(1963) 12 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. No. 72-D of 1962

Seth Chiranji Lal Jaiporia APPELLANT

Vs

Hardwari Lal and Others RESPONDENT

Date of Decision : 18-12-1963

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1964) 2 ILR (P&H) 321 : (1965) 67 PLR 24

Hon'ble Judges : Prem Chand Pandit, J

Bench : Single Bench

Advocate : Manmohan Nath, for the Appellant; S.N. Shanker and Daljit Singh, for the Respondent

Final Decision : Dismissed

Judgement

Prera Chand Pandit, J.—Charanji Lal Jaipuri filed a suit against Hardwari Lal and others for partition of certain properties, including the property in dispute namely Jaipuria Spinning and Weaving Mills, Delhi, and rendition of accounts. One. of the issues in this case was whether the property in dispute was impartible or not. During the pendency of this suit, on 19th September, 1960, the Plaintiff filed an application u/s 2 of the Indian Partition Act (4 of 1893)(hereinafter referred to as the Act), on which it was stated that the Defendants had raised an objection that the property in dispute was impartible. The objection was frivolous, but in case the Court held against him, this property be sold by public auction, which would be in the interests of all concerned. In answer to this application, only Hardwari Lal, Defendant No. 1, put in his reply on 26th September, 1960, saying that the property in dispute was impartible and it would be more beneficial for all the shareholders, if the court directed a sale of the same and distribution of the proceeds in accordance with the Act. It was, however, mentioned that the Plaintiff, who was claiming only a very small share, namely 74 per cent, in this property, could not dictate the sale. It Was, therefore, prayed that orders in accordance with the Partition Act--Section 2 may be passed, if so desired by the

Plaintiff. While deciding this suit on 1st December, 1960, the trial Court came to the following conclusion:--

Para 31. When such is the case, the Court is empowered to act u/s 2 of the Partition Act on the application of any of the shareholders. In the present case, an application has been made by the Plaintiff himself and Defendant No. 1 who is the major shareholder, has not only agreed to it, but also pleaded that it would be beneficial if this property is sold by public auction under the provisions of the Partition Act. In these circumstances, I decide this issue in favour of the Defendants and further hold that it is a fit case, in which this property should be sold by auction under the provisions of the Partition Act.

Para 33. In regard to the sale of Jaipuria Spinning and Weaving Mills, Subzimandi, Delhi, it is necessary for the Court to fix a reserve price of the property u/s 6 of the Partition Act. This can be done only after the parties file their respective estimates of its value. They should do so on 15th December, 1960.

2. A preliminary decree was then passed in which the shares of the various owners were mentioned and a Local Commissioner was appointed to take the accounts of the income of the property in dispute. The estimate of the reserve price of this property as given by the Plaintiff was Rs. 45 lacs, while according to one of the Defendants it was Rs. 50 lacs.

3. On 15th December, 1960, Hardwari Lal and his mother, Smt. Muni Devi, Defendant No. 3, filed an application u/s 3 of the Act and Section 151, Code of Civil Procedure, to the effect; that the Applicants were prepared to purchase the share of the Plaintiff at a valuation that might be fixed under the provisions of Section 3 of the Act. Under these circumstances, it was just and Se proper that the Plaintiff''s share might be ordered : to be sold to the highest bidder from amongst the H shareholders under the provisions of Section 3(2) of the Act. A prayer was, therefore, made that orders for the sale of the Plaintiff''s share u/s 3 be passed and the bids be confined to the shareholders alone.

4. This application was opposed by the Plaintiff, who submitted that the same was legally not maintainable. By order, dated 1st December, 1960, the Court had held that this property would be sold by public auction. This order had been passed on the Plaintiff''s application u/s 2 of the Act and Defendant No. 1 did not raise any objection at that stage that it should not be so sold. The Defendant''s application was mala fide and the Plaintiff would be greatly prejudiced, in case the property was not sold by public auction. It was also mentioned that the Plaintiff was a poor man and was unable to purchase the Mills. After the passing of the judgment and the preliminary decree, such an application did not lie.

5. The trial Court came to the conclusion that an application u/s 3 of the Act was maintainable even after orders had been passed by the Court for taking proceedings u/s 2. It was also held that the application filed by the Plaintiff u/s 2 did not disentitle them to move an application u/s 3 of the Act. On these

grounds, the objections raised by the Plaintiff were dismissed. Against this order, the present appeal has been filed by Charanji Lal Jaiporia.

6. The first question for decision is whether Defendants 1 and 3 could file an application u/s 3 of the Act after an order had been passed by the Court that the property in dispute be sold by auction. Learned Counsel for the Appellant submitted that the proper time to apply u/s 3 was before a Court made an order u/s 2 and that when an order for sale had been made under the latter section, a co-sharer could not apply to have the property sold to him at a valuation to be fixed by the Court u/s 3 of the Act. For this submission, reliance was placed on a Division Bench authority of the Madras High Court in Angamuthu Mudaliar Vs. Ratna Mudaliar and Others,

7. In my view, there is no merit in this contention. Sections 2 and 3 of the Act are in the following terms:

Section 2. Whenever in any suit for partition in which, if instituted prior to the commencement of this Act, a decree for partition might have been made, it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein, or of any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property and distribution of the proceeds would be more beneficial for ail the shareholders, the Court may, if it thinks fit. on the request of any of such shareholders interested individually or collectively to the extent of the one moiety or upwards, direct a sale of the property and a distribution of the proceeds.

Section 3(1) If, in any case in which the Court is requested under the last foregoing section to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, the Court shall order a valuation of the share or shares in such manner as it may think fit and offer to sell the same to such shareholder at the price so ascertained, and may give all necessary and proper directions in that behalf.

(2) If two or more shareholders severally apply for leave to buy as provided in sub-section (1), the Court shall order a sale of the share or shares to the shareholder who offers to pay the highest price above the valuation made by the Court.

(3) If no such shareholder is willing to buy such share or shares at the price so ascertained, the Applicant or Applicants shall be liable to pay all costs of or incident to the application or applications.

8. A plain reading of these two sections would show that no such restriction as suggested by the learned Counsel for the Appellant has been imposed by the Legislature. Once the court comes to the conclusion that the property involved is impartible and some of the co-sharers apply for the same being sold u/s 2 of the Act, the provisions of Section 3 are attracted and the other shareholders can

apply under this section for leave to buy the share of the party asking for a sale at a valuation to be fixed by the Court. An application u/s 3 can, therefore, be made at any time after a co-sharer has moved the Court u/s 2 and before the property involved is actually sold, because after the sale, the rights of third parties come in. The mere fact that a preliminary decree has been passed would not stand in the way of the co-sharers exercising their rights u/s 3 of the Act, because at that stage it cannot be said that and injustice would be done to any body by doing so. The object of Section 3 mainly, is that the property should remain joint in case some of the co-sharers are inclined to purchase the shares of those, who want to sell the property u/s 2 of the Act. In this view of mine, I am supported by a Bench Decision of the Calcutta High Court in Nitfish Chandra and another v. Promode Kumar and Ors. (2). As regards Angamuthu Mudaliars case (1) relied upon by the learned Counsel for the Appellant, in the first place, it is distinguishable on facts, because there the preliminary decree was passed when both the parties to the suit were present and had agreed to the sale being ordered. Secondly, in view of the reasons, already mentioned above, the proposition of law Laid down in that authority, namely that after an order had been made u/s 2 that the property be sold, a co-sharer could not move an application u/s 3, with due respect to the learned Judges, is not sound.

9. The next question argued was that Defendant No. 1 had agreed to the property being sold by public auction and, therefore, he was debarred from filing an application u/s 3 of the Act.

10. There is no force in this contention also. So long as the property is not sold, any co-sharer can make an application u/s 3 of the Act for the purchase of the shares of those who want the : same to be sold.

11. The last contention raised was that only the small shareholders could file an application u/s 3 and Defendant No. 1, who had the largest share in the property, was not entitled to exercise this right. Reliance for this was placed on L. Ram Prasad v. Mt. Mukandi and another (3), where it was held that the Partition Act must be construed strictly as the provisions of the Act exclude the right of the majority shareholder to acquire the property, the subject of partition, at the option of the minority shareholder.

12. There is no substance in this contention a well Section 3 does not anywhere lay down that it is only the small shareholders who can make an application under this section and acquire the share of the others, who want the property to be sold u/s 2 of the Act. It is not quite clear if the learned Judges of the Allahabad High Court wanted to lay down that Section 3 was only intended for the benefit of small shareholders and the bigger ones could not purchase the property under this section. But if that was the intention, then, with great respect to them, I cannot subscribe to this view, because no such restriction is discernible from the plain reading of Section 3.

13. In view of what I have said above, this appeal fails and is dismissed. In the

circumstances of this case, however, I will make no order as to costs in this Court.