

(1924) 07 AHC CK 0036
In the Allahabad High Court

Ram Sarup

APPELLANT

Vs

Mt. Kataula and Others

RESPONDENT

Date of Decision : 02-07-1924

Acts Referred:

Citation : AIR 1925 All 211 : 83 Ind. Cas. 227

Final Decision : Dismissed

Judgement

1. This is a defendant's appeal u/s 10 of the Letters Patent. The suit was for a declaration that the plaintiffs as members of a joint Hindu family have a right to two-thirds of the property in dispute detailed in the plaint and are entitled to get mutation of names effected in the revenue Court in their favour. There was also an alternative relief for possession in case they were found to be out of possession. The claim was contested by the defendants on the ground that the family had been separate at the time when Daulat Singh died. The Court of first instance came to the conclusion that the family was joint at the time of his death and did not think it necessary to consider whether it was separate or joint at the time when the suit was instituted. The learned District Judge, however, came to the conclusion that the ordinary presumption of jointness had not been rebutted by any evidence at all and that really there was no evidence of separation at all.

2. Beading his judgment there can be no doubt that he came to the conclusion that the family continued to be joint till the date of the institution of the suit. Nevertheless he affirmed the decree of the first Court granting the plaintiffs a declaration that they were entitled to a two-thirds share in the property in dispute.

3. On appeal that decree has been affirmed by a learned Judge of this Court. In the judgment of the learned Judge it has been assumed that there had been no separation amongst the descendants of the three brothers and that the plaintiffs as members of a joint Hindu family are asking for a declaration that they had a right to the property standing in the name of Mt. Sobha to the extent of a two-thirds share. The learned Judge also thought that the Courts below had found

that the plaintiffs and defendants were members of a joint Hindu family.

4. One of the points raised before him was that under these circumstances the suit as framed was not maintainable. He, however, overruled this plea on the ground that it was not incumbent on the plaintiffs to claim partition of the property by metes and bounds.

5. It is quite clear to us that if the family continued joint till the date of the suit, and there is no suggestion in the plaint that the plaintiffs want to separate, the plaintiffs, though they are entitled to joint possession over the joint property, are not entitled to a declaration that they necessarily have a two-thirds share in the property. The exact extent of their share can only be determined at the time when the separation actually takes place. Mr. Saila Nath Mukerji is unable to show to us from the pleadings or any other statement of the plaintiffs that they claimed to be separate at the time when the suit was instituted or that they expressed in clear and unambiguous terms their intention to separate.

6. Under these circumstances the decree of the Court below must be modified. The appeal is accordingly allowed in part and the decree of the Court below is modified to this extent that the plaintiff's suit for a declaration that they have a joint interest in the property in dispute and are entitled to joint possession is decreed, but that that portion of the decree which specifies the plaintiff's share as being two-thirds is to be struck off from it. In other respects the appeal is dismissed.

7. As on the question of fact raised in the Court below the defendants have failed and as all this trouble has been caused owing to the bad drafting of the plaint and the incorrect way in which the reliefs have been claimed, we direct that the parties should bear their own costs throughout.