
(2003) 02 JH CK 0050
In the Jharkhand High Court
Case No : A.F.O.D. No. 307 of 1989

Ramnath Sao alias Ramnath Sahu and Others	APPELLANT
Vs	
Goberdhan Sao and Others	RESPONDENT

Date of Decision : 26-02-2003

Acts Referred:

Hindu Succession Act, 1956 — Section 15, 16, 6

Citation : (2003) 51 BLJR 749

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : N.K. Prasad, P.K. Prasad and Pratyush Kumar, for the Appellant;
Manjul Prasad and A.K. Sahani, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—This appeal by the defendant-appellants is directed against the judgment and decree dated 31-5-1989 passed by Subject III, Hazaribagh in Partition Suit No. 77/80 of 1966/88 whereby the plaintiffs' suit has been decreed in part.

2. In the aforesaid suit the plaintiffs-respondents sought a decree for partition and claimed sixty two and half paise share in the properties of village Lapunga detailed in Schedule B and item Nos. 1 to 8 of Schedule C properties and share to the extent of 13-4/5 paise item No. 9 of Schedule C properties.

3. Plaintiff's case, inter alia, is that one Fuchan Sao was the common ancestor of the parties Khata No. 19 of village Labaga P.S. Ramgarh was recorded in the name of Fuchan Sao. He had one son, Mithu Sao. Mithu Sao, since dead, had two wives. From the first wife named Temni Devi he had two sons, Ramnath Sao and Kashinath Sao and a daughter Bachua Devi. From his second wife, Bilaso Devi, he had three sons, Goberdhan Sao, Baldeo Sao and Jagdish Sao and a daughter, Sarita Sahu. Ramnath Sao had two sons, Nageshwar Sao and Bhubneshwar Sao Kashinath Sao had also two sons, Jadunandan Sao and Ashok Kumar, Khaiti Devi

is the wife of Ramnath Sao and Gudani Devi is the wife of Kashinath Sao. Chinta Devi is the wife of Nageshwar Sao Further case of the plaintiffs is that they along with the defendants constituted a joint Hindu Mitakhar family and they have been continuing in jointness. The joint family had ancestral land recorded under khata No. 19 village Lapanga in the District of Hazaribagh. The joint family also acquired lands in several villages in the name of one and other members of the joint family. The parties continued in joint possession of the properties, both of ancestral and those of acquired from time to time in the name of different members of the family. It is stated that some ancestral lands of joint family as detailed in Schedule B/1 was acquired by the Bihar State Electricity Board and compensation amount has been paid. It is alleged that due to growth in the number of the family members it became now inconvenient to remain joint and, therefore, the suit filed for a decree of partition.

4. Defendant Nos. 1 to 10 filed their written statement alleging that the suit for portion is not maintainable and the same is bad for non-joinder and mis-joinder of parties. Defendant's case is the Ugani Devi, daughter of Fuchan Mahto is the necessary party to the suit. There is no unity of title and possession between the parties. The suit has not been properly valued. The defendants have denied and disputed the allegation of jointness and unity of title and possession. The case of the defendants is that after the death of Mithu Sao or even before there were disruption in the family by reason of his having married two wives one after another. There was serious difference in the family. The children of the first wife separated from Mithu Sao. After the death of Mithu Sao the brothers again separated. The sons of the first wife separated from the sons of the second wife. There was no joint family and both the parties have separate earnings. Only the ancestral lands of Khata No. 19 are available for partition. Major portion of the ancestral land was acquired by the Government and compensation amount was divided among the parties according to their shares. Defendant's further case is that they acquired properties of Item No. 9 Schedule C by eight separate sale-deeds. All the acquisitions in the name of the members of the family or others are their self acquired properties which any aid and assistance from the joint family. As a matter of fact, the joint family had no sufficient nucleus and the acquisitions were never made out of the said nucleus or out of the joint family funds. It is stated that the lands of Khata No. 1 of village Rasda exclusively belongs to Chinta Devi and the land of Item No. 7 belongs to Ghurni Devi. These properties are not joint family properties. Defendant's further case is that the land of village Gegda measuring 1.56 acres of plot No. 117 under Khata No. 2 were jointly acquired by plaintiff No. 4 and defendant No. 4 but subsequently there was division in the said property and both plaintiff No. 4 and defendant No. 4 are in separate possession of this land. The defendants in their pleadings have described the manner of acquisition of all those properties separately and out of their own income.

5. Defendant Nos. 11 to 39 have filed separate written statement stating therein that they have no concern with the joint family property. However, it is stated by

them that the plaintiffs and the defendant are all separate since long and there is no unity of title and possession.

6. The learned Court below on the basis of the pleadings of the parties, framed the following issues:

- "(i) Is the suit maintainable i its present form?
- (ii) Is the suit barred by limitation and adverse possession?
- (iii) Is the suit barred by law of estoppel, acquiescence and waiver?
- (iv) Is the suit bad for defect of parties?
- (v) Have the plaintiffs any cause of action for the suit?
- (vi) To what relief or reliefs the plaintiffs are entitled?
- (vii) Whether there is unity of title and possession between the plaintiffs land defendant Nos. 1 to 10?
- (viii) Whether the suit is barred for previous partition?

7. The learned Court below, after considering the evidence, both oral and documentary adduced by the parties, recorded a finding that the parties constite a joint Hindu Family and after the death of Mithu Sao, his son, Ramnath Sao became the karta of the family and used to manage the joint family properties on behalf of the joint family. The Court below, further came to the conclusion that all the acquisition of the properties in the names of different members of the family was made by the joint family and they are not separate properties of any individual. The Court has come to the finding that major portion of the ancestral property was acquired by the Bihar State Electricity Board and the compensation of the said acquisition was utilized for the purposes of acquisition of the properties in the names of different members of the joint family. The Court further recorded a finding that the defendants failed to prove that the acquisition of the properties in the names of different members of the family was in fact acquired out of their separate income. The Court below, therefore, decreed the suit holding that the plaintiffs are entitled to get share to the extent of 62-1/2 paise in the Schedule B property and 12 paise share i the properties mentioned in Items No. 9 of Schedule C properties.

8. Mr. N.K. Prasad, learned Senior Counsel appearing on behalf of the defendants-appellants assailed the impugned judgment and decree as being illegal and contrary to the facts and evidence on record. Learned Counsel-firstly submitted that the property standing in the name of individual is presumed to be self acquired property and the onus to prove the same that it is joint family property heavily lies upon the persons claiming it to be so and the Court below has wrongly placed the onus upon the defendants so much so that the defendants were called upon to lead evidence first. Learned Counsel submitted that the Court below has also committed serious illegality in holding that there was unity

of title and possession between the parties even after the death of Mithu Sao and that defendant No. 1, Ramnath Sao was the karta of the joint family and used to manage the joint family property. Learned Counsel submitted that in any view of the matter all those properties acquired by different sale-deeds marked Exts. A/10 and A/11 could not have been held to be joint family properties as those properties were acquired in 1962 while Mithu Sao died in 1961. Learned Counsel further submitted that so far ancestral property is concerned, it will be governed by Section 6 of the Hindu Succession Act and five sons of Mithu Sao shall have 1/6th share. According to the learned Counsel Mithu Sao and his wife sons will have 1/6 share and 1/6th share of Mithu Sao again devolved upon his Class I heirs. Learned Counsel submitted that from the facts and evidence on record it will appear that the plaintiffs failed to prove that there was sufficient and adequate nucleus out of which the subsequent acquisition was made. Learned Counsel, in course of argument, referred all the documents by which the properties were acquired and submitted that unless it is proved that the properties standing in the name of females was acquired by the joint family also, those properties of the females shall be inherited in accordance with the provisions of Sections 15 and 16 of the Hindu Succession Act.

9. Mr. Manjul Prasad, learned Counsel appearing on behalf of the plaintiffs-respondents, drew my attention to Article 233 of the Mulla's Hindu Law and submitted that the burden of proof heavily lies on the parties that the property was the coparcenary property. It is not necessary for the plaintiffs to plead and prove as to how the property became joint family property. Learned Counsel submitted that the defendant, Ramnath Sao, himself admitted to be the karta of the joint Hindu Family and in that capacity he sold one of the properties standing in the name of Mithu Sao. Learned Counsel submitted that Ext. I read with Ext. A/14 are enough to prove that at all material times the members of the joint family remained joint and the properties were acquired out of the joint family funds. Learned Counsel submitted that although the defendants took the defence of previous partition before and after the death of Mithu Sao but they have failed to prove the same. According to the learned Counsel the Court below has come to a right conclusion that all the properties are joint family property.

10. It is well-settled that once jointness is alleged and relationship is established, the unity of title has to be presumed unless demolished by cogent evidence by the parties alleging otherwise. It is equally well-settled that there is strong presumption in favour of Hindu brothers constituting joint Hindu Family. It is for the person alleging severance of the joint family to prove it by leading strong evidence.

11. Admitted case of the parties is that Mithu Sao son of Fuchan Sao had two wives. Defendant Nos. 1 to 10 are the heirs of the first wife and plaintiff Nos. 1 to 3 and 5 are the heirs of the second wife, plaintiff No. 4. It is also not disputed that Mithu Sao died in 1961. Plaintiffs' case is that Mithu Sao left behind undivided Hindu Joint Family properties but the defendants' case is that there

was disruption in the joint family after the death of Mithu Sao. Their further case is that even before death of Mithu Sao there was disruption in the family and after the death of Mithu Sao his sons again separated. However, there is no specific pleading in the written statement as to when disruption in the family took place and in what manner the properties were divided and which portion of the joint family property was allotted to the parties. From perusal of the sale-deed dated 16-3-1974 (Ext. 1) executed on 16-3-1974 i.e. much after the death of Mithu Sao, Defendant No. 1, Ramnath Sao admitted that he was acting as karta of the family transferring the portions of land of village Sankul to one Dema Sao. Defendant No. 1 who was examined as DW1 admitted in his evidence about the recital of the sale-deed but his explanation was that since the land stood in the furzi name of his father, Mithu Sao, he made such statement in the sale-deed. The evidence of Defendant No. 1 (DW 1) sufficiently proves that after the death of Mithu Sao, his son, Ramnath Sao managed the property as the karta of the joint family. Although the defendants-appellants claimed the properties which were acquired in their separate names as their self acquired property and not the joint family property but there is no pleading from the side of the defendants as to the source of income of the members of the joint family from which they acquired the properties even during the life time of Mithu Sao. Admittedly major portion of the ancestral property was acquired and compensation was paid for the said land by the Bihar State Electricity Board. It was only after receiving the compensation amount the joint family purchased the lands at different places through sale-deeds, Exts. A to A/7. From the evidence adduced by the parties it appears that even after payment of consideration money for the acquisition of the property in the names of different members of the family a sum of Rs. 11,000/- remained in the hand of the joint family. As noticed above, no evidence was led from the side of the defendants as to the source of income from which the consideration money was paid for the purchase of the land through Exts. A to A/7.

12. It is well-settled that if at the state of jointness some properties are acquired in the names of family members of the joint family then heavy onus lies on the members of the joint family to prove that it is self acquired property. Presence of family nucleus coupled with want of proof of separate source of income of the members raises presumption that the property was acquired by the joint family.

13. On consideration of the entire evidence both oral and documentary which has been elaborately discussed by the trial Court I come to the conclusion that there is no perversity in the finding recorded by the trial Court that there had not been disruption in the joint family and the properties have not been partitioned by metes and bounds. Even after the death of Mithu Sao, his son, Ramnath Sao became the karta of the family and in that capacity he transferred the joint family properties and further it is evident that the properties were acquired in the names of different members of the joint family and it shall be presumed in absence of proof of separate source of income of the members of the joint family that these properties were acquired out of joint family funds.

14. Taking into consideration the entire facts and evidence available on record I do not find any errors of fact and errors of law in the judgment passed by the trial Court which warrants interference.

15. For the aforesaid reasons I do not find any merit in this appeal which is, accordingly, dismissed.