

(1954) 07 GAU CK 0011
In the Gauhati High Court
Case No : Civil Appeal No. 10 of 1954

Wahengbam Kokngang Singh	Vs	APPELLANT
Wahengbam Ongbi Pishak Devi		RESPONDENT

Date of Decision : 15-07-1954

Acts Referred:

Citation : AIR 1954 Manipur 9

Hon'ble Judges : Brij Narain, J

Bench : Single Bench

Advocate : T.N.Bhattacharya, S.Somorendra Singh, Advocates appearing for Parties

Judgement

1. This appeal arises out of a partition suit No. 151 of 1951 which was decreed by the learned SubJudge, Manipur on 27/3/1954. The plaintiff/respondent Thenbi Singh, later on represented by Srimati Pishak Devi, sued for partition of the lands mentioned in pattas No. 46/426 I. W. T, & 46/350 I. W. T. on the ground that these lands stood in the name of Wahengbam Hera Singh, and as these lands remained joint and the plaintiff could not enjoy his share properly, partition became inevitable. The plaintiff claimed one half share in the lands mentioned above by right of inheritance from Wahengbam Mera Singh and Khoidong Singh.

(2) The defendants/appellants contended that the plaintiff has no cause of action for the suit as Wahengbam Hera Singh had partitioned his lands among his four sons and their descendants remained in exclusive possession over the shares which had been allotted to them under this family settlement. It has been further contended that the suit was barred by estoppel owing to decisions in civil suit No. 76 of 1949/50 and civil appeal No. 103 of 1950 and the second appeal No. 343 of 1950 (A) in the Judicial Commissioner's Court, Manipur. Lastly it was contended that the presumption of jointness was inapplicable to Hindu families living in Manipur on account of a custom prevailing to that effect.

(3) According to the plaintiff an area of 54 bighas 3 kattas 2 lessas originally

covered by the patta No. 46/426 I. W. T. & land measuring an area of 7 bighas 1 katta 16 lessas covered by patta No. 46/350 I. W. T had been standing in the name of Wahengbam Hera Singh who died about 25 years ago leaving behind him 4 sons of whom Wahengbam Kokngang Singh and Wahengbam Tombi Singh defendants 1 and 2 were from his second wife, and Khoidong Singh and Chaoba Singh were from his first wife. Chaoba Singh, according to the plaintiff, died about 15 years ago leaving his son Ibochauba Singh who also died in the first part of the year 1942 A. D. The plaintiff's father Khoidong Singh also died in the second part of the year 1942 A. D. leaving the plaintiff, a minor. The plaintiff and the defendants were alleged to have, for sufficiently long time, lived jointly and enjoyed the patta lands and the Ingkhol at Pumloo village. But the plaintiff demanded partition of his half share on attaining majority as he represented the branch of Wahengbam Hera Singh from his first wife, while the defendants were alleged to be entitled to the other half as they represented the descendants of Wahengbam Hera Singh from his second wife.

(4) The learned SubJudge decreed the suit and so the defendants have come in appeal. The following points arise for determination in this appeal:

1. Whether there had been a partition of the joint family properties during the lifetime of Wahengbam Hera Singh and all the different sons of Wahengbam Hera Singh subsequently remained in exclusive possession of the properties which had been allowed to them by their father by means of a family settlement.
2. Is there any custom in Manipur by which sons on attaining majority are regarded as separate from their father during the latter's lifetime?
3. Was the plaintiff's suit barred by estoppel?

The plaintiff examined Ibomacha Singh, I, Hokendra Singh, Wahengtaam Inakkhunba Singh, Tomba Singh and Gour Singh witnesses to prove that the properties left by Wahengbam Hera Singh have not yet been partitioned among the branches of his sons and all the sons and their descendants continued to remain in joint possession over them, even though different lands were entered in the names of different sons in the pattas.

The plaintiff produced 32 documents and the documents Exs. P/AA, P/BB, P/CC, P/DD, P/EE, and P/FF relate to the lands in question. The jamabandis Ex. P/AA and Exs. P/CC to P/FP and the order Ex. P/BB as well as the order Ex. P/B show that proceedings were started in the Revenue Court about the lands in question and it was decided that these lands came down to the parties from their ancestor Wahengbam Hera Singh. The defendants produced jambandis Exs. D/A to D/D and revenue receipts Ex. D/G as well as jamabandis Exs. D/H to D/J and these documents also establish that the lands in question besides other lands were owned by Wahengbam Hera Singh and later on different lands remained in the names of different sons. The defendants examined Wahengbam Kokngang Singh, W. Tolchou Singh, Kerani Singh, Nakol Singh, Wahengbam Bidur Singh and Balhav Singh witnesses in order to show that Wahengbam Hera Singh had

divided his properties among his sons during his lifetime;

(5) It has been contended by the learned counsel for the appellants that W. Tolchou Singh is related to the parties and is 74 years old, and similarly Kerani Singh is also 60 years old, and so their statements should have been believed. The evidence of Nakol Singh D. W. 4 contradicts the statements of these 2 witnesses by showing that Wahengbam Hera Singh had separated his 2 sons only by giving them 8 paris of land while the remaining minor sons remained joint with him and 8 paris of land remained for these minor sons. Bidur Singh D. W. 5 has tried to show that no property remained joint at the time of the death of Wahengbam Hera Singh, but this version does, not find support from the statement of Nakol Singh D. W. 4. Balhav Singh D. W. 6 tried to show that the father of the plaintiff, Khoidong Singh, had told him that the land of patta No. 46/179 had been given to him by his father and if this statement is believed it would go to show that for the sake of better management some of the lands were given to a particular son of Wahengbam Hera Singh for cultivation for some time and so the fact that revenue receipts were issued regarding specific plots in the name of any particular son, will not be of any material consequence. The argument that as no objection was raised, on the exclusive possession of particular sons on particular plots of land belonging to Wahengbam Hera Singh, it should be inferred that Wahengbam Hera Singh had actually partitioned his properties among his sons cannot be accepted, because mere temporary possession for the sake of better management, of a son of a particular plot of lands owned by the father, would not establish a regular partition.

(6) Partition, according to Hindu Law, consists in numerical division of the property; in other words, it consists in defining the shares of the coparceners in the joint property and an actual division of the property by metes and bounds is not necessary, vide "Ram Pershad v. Lakhpati, Koer", 30 Gal 231 (PC) (B). The defendants ought to have proved that there was actually definite division of the property, but the evidence produced by the defendants goes to show that at least 2 of the sons of Wahengbam Hera Singh remained joint and as the defendants' evidence was full of grave discrepancies, I think the learned SubJudge was perfectly justified in disbelieving their evidence. Wahengbam Hera Singh had 12 paris of land and the defendants' case is that he gave 4 paris of land to each of his sons during the alleged partition or family settlement, but this cannot be accepted as correct for he could not possibly give more than 3 paris to each of his sons. It has not been established in this case whether Wahengbam Hera Singh carried out this partition immediately before his death or long before his death. Again some of the lands which are contended by the defendants to have been in possession of Wahengbam Hera Singh appear to have been acquired by Chaoba Singh, vide Ex. P/E and Ex. P/F. Khoidong Singh also appears to have acquired some property out of the properties in question by means of Ex. P/I. As such the defendants have failed to prove what specific property was really with Wahengbam Hera Singh, and they have further failed to prove what specific property was given to any particular son in the alleged partition.

(7) The mere fact that Khoidong Singh sold 3 paris of land under patta No. 47/97 N. to Lukhoi Singh on 8111925 for meeting the expenses of lather's shradha ceremony, will not be sufficient to establish that the sons had separated during the lifetime of their father. For if, there had really been any separation, the land belonging to one of the sons would not have been sold, but all the sons would have sold some of their land to contribute towards the expenses of the shradha ceremony of their father. Khoidong Singh would certainly have sold joint property for meeting the expenses of the shradha ceremony of their father and so I think this fact also does not establish that Wahengbam Hera Singh had partitioned his properties among his four sons during his lifetime. The burden of proving partition lay on the defendants; vide "*Bhagwati Prasad v. Rameshwari Kuer*", AIR 1952 SO 72 (C), and after going through the evidence on the record, I agree with the learned SubJudge in holding that they have failed to substantiate their contention. I, therefore, decide this point against the appellants.

(8) "Point No. 2". A custom is a rule which in a particular family or in a particular district, has from long usage, obtained the force of law. "It must be ancient, certain and reasonable" and being in derogation to the general rules of law, must be construed strictly, vide "*Hurpurshad v. Sheo Dyal*", 3 Ind App 259 (PC) (D). It is, further, essential that it should be established to be so by clear and unambiguous evidence, for it is only by means of such evidence that the Courts can be assured of its existence and of the fact that it possesses the condition of antiquity and certainty on which alone its legal title to recognition depends. It must not be opposed to morality or public policy and it must not be expressly forbidden by the Legislature. Where the evidence shows that the custom alleged was not valid in numerous instances, the custom could not be held to be proved vide "*Mulla's Hindu Law*, 1952 Kdn., page 16".

In the present case the defendants did not produce any reliable evidence to show that the alleged custom was followed in any specific instances. The alleged custom also does not fulfil essential requisites of a valid custom laid down above. It has been vaguely contended that in Manipur the sons on attaining majority become separate from their father, and so it should be presumed that there is always separation between the major sons and their father in Manipur. In the absence of cogent evidence on behalf of the defendants to prove this custom, I think it proper to hold that no such custom exists in Manipur. This point is also decided against the appellant.

(9) "Point No. 3". It has been contended that the judgment in civil suit No. 73 of 194950 Ex. PT by which the dispute regarding the assets left by Ibonchauba Singh was compromised in this Court in "Second Appeal No. 343 of 1950 (A)" operates as estoppel in this case. It does not appear that the dispute in the former case was relating to the property of Wahengbam Hera Singh and as the question whether there was any partition among the sons of Wahengbam Hera Singh during his lifetime was not raised in that case, I think the judgment in that case cannot bar the present suit. The present plaintiff nowhere declared in that

case that he would not lay any claim to any other property left by Wahengbam Hera Singh, and so this point also must be decided against the defendantsappellants.

(10) The appeal, therefore, fails and it is hereby dismissed with cost to the respondent.