

(1974) 07 MP CK 0008

In the Madhya Pradesh High Court

Case No : First Appeal No. 149 of 1967

Santoshchandra and Others

APPELLANT

Vs

Smt. Gyansundarbai and Others

RESPONDENT

Date of Decision : 01-07-1974

Acts Referred:

Specific Relief Act, 1963 — Section 34

Citation : AIR 1975 MP 193 : (1979) ILR (MP) 641 : (1974) JLJ 615 : (1974) 19 MPLJ 679 : (1974) MPLJ 679

Hon'ble Judges : S.M.N. Raina, J;C.P. Sen, J

Bench : Division Bench

Advocate : R.K. Pandey, for the Appellant; D.M. Dharmadhikari, for the Respondent

Final Decision : Dismissed

Judgement

Raina, J.

This is an appeal by the plaintiffs from the judgment and decree of the Court of Additional District Judge, Betul dismissing their suit for a declaration and injunction.

The plaintiffs are the sons of Tekchand respondent No. 2. Tekchand was the adopted son of Jethmal. Mst. Jhunnobai, who was the original defendant No. 1 was the widow of Jethmal. Jhunnobai died during the pendency of the suit and on her death her daughter Mst. Gyansundarbai respondent No. 1 was brought on record as her legal representative. Mst. Tarabai, defendant-respondent No. 3 is the wife of Tekchand.

Jethmal died in the year 1947. During his lifetime he had acquired 3 houses. Out of them one was sold by him. So far the facts are not in dispute. The case of the plaintiffs is that the relations between Tekchand and Smt. Jhunnobai being strained, Jethmal made a family arrangement in June, 1946. Under this arrangement he gave a sum of Rs. 12,000/- to Mst. Jhunnobai and she was also

given right of residence in the family property. The rest of the property was allotted to Tekchand and the plaintiffs in lieu of their share in the property. Thus, according to the plaintiffs, after this arrangement was made Mst, Jhunnobai had no interest left in the family property. Jhunnobai, however, filed a suit for partition against Tekchand, namely Civil Suit No. 34-A of 1959. A preliminary decree was passed in her favour on 23-7-1962 and subsequently it was made final. It is not disputed that the said decree was executed and Jhunnobai and Tekchand were placed in possession of their shares under the decree. On 14-3-1963 the plaintiffs filed this suit for a declaration and injunction contending that they were not bound by the decree of partition in Civil Suit No. 34-A of 1959 as they were not parties thereto. During the pendency of the suit the plaintiffs made an application for deleting the relief of injunction when the question of Court-fees being inadequate was raised by the defendants. The trial Judge rejected the application and after dismissing the suit on merits, directed the plaintiffs to pay additional Court-fees of Rs. 1055/-. Being aggrieved thereby the plaintiffs have filed this appeal.

The plaintiffs raised the question of Court-fees in appeal and the matter was referred by a Division Bench of this Court to a Full Bench which held that the plaintiffs-appellants were not required to seek the relief of injunction and as such were not required to pay Court-fees u/s 7(iv)(c) or u/s 7(iv)(d) of the Court-fees Act. It was further held that the Court-fees paid by them was sufficient. After the aforesaid opinion of the Full Bench was recorded this appeal has come up before us for disposal on merits.

Before we proceed to consider the appeal on merits we would deal with the contention of the learned counsel for the appellants that the learned trial Judge was in error in rejecting their application for amendment of the plaint so as to delete the relief of injunction. It is for the plaintiff to seek such relief as he chooses and, therefore, there was no justification for rejecting the application for amendment. The question whether a suit for bare declaration was maintainable in the circumstances or not is a separate matter and in fact the Full Bench has observed in the concluding paragraph of its opinion that their opinion would not affect the question of tenability of the suit in view of Section 42 of the Specific Relief Act. The learned counsel for the respondents has also no objection to the amendment being allowed. We, therefore, set aside the order of the trial Court rejecting the plaintiffs' application for amendment of the plaint and hereby allow the application and direct that the plaint shall be amended accordingly.

The next point for consideration is whether a suit for bare declaration is - maintainable in the circumstances of this case. Proviso to Section 34 of the Specific Relief Act, 1963, lays down that no Court shall make any such declaration where the plaintiff being able to seek further relief than mere declaration of title, omits to do so. The object of this proviso is to avoid multiplicity of suits. Where the plaintiff is entitled to some consequential relief directly flowing from the right or title of which he seeks declaration in the suit,

he must seek such relief along with the declaration. It is not open to him to seek a declaration in the first instance and a consequential relief at a later stage by 2 separate suits. This provision is mandatory and enjoins the Court not to pass a declaratory decree where the plaintiff omits to seek further relief to which he is entitled as a natural consequence of the declaration.

In the instant case it has been urged on behalf of the defendants-respondents that the plaintiffs were bound to seek either the relief of injunction restraining the other side from executing the decree against them or the relief of possession as a consequential relief and for having failed to do so the suit is liable to be dismissed. So far as possession is concerned it was not disputed before us that the plaintiffs were in possession on the date of the suit and they were dispossessed by the defendants during the pendency of the suit in execution of the decree obtained by the late Jhunnobai against the respondents 2 and 3. It is no doubt true that it was open to the plaintiffs to seek the relief of possession by amending the plaint when they lost possession under the decree, in question. But on that ground alone their right to seek a declaration cannot be denied. Ability of the plaintiff to seek further relief within the meaning of Section 34 means ability at the time of the institution of the suit and a suit for declaration which was maintainable at the time of the institution does not cease to be so on the happening of some subsequent event which may necessitate consequential relief. The right of plaintiff to maintain a declaratory suit is not affected by the fact that possession was lost during the pendency of the suit. Thus the mere fact that the plaintiffs did not seek the consequential relief of possession by amending the plaint would not affect their right to seek a declaration of the title if that right was available to them on the date of the suit. A similar view was expressed in *Surendra Narayan Deb and Another Vs. Bhairabendra Narayan Deb and Others*, .

It has been urged on behalf of the respondents that, in any case, it was necessary for the plaintiffs to seek the relief of injunction as the decree in Civil Suit No. 34-A of 1959 was binding on them. It is, no doubt, true that the plaintiffs were not parties to the earlier suit and the decree passed therein. Ordinarily, a person, who is not a party to a decree, is not bound by it and may, therefore, sue for a declaration that it is not binding on him without seeking any further relief. But there are exceptions to this rule. In this connection it would be pertinent to refer to the following observations of their Lordships of the Supreme Court in *Shamsher Singh Vs. Rajinder Prashad and Others*, :--

"But there are exceptional cases in which the plaintiff though not a party to the deed or the decree is nevertheless bound thereby. For instance, when a sale or mortgage of joint family property is effected by a manager of a joint Hindu family, the alienation is binding on the other members of the family (even if they are not parties to it) until and unless it is set aside. Similarly, a decree passed against the manager will be binding on the other members of the family. If, therefore, a coparcener sues for a declaration that such an alienation or decree is null and void, the declaration must I think be held to include consequential relief

in the same way as in those cases in which the plaintiff is himself a party to the alienation or the decree, which is sought to be declared null and void."

So far as a suit for partition is concerned, the general rule is that it must embrace all the joint family properties and all the parties interested in such properties must be made parties to the suit. But if the suit is for partition of the properties not between all the individual coparceners but only between the various branches of the family, the really necessary parties are the heads of the various branches and in such a case it is not obligatory on the plaintiff to implead all the coparceners of each of the branches vide "Hindu Law" by Mulla, Thirteenth Edition, at pp. 386-387. The decree in such a suit would be binding on the coparceners who were represented by the head of their branch.

As Tekchand, father of the plaintiffs, was a party to the suit for partition brought by Smt. Jhunnobai, it would appear that the plaintiffs are bound by the said decree. We need not, however, go into this question any further because the plaintiffs sought a declaration on the specific allegation that the property in suit was the exclusive and self-acquired property of their grandfather and was acquired by them under a family arrangement. In view of this allegation in the plaint, it was observed by the Full Bench in paragraph 14 that a suit for a declaration simpliciter could lie without seeking the relief of injunction- We, therefore, now proceed to consider whether the claim as laid by the plaintiffs has been established.

It is not disputed that the property in such suit was the joint family property of the grandfather. The contention of the plaintiffs is that this property was acquired by them under a family arrangement in 1946. A family arrangement is an arrangement among relations or members of a family in order to settle disputed rights against one another and to avoid litigation in the interest of all concerned.

In Gulam Abbas Vs. Haji Kayyum Ali and Others, their Lordships described a family arrangement in the following terms in paragraph 16 quoting the definition of such arrangement in Halsbury's Laws of England. Third Edition. Vol. 17, pp. 215 and 216:

"A family arrangement is an agreement between members of the same family intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour."

In Maturi Pullaiah and Another Vs. Maturi Narasimham and Others, their Lordships made the following pertinent observations regarding the nature of family arrangement:

"Though conflict of legal claims in praesenti or in future is generally a condition for the validity of a family arrangement, it is not necessarily so. Even bona fide disputes, present or possible, which may not involve legal claims will suffice."

Their Lordships further observed in the said case that if the arrangement is bona fide and the terms are fair, the Court will readily enforce it. It was further pointed out that such an arrangement will need registration if it creates any interest in praesenti in immovable property.

In Potti Lakshmi Perumallu Vs. Potti Krishnavenamma, , their Lordships pointed out that before a Court would enforce a family arrangement it must be shown that there was an occasion for effecting it and that it was acted upon.

From the aforesaid decisions it would appear that following are the essential features of a family arrangement;

(i) It is an agreement between members of the same family for compromising doubtful or disputed rights of the members in the interest of the family as a whole.

(ii) There must be an occasion for effecting the family arrangement.

(iii) A conflict of legal claims in praesenti or in future, or at least bona fide disputes present or possible, is a condition precedent for the validity of a family arrangement.

(iv) A family arrangement would need registration only if it creates any interest in immovable property in praesenti in favour of the parties mentioned therein. If no such interest is created, the document will be valid despite its nonregistration,

(v) If a family arrangement is entered into bona fide and the terms thereof are fair, the Court will accept such an arrangement and enforce it.

If we carefully examine the pleading and the evidence in this case relating to the family arrangement pleaded by the plaintiffs, it would appear that some of the essential features of such an arrangement are missing. There is nothing to show that there was any compromise of doubtful or disputed claims. All that is pleaded in paragraph 3 of the plaint is that relations between the late Smt. Jhunnobai and Tekchand, her adopted son were strained during the lifetime of Jethmal as they were incapable of pulling on together. There is nothing in the pleadings to indicate that they had any conflicting claims over the family property. There is also no evidence on the point. According to Brijlal (P. W. 1) there used to be quarrels between Tekchand and Jethmal and this led to a partition between them. Ramratan (P. W. 2) made a similar statement. If Jethmal and his wife Jhunnobai could not pull on well with Tekchand there could be a partition of the joint family property; but there could be no reason for Jethmal to allot his own self-acquired property to either Tekchand or his sons by way of family arrangement.

There is also a very significant discrepancy between the pleadings and proof relating to the alleged family arrangement. There is not an iota of evidence to suggest that the property in suit was allotted to the plaintiffs under the arrangement; while the pleading is that it was allotted to Tekchand and the

plaintiffs in lieu of their share in the family property. The learned trial Judge held that the family arrangement, which has been referred to as a partition in issue No. 1, was not proved. The finding appears to be reasonable and there is no justification for taking a contrary view. As pointed out by the learned Judge, all that could be reasonably gathered from the evidence was that a sum of Rupees 12,000/- was given to Smt. Jhunnobai but the property in suit, which admittedly was the self-acquired property of Jeth-mal, was not in any way transferred to either Tekchand or the plaintiffs and did not vest in them.

It may here be also mentioned that since the case of the plaintiffs is that the property in suit was the self-acquired property of Jethmal, it could be transferred to Tekchand or the plaintiffs only by a registered document under the alleged arrangement; admittedly there was no transfer of interest to the plaintiffs by any such document. Thus, the plaintiffs have utterly failed to prove that they had acquired any interest in the property under the alleged family arrangement which is referred to as a partition in the issues and the judgment,

Since the plaintiffs have failed to make out any title to the property in suit under the family arrangement pleaded by them, their suit is liable to be thrown out on this ground. The property in suit, being the self-acquired property of Jethmal, must have been inherited by Tekchand and Smt. Jhunnobai. The plaintiffs can claim a share in the property as grandsons of Jethmal on his death. Even Smt. Jhunnobai is now dead and the plaintiffs can claim share in her property as her heirs. The plaintiffs, having failed to establish the grounds on which they challenged the earlier partition decree between Smt. Jhunnobai and Tekchand, the dismissal of the suit must be maintained.

Whatever rights the plaintiffs have acquired in the property in suit, either as heirs of Jethmal or as heirs of Smt. Jhunnobai, can be worked out in a separate suit. We, therefore, do not find any good reason to interfere with the order of dismissal of the suit.

The appeal, therefore, fails and is hereby dismissed with costs. Counsel's fee according to scale, if certified.