

(1973) 08 CAL CK 0016

In the Calcutta High Court

Case No : Civil Rules No's. 8005 (W) and 8006 (W) of 1968

Sudhakar Bhatta

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 16-08-1973

Acts Referred:

Transfer of Property Act, 1882 — Section 53

West Bengal Estates Acquisition Act, 1953 — Section 44(2), 5, 5A, 5A(7)

Citation : 79 CWN 56 : (1975) 1 ILR (Cal) 284

Hon'ble Judges : P.K. Banerjee, J

Bench : Single Bench

Advocate : Lala Hemanta Kumar, Manick Ch. Banerjee and Mohan Lal De, for the Appellant; N.C. Das Gupta and Soumen Mukherjee, for the Respondent

Judgement

P.K. Banerjee, J.—The Petitioner in this application challenges the order made u/s 5A of the Estates Acquisition Act, 1953, whereby the deed of partition executed and registered within the prohibited period was declared cancelled. One Gadadhar Bhatta is stated to be governed by the Mitakshara school of Hindu Law. The said Gadadhar Bhatta came to Bengal with his personal law and settled in Bengal. He died leaving behind him his sole heir and legal representative, his son Aniruddha Bhatta, the father of the Petitioner. At the time of his death, Gadadhar Bhatta left a considerable property consisting of agricultural lands, non-agricultural lands, tank fishery and homestead and gardens. It is stated that Aniruddha Bhatta had more or less 213 acres of agricultural lands, more or less 46 acres of non-agricultural lands, 23 acres of tank fishery and 3-10 acres of homestead in khas and rent receiving interest of land measuring about 168 acres by way of inheritance. It is stated that Aniruddha Bhatta had two sons, Dibakar Bhatta, since deceased and Sudhakar Bhatta, the present Petitioner and three daughters viz. Indira, Sushama and Nirupama. Dibakar Bhatta died leaving behind him his widow, Shanti Debi Bhatta and one daughter, Aruna Bhandari, wife of Sri P.H. Bhandari. It is alleged that the joint family of Aniruddha Bhatta consisted of himself, Shanti Debi Bhatta, the widow of Dibakar Bhatta, the son of

Aniruddha Bhatta and Sudhakar Bhatta, the Petitioner and all of them are the coparceners of the joint Mitakshara Hindu family of Aniruddha Bhatta. On or about September 25, 1954, the ancestral property of Aniruddha Bhatta, who was governed by the Mitakshara school of Hindu Law, was partitioned amongst the members of the joint family of the said coparcenery, viz. Aniruddha Bhatta, Shanti Debi Bhatta and Sudhakar Bhatta, the Petitioner by a deed of partition dated September 25, 1954, which was registered on the same date and it is alleged that thereafter each of the coparceners is in separate possession of his respective allotments. By the said deed of partition Aniruddha Bhatta got more or less 85 acres of agricultural land and non-agricultural land in khas, 6-97 acres of tanks, 1-05 acres homestead and more or less 56 acres of rent receiving interests of lands. Similarly, Shanti Debi Bhatta got more or less 87 acres of agricultural land and non-agricultural land in khas 9-64 acres tanks and 1-24 acres homestead and 56 acres of rent receiving interest of lands. The aforesaid Sudhakar Bhatta, the Petitioner in this case, got more or less 85 acres of agricultural lands and non-agricultural lands in khas and 6-49 acres of tank and 81 acres of homestead and more or less 56 acres of rent receiving interest of lands. After the said deed of partition the records of rights was recorded in the respective names and the record of rights was duly published in the settlement records. In 1957, Aniruddha Bhatta, the Respondent No. 5, voluntarily surrendered more or less 40-25 acres of land and delivered the same to the State of West Bengal and that he retained more or less 25-15 acres of agricultural lands and more or less 18-46 acres of non-agricultural lands out of the lands allotted to him by the deed of partition. Similarly, in 1957, Sm. Shanti Debi Bhatta and the Petitioner voluntarily surrendered the lands in favour of the State Government and retained the lands allotted to them by the deed of partition. Thereafter, the Respondent initiated a proceeding u/s 44(2a) of the West Bengal Estates Acquisition Act suo motu for, the revision of the records of rights. Ultimately, u/s 44(2a) of the Act the proceeding was dropped, but in the meantime the proceeding was started u/s 5A of the Act in respect of documents registered and executed by the parties. At the hearing the Petitioner stated that the deed executed on September 25, 1954 and registered on that date was not a deed of partition but a deed of transfer within the meaning of Section 5A(7) of the Act. It must be stated that the deed which is the subject-matter in this case was not produced before me and also it was not annexed to the petition.

2. The only point argued before me is that whether the deed of partition, which is the subject-matter of a proceeding, is a deed of transfer within the meaning of Section 5A(7) of the West Bengal Estates Acquisition Act.

3. Mr. Lala Hemanta Kumar, on behalf of the Petitioner, contended that the partition was not a transfer within the meaning of Section 5A(7) of the Act and relied upon a number of cases, namely, Champa Bibi Vs. Panchiram Nahata Siva Bigrha and Others, and V.N. Sarin Vs. Ajit Kumar Poplai, . In my opinion, in view of the pronouncement made by the Supreme Court in the case of Champa Bibi it is necessary for me to refer to any other decisions. In the said case, the

point for consideration is whether the partition comes within the meaning of the word "transfer" under the Transfer of Property Act, 1953. In paras. 10 and 11 the Supreme Court said as follows:

10. Mr. Purshottam, however, contends that when an item of property belonging to the undivided Hindu family is allotted to the share of one of the coparceners on partition, such allotment in substance amounts to the transfer of the said property to the said person and it is, therefore, an acquisition of the said property by transfer. Prima facie, it is not easy to accept this contention. Community of interest and unity of possession are the essential attributes of coparcenary property; and so, the true effect of partition is that each coparcener gets a specific property in lieu of his undivided rights in respect of the totality of the property of the family. In other words, what happens at a partition is that in lieu of the property allotted to individual coparceners they, in substance, renounce their right in respect of the other properties; they get exclusive title to the properties allotted to them and as a consequence they renounce their undefined right in respect of the rest of the property. The process of partition, therefore, involves the transfer of joint enjoyment of the properties by all the coparceners into an enjoyment in severalty by them of the respective coparceners allotted to their shares. Having regard to this character of joint Hindu family property it cannot be denied that each coparcener has an antecedent title to the said property, though its extent is not determined until partition takes place. That being so, partition really means that whereas initially all the coparceners have subsisting title to the totality of the property of the family jointly that joint title is by partition transformed into separate titles of the individual coparceners in respect of several items of properties allotted to them respectively. If that be the true nature of partition, it would not be easy to uphold the broad contention raised by Mr. Purshottam that partition of an undivided Hindu family property must necessarily mean transfer of the property to the individual coparceners. As was observed by the Privy Council in *Girja Bai v. Sadasiv Dhundiraj* 3 Ind. App. 151 at p. 161 : AIR 1961 P.C. 104 at p. 108:

Partition does not give him (a coparcener) a title or create a title in him; it only enables him to obtain what is his own in a definite and specific form for purpose of disposition independent of the wishes of his former cosharers.

11. Mr. Purshottam, however, strongly relies on the fact that there is a preponderance of judicial authority in favour of the view that a partition is transfer for the purposes of Section 53 of the Transfer of Property Act. It will be recalled that the decision on the question as to whether a partition under Hindu Law is a transfer within the meaning of Section 53 naturally depends upon the definition of the word "transfer" prescribed by Section 5 of the said Act. Section 5 provides that in the following sections, "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons. It must be conceded that in a number of cases, the High Courts in India have held that

partition amounts to a transfer within the meaning of Section 53, vide, for instance, Soniram Raghushet and Others Vs. Dwarkabai Shridharshet and Another, and the cases cited therein. On the other hands, there are some decision which have taken a contrary view, vide Naramsetti Venkatappala Narasimhulu and Others Vs. Naramsetti Someswara Rao and Another, and Gutta Radhakristnayya minor, by mother and guardian Nagarattamma Vs. Gutta Sarasamma, .

Thereafter, the Supreme Court sought to interpret Section 14(6) of the Delhi Rent Control Act and in view of the definition of the said section, the Supreme Court held also that the partition is not transfer within the meaning of the word "transfer" u/s 14(6) of the said Act. In my opinion, the principle laid down in the said Supreme Court's decision applied in all force to the fact of the present case. Here again the word "transfer" has been defined u/s 5A(7) of the West Bengal Estates Acquisition Act which is as follows:

"Transfer" means a transfer by sale, mortgage, lease, exchange or gift.

4. A deed of partition cannot come within the mischief of the word "transfer" as defined in the said section. The Supreme Court has said that the process of partition involves the transfer of joint enjoyment of the property by all the coparceners into an enjoyment in severalty by them of the respective properties allotted to their shares and therefore, the joint title is by partition transformed into separate titles of the individual coparceners in respect of several items of properties allotted to them. In that view of the matter, it cannot be said that the partition is either gift or sale or for that matter exchange of the property partitioned between the coparceners who 1 had joint title in respect of the property in question. If that is so, the proceeding u/s 5A of the West Bengal Estates Acquisition Act is incompetent and as such, the notice as well as the order passed u/s 5A of the Act must be set aside which I do.

5. The Rule is made absolute to the extent as indicated above.

6. There will be no order as to costs.

7. The Respondent is given liberty to proceed against any other proceeding in accordance with law in respect of the properties in dispute.

8. Let the operation of the order be stayed for three weeks.