
(1908) 08 CAL CK 0017
In the Calcutta High Court

Rangamani Dasi

APPELLANT

Vs

Jogendra Nath Manna and Others

RESPONDENT

Date of Decision : 07-08-1908

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 103, 146

Citation : 3 Ind. Cas. 304

Hon'ble Judges : Doss, J;Coxe, J

Bench : Division Bench

Judgement

1. The plaintiff in this case is the widow of one Lokenath, the son of Beni Madhab Manna. Beni Madhub died leaving five sons and a widow named Srimati Anandamoyi Dasi. During her life-time the family property was partitioned by an arbitration award dated the 13th November 1887 and Anandamoyi obtained certain property absolutely and a life-estate in a garden and a sum of Rs. 3,000. Lokenath died during Anandamoyi's life-time and his widow now sues for partition of a fifth share in the garden and the sum of Rs. 3,000.

2. The Subordinate Judge found that the plaintiff was not and never had been in possession of the disputed property jointly with the defendants and, therefore, was not entitled to sue for partition. The suit was brought on a Court-fee stamp of Rs. 10 and an issue was framed as to whether the suit could proceed on that Court-fee. The Subordinate Judge, however, neither decided the issue nor required the deficiency in Court-fees to be made good, as he should have done. He then proceeded to come to a decision to which the parties were not entitled, on the question whether under the partition award of 1887, the plaintiff was entitled to inherit a share of the property in suit. This point he decided against the plaintiff who accordingly appeals.

3. The learned Counsel for the appellant has argued that the possession of the other members of the family was possession on behalf of the plaintiff, and that, therefore, she is entitled to sue for partition on a Court-fee stamp of Rs. 10. But as her whole case rests on a complete partition made years ago, and it is proved

beyond doubt that she has never possessed the property in dispute, it seems to us clear that the Subordinate Judge was right and that she is not entitled to sue for partition without suing at the same time for possession of her share, a course entailing payment of Court-fees calculated ad valorem both in the plaint and the memorandum of appeal. The appellant has taken this course and paid in the proper Court-fees; and accordingly we proceed to dispose of the appeal on the merits.

4. The appellant's learned Counsel contends that the partition award effected a complete severance in the interests of the various co-parceners; and that, accordingly, the plaintiff's husband obtained a separate vested interest in the property in which Anandamoyi was given a life-estate, which separate interest descended in due course to his widow. It is clear that this must be the case, if the terms of the partition award itself do not affect the plaintiffs right of inheritance, and the learned Counsel for the respondents admits that if it were not for the express terms of the partition award the plaintiff would be entitled to succeed to a share of the disputed property. The whole question, therefore, turns on the meaning of the words at the end of the partition award which prescribe "that the said garden, both debuttar and sarkari, and the Rs. 3,000 will, after the demise of the mother Anandamoyi, be divided among the then surviving heirs and representatives." The award is in English and it is quite clear from the language used that it was drafted by a person familiar with conveyancing.

5. It is contended on behalf of the appellant that the expression the then surviving heirs and representatives" means "the then surviving heirs and the then surviving representatives of the deceased heir." This construction makes the words ""then surviving" entirely unnecessary as if the words "representatives of deceased heirs" the whole expression under examination must necessarily mean simply the heirs and representatives."

6. On the other hand it is argued for the respondents that the words include only such of the original heirs as were then, alive when Anandamoyi died. This construction makes the word and representatives" wholly unnecessary. The learned Counsel for the respondents further urges that at the time of the award it was understood in Bengal that on the death of a mother who has obtained a share in partition, her share would go to her husband's heirs; and refers to the unreported case decided by Mr. Justice Pigot, which is quoted in Sorolah Dosses v. Bhoobun Mohun Neoghy 15 C 292 and also to the third edition of Mr. Mayne's work on Hindu Law, p. 599.

7. We for our part greatly doubt whether the arbitrators really devoted their minds seriously to the consideration of the question who were the proper heirs to succeed to a mother's portion.. It appears to as more likely that they used the words as a mere jingle, meaning that after Anandamoyi's death the property should go to the heirs, whoever they might be, without attempting to lay down, or even, consider, who the heirs might be. Taking this view, we are unable to hold that there is anything in the award to interfere with the ordinary rules of

succession and consequently the 9th issue laid down by the Subordinate Judge must be decided in the plaintiff's favour. But as there, are several other issues remaining for disposal, the case must go back to the Subordinate Judge in order that they may be decided. The costs of this appeal will abide the result of the suit. One of the issues left undecided by the" Subordinate Judge is the question whether the suit is barred by Section 103 of the Civil Procedure Code. We are unable to decide this point as the Subordinate Judge has not discussed it and the appellant's pleader in reply professed himself unprepared to argue it. But we may point out to the Subordinate Judge that if this plea proves to be well-founded, as to which, of course, we express no opinion, the period front the date of the institution of the suit to its ultimate decision and the trouble and expense to which the parties and witnesses have been put, will have been almost wholly wasted by reason of his disregard of the provisions of Section 146 of Civil Procedure Code. The terms of that section are perfectly clear. They prescribe that when issues of law going to the root of a case arise the Court is bound to try those issues first and may, in its discretion, which in this case the Subordinate judge should certainly have exercised, postpone the settlement of the issues of fact until after the issues of law have been determined.