
(1959) 09 SC CK 0023

In the Supreme Court Of India

Case No : Civil Appeal No.330, 331 of 1955

Smt. Parbati Kuer

APPELLANT

Vs

Sarangdhar Sinha and Others

RESPONDENT

Date of Decision : 14-09-1959

Acts Referred:

Code of Civil Procedure, 1908 — Section 109, 110

Citation : AIR 1960 SC 403

Hon'ble Judges : Sudhi Ranjan Das, C.J;M. Hidayatullah, J;K. C. Das Gupta, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

M. Hidayatullah, J.—These two appeals have been filed by the same appellant (Smt. Parbati Kaur) with certificates granted by the High Court of Patna under Article 133 (1) of the Constitution read with Sections 109 and 110 of the Code of Civil Procedure. By these two appeals, the appellant impugns the common judgment but separate decrees of the High Court in Civil Appeals Nos. 69 and 91 of 1947 dated September 9, 1953.

2. The facts are as follows : One Ramdin Sinha had three sons, Ram Ran Vijaya Sinha, Sarangdhar Sinha and Ramji Sinha. The last two were the step-brothers of Ram Ran Vijaya Sinha. Ramdin Sinha died in 1903, as it is now admitted, in a state of jointness with his three sons, and the coparcenary also continued till the death of Ram Ran Vijaya Sinha on October 27, 1936. Ramdin Sinha had started a printing and publishing business in Patna known as Khadga Vilas Press, hereinafter referred to as the Press, and left also vast movable and immovable properties in Patna and Ballia District. Ram Ran Vijaya Sinha had three daughters, one by his third wife and two by his fourth wife. These daughters were defendants along with the present appellant in the Court of First Instance. Ram Ran Vijaya Sinha died on October 27, 1936, leaving extensive properties.

3. Included in the property were stocks, shares and securities and three life

insurance policies with the Great Eastern Life Assurance Co., Ltd., which was the fifth defendant in the suit. After the death of Ram Ran Vijaya Sinha, the widow, Parbati Kaur, applied to the District Court for a succession certificate, and obtained an order in her favour. We were informed that she could not act on the order granting the certificate to her, because she could not furnish security. The present suit was filed by the two stepbrothers of Ram Ran Vijaya Sinha for a declaration that they were entitled to the monies due under the insurance policies and the shares, stocks and securities together with interest and other benefits, as the surviving coparceners. This suit was opposed on various grounds by the answering defendants, and the trial Judge held that the stocks, shares and securities belonged to the coparcenary, but that the insurance policies were the private property of Ram Ran Vijaya Sinha and the widow was entitled to succeed to them. Against the decision of the Subordinate Judge, Patna, two appeals were filed by the opposing parties. The High Court by its judgment under appeal, decided the entire suit in favour of the plaintiffs, and held that the insurance policies also formed the assets of the coparcenary, to which the plaintiffs were entitled as survivors. The appellant, therefore, obtained two certificates from the High Court, and filed these two appeals. As regards Appeal No. 331 of 1955, it is sufficient to say that it was not pressed before us, and must, therefore, be dismissed.

4. The appellant fought the case only in respect of the three insurance policies, each of Rs. 17,000, and contended that the decision of the High Court reversing the decision of the Subordinate Judge of Patna was erroneous. The contention that there was a partition between the step-brothers in 1906 was abandoned in this Court, in view of the concurrent findings of the two Courts below. The case of the appellant in respect of the insurance policies was based on the following pleas : About the time Ram Ran Vijaya Sinha took out these policies, he also procured two other policies on the lives of his two step-brothers with the same Company for a sum of Rs. 25,000 each. The submission of the appellant was that this was a provision for the wives and children of the three coparceners, and the proceeds were not meant to form joint family assets. The appellant submitted that there used to be maintained an Amanat khata in the account books of the Press, wherein sums taken by each brother were deposited separately to be withdrawn later. The payment of the premia towards these five insurance policies was thus a payment to the brothers, and constituted their separate and personal property. The premia were not only paid separately, but were also entered separately in the account books of the Press, and this showed that they were handed out, as it were, to the three brothers. It was also contended that there was a presumption in law that money payable under a policy of life insurance to a coparcener belonged to him and the proceeds on the death of the coparcener went by succession to his heirs and not by survivorship to the other coparceners. In amplifying this proposition, it was submitted (a) that a life insurance policy could never be, by its very nature, a part of joint family assets, (b) that premia paid towards life insurance policies, even if paid out of joint family funds, must

be treated as money appropriated to the insured and as such, presumed to be his separate property, and (c) that the burden of proof in the case of a life insurance policy was upon the person who alleged that the amount of the policy belonged to the joint family. These were the points which were again pressed upon us for acceptance in the appeal. It may be pointed out that in the High Court learned counsel for the present appellant conceded that the premia were paid out of joint family funds, though he submitted that in the absence of the ledger it could not be held with certainty whether the amount was treated as spent for the joint family or on account of the individual member, in whose name the policies stood. The respondents naturally relied upon this concession and made much of it. We have, however, heard full arguments without the concession, and have permitted the appellant to refer to us the circumstances from which any inference against the respondents can legitimately be drawn from the record of the case. Having heard these arguments, we are satisfied that the concession was properly made, and that there is no scope for inference, either in law or in fact, that the premia paid ceased to be the assets of the joint family and became the share of the income of the individual coparceners. We are also of the opinion that there is no proposition of law by which the insurance policies must be regarded as the separate property of the coparceners on whose lives the insurance is effected by a coparcenary, and that the proceeds of an insurance policy do not belong to the joint family. We give our reasons below.

5. The appellant has tried to establish that the life insurance premia were not paid from joint family funds. In this, the appellant had a burden inasmuch as it was conceded before the High Court that they were so paid. Learned counsel for the appellant draws our attention to the Haveli and Amanat khatas, and argues that the premia were not paid from the Haveli khata, out of which the joint expenses of the family were met. He refers to the Amanat khata, and states that all the three brothers withdrew sums from the Press account and put them in their own names in an Amanat khata, to be used by them as occasion arose. This argument would have had some validity, if the payment of the premia was from the Amanat Khata. It was the case of the appellant that Ram Ran Vijaya Sinha had a private account of his own with the Bihar Bank on which cheques were issued by him to pay the premium not only for his own policies but also for the two policies on the lives of his stepbrothers. Occasionally, cash was also sent towards such payments, but that makes little difference, because what we have to see is whether the premia were paid to the detriment of the joint family fund or not. In the account books of the Press, there was an insurance khata in which the entry of the payment of premia for all the policies used to be made. There does not appear to have been a separate khata for each brother, so that the amount could be debited to his individual Khata, whenever premium for his policy was paid.

6. We were shown certain entries in the Paper Book, which have been taken from the Press accounts, and the learned counsel argued that in the headings of some of these entries the insurance khata was mentioned but in some others, there

was no such mention. Learned counsel for the respondents contends that the entries have not been taken in full and the heading has been omitted, and this gives rise to the argument. We find that there are asterisks in the extracts which have been filed to show that some portions of the entries have been omitted. Learned counsel for the respondents offered to place the entire books from the Press before the Court to demonstrate his contention. This challenge was not accepted by the appellant's counsel. In view of the fact that the entries have not been incorporated in the Paper Book in full but only extracts have been placed before us, we cannot accede to this argument, especially as the appellant did not care to take up the challenge and put before us the account books.

7. It also appears that though the amounts were stated in respect of each policy separately, a total of the entire amounts was made in the account books of the Press, and that total was carried also to the insurance Khata, though there again the names of the companies and the numbers of the policies together with the names of the assured were noted. No argument can be raised on the basis of the mention of separate names, because it is an obvious practice to write down the number of the policy, the name of the assured and the amount, to make it easy for future reference as to which premium was paid on any particular occasion. Ex. 9 series consists of 17 letters, which were written by Ram Ran Vijaya Sinha or were replies to him from the insurance company. Ex. 90 clearly shows that all these policies were treated together, and even interest due on belated premia went into the accounts of the Press. Since the Press was a joint family venture, it is inconceivable that accounts of separate property would have figured in it and more so, the interest for which individual members would have been liable and not the family as a whole. There is also proof that three of the policies standing in the name of Ram Ran Vijaya Sinha matured in his lifetime; the proceeds of one policy were deposited in the Amanat khata, those of the second in the Haveli khata and those of the last in the insurance khata. These three acts clearly show that the insurance transactions were viewed as of the joint family and not those of any individual. The Haveli khata, as we have already said, was a khata in which money from the Press was put in, to be used for the purposes of the joint family. The insurance khata was also of a similar character. No doubt, the proceeds of one of the policies were put in the Amanat khata, but that was because that money was to be used for celebrating the anniversary of Ramdin Sinha. The use of that money towards a purpose of the family also indicates that it was a joint family asset and not separate property. In our opinion, learned counsel for the appellant in the High Court was justified in conceding that the joint family incurred expenses for purchasing the various policies, and the arguments which have been advanced before us on the basis of the account books have not shown in any way that this concession was erroneous.

8. It was next contended by the learned counsel for the appellant that when the Bank sued the family as a whole, the two stepbrothers took the stand that they were not responsible for the overdraft with the Bank. It appears that the Bank had been advancing some sums from time to time to Ram Ran Vijaya Sinha, and

at his death there was an overdraft which the two brothers said, was not binding on them, because the borrowings were not for legal necessity or for the benefit of the family. This contention of the two brothers prevailed with the Court, and the result was that the decree of the Bank was passed only against the widow. We have not been able to see why the coparceners could not raise the plea that the borrowings of the karta were not for legal necessity nor for family purpose, and if that plea succeeded, how it estopped them from claiming other joint family properties by survivorship. No doubt, the two brothers have, by this means, managed to cast the burden of the Bank upon the widow, but however unfortunate that circumstance may be, it cannot have any effect upon the merits of the present suit. The Bank account, as we now find, was not of the separate property of Ram Ran Vijaya Sinha but was meant to keep the money from the Press, and might well have been a joint family account. There is, however, evidence to show that Ram Ran Vijaya Sinha was in receipt of an allowance of Rs. 1,000 per month, and this also he kept with the Bihar Bank. The entire family was thus dealing with the Bihar Bank as also Ram Ran Vijaya Sinha. Whether any portion of the liability should have fallen upon the two brothers or not is not a matter which we have to decide here, but it appears to us that whichever way one decides that question, the ownership of the three policies is not affected by the decision one way or the other.

9. It was then argued, as a matter of law, that insurance was a special venture and was meant only for the benefit of the family of the assured and that the other coparceners had no interest in the policies. Reference was made to the proposal forms, Ex. 12 series, which were submitted by Ram Ran Vijaya Sinha to the companies, where the purpose of the insurance was shown to be for the benefit of the family of Ram Ran Vijaya Sinha. It was contended that by family was meant the wife and children of Ram Ran Vijaya Sinha. This might be true, but the question is not whether Ram Ran Vijaya Sinha took out the policies for the benefit of his own family but whether he did so without detriment to the joint family funds. If it was the latter, then anything obtained with the joint family funds would belong to the joint family, and this is the result, in view of our finding that it was the joint family which had paid for these policies and not Ram Ran Vijaya Sinha individually. It was also contended that the joint family was entitled to recoup the money which had been paid towards the purchase of the policies and not any additional sum which the insurance company had paid by reason of the early death of Ram Ran Vijaya Sinha. We do not know on what this proposition rests. If the joint family purchased some property and it appreciated or gained in value, the benefit would go to the family and not to any individual. No authority was cited in support of such proposition.

10. It was then argued, as a matter of law, that insurance policies must be placed in a separate category by themselves and the proceeds from them must be treated as individual property of those members on whose lives insurance policies were taken, though learned counsel for the appellant did not cite any authority in support of this proposition. Learned counsel for the respondents

drew our attention to the decision in *Mattupalli Venkata Subbarao and Others Vs. Mattupalli Lakshminarasamma alias Hanumayamma and Others*, , where Rajamannar, C. J. and Venkatarama Aiyar, J, (as he then was) observed as follows :

"In our opinion, having regard to modern social conditions and the growth of individual consciousness in marked contrast to the more corporate outlook of an earlier day, the general presumption must be that when one of the members of a joint family insures his life, the amount of the policy belongs to the assured as his separate property and does not become a joint family asset. No doubt, if there is clear indication that the member did not intend to treat it as his separate asset, the position would be different. In a case where each of the several members of the family has taken a policy in his name the presumption becomes stronger that the policies were not part of the joint family assets. The premia must be treated as amounts drawn by the individual members and they must be debited with those amounts."

We need not decide whether such a broad proposition should be accepted as being in consonance with the rules of Hindu law, but unfortunately for the appellant, there are clear indications that none of the three brothers intended to treat as a separate asset the income which would have accrued on the maturity or otherwise of the insurance policies. The case thus falls within the exception contemplated by the learned Judges themselves.

11. We think that the fact that there were two other policies taken at the same time on the lives of the other brothers, makes no difference. It was suggested that these policies were also purchased by Ram Ran Vijaya Sinha with his private funds out of love and kindness for the two brothers. Unfortunately, the account books show that the payment for all these policies was made from the moneys of the Press, which admittedly was a joint family business, and the income of which belonged to the family as a whole.

12. Nothing has been suggested, therefore, which militates against the judgment of the High Court, which, in the circumstances of the case, was correct. We accordingly dismiss Civil Appeal No. 330 of 1955.

13. In view of the stand which was taken by the two brothers by which the entire liability for the overdraft account with the Bihar Bank had fallen upon the widow, we think that the ends of justice will be served by ordering that each party do bear their own costs of these two appeals.