
(1978) 01 CAL CK 0035
In the Calcutta High Court

Tarapada Roy and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 10-01-1978

Acts Referred:

West Bengal Estates Acquisition Act, 1953 — Section 6

Citation : 82 CWN 331

Hon'ble Judges : P. K. Banerjee, J;G. N. Ray, J

Bench : Division Bench

Advocate : P.N. Mitter, N.K. Ganguly and Sadananda Ganguly, for the Appellant;A.P. Sircar and Anil Kumar Bhandari, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal at the instance of the plaintiff-appellants arises out of a suit for declaration that the plaintiff no. 1 has 2 annas share, plaintiff no. 2 four annas share, plaintiff no. 3 four annas share and the plaintiff no. 4 two annas share separately in the properties described in the schedule Ka and that the plaintiff no. 1 has eight annas share in the properties described in schedule Kha and that the Revisional Settlement Record to the contrary is erroneous and for temporary injunction. The Ka schedule properties are all settled raiyati interest and the Kha schedule properties are also all raiyati lands. The case of the plaintiffs is that the plaintiff no. 1 and his full brother Shyamapada Roy were members of a joint family governed by the Mitakshara School of Hindu Law. After separation from each other, the plaintiff no. 1, Tarapada Roy, obtained the properties of schedule Ka separately and specifically. The plaintiffs nos. 2 and 3 are the sons of plaintiff no. 1. They also while in joint ownership and possession with their father as co-parcener in respect of the ancestral property, separated from each other on 1st December, 1954. The proforma defendant no. 2 is the wife of plaintiff no. 1 and mother of plaintiffs nos. 2 and 3. As there was a partition between the co-parceners the proforma defendant no. 2 was entitled to 4 annas share in the joint family property. It is alleged that after the said partition the parties were

enjoying and possessing the properties separately and specifically. In the revisional settlement the shares of the parties were not properly recorded and therefore the suits were filed for correction of the record-of-rights and for declaration of their respective titles. On 15th July, 1960, it has been held by the Revenue Officer of Lalbagh Foxe's Kuti Centre of the Estates Acquisition Department, that the lands of the Khatians held by the plaintiffs are in Khas and they are jointly entitled to retain 75 bighas of agriculture lands and 45 bighas of non-agricultural lands in Khas possession whereupon the present suit was filed.

2. The State Government filed written statement stating, inter alia, that the plaintiffs, and the proforma-defendant no. 2 constituted one undivided joint family living in and there has been no separation. The plaintiff no. 1 is the Karta of the said joint family and he has been functioning as such. It is not a fact that the plaintiffs have separated in December 1954. Therefore it is stated that the plaintiffs and the proforma-defendant no. 2 are entitled to one unit and can retain only 25 acres of agricultural land and 15 acres of non-agricultural lands as one unit u/s 6 of the West Bengal Estates Acquisition Act.

3. Mr. P. N. Mitter on behalf of the appellants contended that the status of the Mitakshara family was separated in December 1954. As soon as the unequivocal declaration of his intention to separate himself from the Mitakshara family is communicated; it is not necessary at all in the Mitakshara School of Hindu Law to separate actual possession. It is sufficient to have the joint status and according to the Mitakshara Law, separation of the joint status constitutes partition. Mr. Mitter referred to *Addagada Raghavamma and Another Vs. Addagada Chenchamma and Another*, in support of his contention. Mr. Mitter further contended that if there was a minor who is co-parcener, even then the severance of joint status is possible and constitutes a partition. Mr. Mitter also relied upon the case reported in *Dnyaneshwar Krishna Sambhus Vs. Anant Vasudeo Avachat*, in support of his contention.

4. Mr. A. P. Sircar on behalf of the Respondent contended that under the Mitakshara Hindu Law unequivocal intention of the severance of the joint status constitutes a partition and intimation of the said intention must be communicated to the other co-sharers. Unless such communication is made, though unequivocal intention may be there, all the adult co-parceners' severance of joint status is not possible. Both the parties relied upon the cases reported in *Addagada Raghavamma and Another Vs. Addagada Chenchamma and Another*, .

5. In *Addagada Raghavamma and Another Vs. Addagada Chenchamma and Another*, it has been held by the Supreme Court that "it is settled law that a member of a joint Hindu family can bring about his separation in status by a definite and unequivocal declaration of his intention to separate himself from the family and enjoy his share in severalty". It has been further held that "one cannot declare or manifest his mental state in a vacuum. To declare is to make known, to assert to others. "Others" must necessarily be those affected by the

said declaration. Therefore a member of a joint Hindu family seeking to separate himself from others will have to make known his intention to the other members of the family from whom he seeks to separate. The process of manifestation may vary with circumstances. This idea was expressed by the learned Judges by adopting different terminology, but they presumably found it as implicit in the concept of declaration. What form that manifestation, expression, or intimation of intention should take, would depend upon the circumstances of each case, there being no fixed rule or rigid formula. The knowledge of the members of the family of the manifested intention of one of them to separate from them is a necessary condition for bringing about that member's severance from the family. It is implicit in the expression "declaration" that it should be to the knowledge of the person affected thereby. An uncommunicated declaration is no better than a mere formation or harboring of an intention to separate. It becomes effective as a declaration only after its communication to the person or persons who would be affected thereby".

It was further held that "one is the expression of the intention and the other is bringing that expression to the knowledge of the person or persons affected. When once that knowledge is brought home that depends upon the facts of each case - it relates back to the date when the intention is formed and expressed." Their Lordships also held that a member of the joint Hindu family can declare a separation in status from the joint family and enjoy his share in severalty, but in order to affect the partition, this declaration must be communicated to the persons affected thereby. About the question of law involved in this case, after the pronouncement of Judicial Committee, there cannot be any dispute between the parties. The dispute now, according to us, is centered round the question whether the intention of Tarapada to sever from the joint status in the Mitakshara family had been declared to other co-parceners who are all minors. In order to decide, we will have to go into facts of this case. On behalf of the plaintiff, three persons gave evidences about the declaration of the intention to separate from other co-parceners. Tarapada, in our opinion, stated unequivocally that he was advised by Nakul Chandra Singh who was the maternal uncle of the minors co-parceners to separate and he accepted the advice after some hesitation and the separation took place on 16th Agrahayan 1361 B. S. He stated that when such separation took place, Tarapada, Nakul and Bibhuti Adhikari were present. Nakul Chandra Singh stated that he suggested to Tarapada that his sons should be separated at once and they suffered for the litigation and Tarapada agreed to effect partition with his minor sons. He further stated that he was looking after the interest of the minors for the purpose of effecting partition. Makhan also stated that the partition took place on 15th Agrahayan 1361 B. S. where Sabitri Devi, the wife of Tarapada, and the mother of the minors, Nakul and other persons were present. From these facts, in our opinion, it appears though there are some discrepancies in detail but the facts remain, that Tarapada wanted to sever the joint status of the joint family and that was communicated to the mother of the minors and the maternal uncle, Nakul Chandra Singh and

other to give effect. Subsequently four lists were prepared how the properties were said to be enjoyed and the evidences of the bargadars also proved that they were paying rent to the different co-sharers at least from 1932 onwards. Though it is argued that from 1364 S.C. onwards, the bargadars did not get receipts, that does not, in our opinion, very much affect the question which we have in our hand. As soon as it is found that the severance of status of Mitakshara family has been affected and the declaration of one of the co-parceners has been communicated to the other co-sharers, the partition in Mitakshara family is complete. In the facts of this case, we are of the opinion that Tarapada unequivocally declared his intention to enjoy the property in severalty and that intention was communicated to Sabitri, the mother of the minor sons and also to Nakul Chandra Singh, the maternal uncle of the minors, who was looking after the interest of the minors. In our opinion, therefore, the learned Judge was not right in holding that there was no partition between the co-sharers of the Mitakshara Hindu family because no formal document was made. In our opinion, it is not necessary for a formal document of partition if we come to a finding as we do that the unequivocal intention of the co-sharers was communicated to the other co-sharers.

6. The learned Judge considered the question of motive for the partition and felt that the partition was said to be made because of the West Bengal Estates Acquisition Act. In our opinion, the motive is clear from the evidences of the plaintiffs' witnesses. Admittedly the plaintiff No. 1 was in debt and the litigation was continuing right from 1933 till 1955-58. It is further clear from Exts. 18, 18A and 18B that the family of the plaintiffs is governed by Mitakshara School of Hindu Law. There were number of decrees involving execution against the plaintiff. In all such cases the other plaintiffs intervened and saved their properties. It must be further stated that the vesting under the West Bengal Estates Acquisition Act came into force on 14th April, 1956. The properties were partitioned as we held with effect from 1st December, 1954 long before the date of vesting. Therefore when the vesting took place, the partition is a fact accomplished and each of the co-parceners is entitled to their shares on the basis of the said partition.

7. It is argued by Mr. Sircar that in view of the Division Bench judgment reported in *Fatechand Mahesri and Others Vs. State of West Bengal and Others*, the plaintiffs must be treated as one unit and not as four units. Mr. Mitter did not dispute the proposition at this stage but contended that as the partition has already been affected in 18th December, 1954 before the vesting this question does not arise. We are of the opinion that Mr. Mitter is right in his contention in view of the fact that the partition has already been effected before the date of vesting and each co-sharer is entitled to retain one unit each u/s 6(1) of the West Bengal Estates Acquisition Act. If the partition were not affected before the date of vesting the situation would have been different.

We are, therefore, of the opinion, that the judgment and decree of the Court

below cannot be upheld and must be set aside.

The appeal, is, therefore, allowed, and the suit is decreed. There will be no order as to costs.

G.N. Ray, J.

8. I agree.