint that the cause of action of the plaintiffs as against defendants 5 to 14 and defendants 16 to 28 is quite different and independent from the cause of action so far as defendants 1 to 4 are concerned. So far as the cause of action seeking relief as against defendants 5 to 14 defendants 16 to 28 is concerned, the properties are situated entirely within the Hazaribagh district and no portion of the properties so far as this cause of action is concerned is located in the jurisdiction of the Munsif, 1st Court, Sasaram. In view of this important circumstances we are of opinion that the Muusif, 1st Court, Sasaram, had no jurisdiction, to try the suit as framed by the plaintiffs at present.

4. For these reasons we allow this application in revision and set aside the order of the Munsif, 1st Court, Sasaram, dated the 6th February, 1961. We further direct that after the records go back to the Munsif, 1st Court, Sasaram, he should give an opportunity to the Plaintiffs, within a time to be fixed by him, to amend the plaint by deleting defendants 5 to 14 and defendants 16 to 28 and also deleting the allegation in the plaint so far as these defendants are concerned and also the reliefs sought against them. If the Plaintiffs fail to amend the plaint in this regard within the time to be granted by the Munsif, he should make an order returning the plaint for being presented in the proper Court under Order 7, Rule 10 of the Code of Civil Procedure.

5. We accordingly allow this application in Civil revision. There will be no order as to costs.