

Anup Kr. Debbarma Vs. Ahindra Kr. Debbarma and ors.

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Court : Guwahati

Decided On : Aug-05-2008

Judge : B.K. Sharma and Mutum B.K. Singh, JJ.

Appellant : Anup Kr. Debbarma

Respondent : Ahindra Kr. Debbarma and ors.

Advocate for Def. : Mr. Nandi

Advocate for Pet/Ap. : Mr. D. Chakraborty

Disposition : Appeal dismissed

Judgement :

B.K. Sharma, J.

1. This appeal is directed against the judgment and decree dated 17.06.2002 passed by die learned Civil Judge (Sr. Division), Court No.2, West Tripura, Agartala, in Title (Partition) Suit No.82/1998, dismissing the suit of the plaintiff appellant. The suit was filed for partition of the joint properties described in the Sched.de to the plaint. Be it stated here that the plaintiff and the three defendants are full blood brothers being the sons of Late Hiran Kumar Debbarma, who died on 30.06.1988.

2. In the suit, it was the case of the plaintiff/appellant that after the death of the father of the plaintiff and the defendants they became the joint owner of the property left behind by their father. Be it stated here that the proforma defendant who is the proforma respondent in this appeal is the married daughter of Late Hiran Kumar Debbarma and she relinquished her claim over the property. Thus the plaintiff and the defendants became the join owners of the property in question having 1/4th share each.

3. According to the plaintiff appellant, differences had arisen in the management and enjoyment of the said eimli property and the defendant Nos.2 and 3 demanded from the plaintiff and the defendant No. 1 on or about a day in the first week of April, 1998 and on 16.04.1998 asked the plaintiff and the defendant No. 1 to put their signatures on an agreement for affecting partition of the said property. In the plaint it was stated that the defendant Nos.2 and 3 deceitfully and fraudulently obtained the signatures of the plaintiff and the defendant No. 1 on the said agreement papers without explaining the contents therein, which they promised to do after field markings by revenue staff. According to the plaintiff, the defendant Nos.2 and 3 in connivance with a view to deprive the plaintiff and defendant No. 1 from the legitimate share started putting up hap-hazard constructions within the suit land thereby causing sea-charge in the nature of the property.

4. With the aforesaid facts narrated in the plaint, the plaintiff prayed for a judgment and decree by way of preliminary decree for partition of the property described in the schedule to the plaint and for appointment of a commission for affecting the partition in terms of the preliminary decree.

5. The defendants contested the claim of the petitioner by filing written statements. Contrary to the stand in the plaint that the defendant Nos.2 and 3 deprived the plaintiff and the defendant No. 1, the defendant No. 1 filed the written statement jointly with the defendant Nos.2 and 3. In the written statement it was their stand that there is no question of any decree for partition in as much as the family settlement was already executed in respect of the property and all the parties thereto, i.e. the plaintiff and the defendants, put their respective signatures in the

agreement for family settlement. It was their stand that acting on the said family settlement, all the brothers came into possession of the respective shares of the property and in fact, their names had also been mutated in the respective shares. It was their further stand that the suit land had already been demarcated by metes and bounds after execution of the deed of family settlement. It was also stated that the plaintiff and the defendants, out of their respective shares of land sold out part thereof by different sale deeds. Thus in a nutshell it was the case of the defendants/respondents that the family settlement having been acted upon, there was no question of any further partition of the property and the suit filed by the plaintiff was misconceived.

6. On the basis of the aforesaid pleadings, the learned Civil Judge formulated the following issues:

1. Is the suit maintainable in law?
2. Is the suit property is joint property of the plaintiff and defendant Nos. 1, 2 and 3?
3. Is the plaintiff entitled to 1/4th share in the suit property?
4. Is the purported unregistered deed of partition dated 16.4.1998 in the name of Ahindra Kumar Deb Banna and other void?
5. Is the plaintiff entitled to the decree as prayed for?
6. To what relief/reliefs the plaintiff is entitled?
7. The plaintiff exhibited Exhibit-1 serie; khatians, Exhinit-2 series gift deeds and Ex-hibit-3 series sale deeds. He also examined himself as PW-1. On the other hand, the defendants produced the family settlement deed and exhibited as Exhibit-A. They also exhibited Exhibit-B map of the partition, Exhibit-C khatians of the defendants and Exhibit-D revenue receipts. They also examined defendants No.2 and 3 as DWs-1 and 2, respectively. Another witness examined as DW-3 was the deed writer, who wrote the family settlement.

8. The learned Trial Court in consideration of the evidence on record having dismissed the suit, the plaintiff has preferred this instant appeal.
9. We have heard Mr. D. Chakraborty, learned Counsel for the plaintiff/appellant as well as Mr. A. Nandi, learned Counsel representing the defendant/respondents. While Mr. Chakraborty submitted that there being evidence relating to the subsequent alteration made in the family settlement, same could not have been acted upon, Mr. Nandi, learned Counsel for the defendants/respondents submitted that the plaintiff himself having acted upon the family settlement, he cannot resile back from the same so as to claim partition of the property.
10. We have considered the rival submissions made by the learned Counsel for the parties and the materials on record.
11. The family settlement (Exhibit-A) was exhibited without any objection. Both the parties, i.e. the plaintiff and the defendants, put their respective signatures in each and every page of the deed of family settlement as a token of acceptance of the terms and conditions incorporated therein. It is in the evidence that the plaintiff himself acted upon the said family settlement by way of execution of sale deeds in respect of his share of the land. His share of the property came to him by virtue of the family settlement. In his deposition, he admitted the execution of the family settlement out, contended that the same was not acted upon as because there was erasing, overwriting and errors in the agreement. He stated about his disagreement to the terms of the agreement. He, however, admitted about the mutation on the basis of the family settlement. In the cross-examination he admitted about signing of the family settlement as well as the map prepared pursuant to the said settlement. Although he stated about filing of appeal against the order of mutation but could not produce any order passed in the appeal. He admitted that the appeal was dismissed.
12. DW-1 in his deposition duly proved the exhibits. He in his deposition stated about disposal of portion of respective share of land by the plaintiff and other defendants. In the cross-examination he admitted about making some correction in the deed of family settlement. DW-2 is the deed writer. He in his deposition stated about execution of the deed of family settlement. He categorically stated

that after finalization of the deed of settlement, all the brothers signed the same in his presence. He proved his signature in the deed. In the cross-examination he admitted the over writings in the deed but stated that no explanation was furnished for the same as the plain-tiff did not want him to do so. DW-3 also stated about the family settlement. He in his deposition stated that the deed of settlement was in custody of the plaintiff. In his cross-examination he stated that he signed the deed after the contents were read over. He also stated that he did not know about any possibility of making any change in the deed.

13. In consideration of the aforesaid evidence on record, the learned Civil Judge has come to the conclusion that the suit for partition was not maintainable and accordingly, same was rejected. The moot question before the learned Court below was as to whether the family settlement was valid in the eye of law. Upon a reference to the decisions mentioned in the impugned judgment and decree, the learned Trial Court held that there is nothing to disbelieve the family settlement arrived at by and between the parties.

14. Law is well settled that the family settlement need not necessarily be registered. A family settlement in absence of any ambiguity should always be favoured. In the instant case, all the brothers signed the deed of family settlement. Not only that, even some of the brothers including the plaintiff sold out some portion of their respective shares of the property. The settlement having been arrived at by consent and acted upon as is evident from the evidence on record, some cannot be reopened at the instance of the appellant, even if he is dissatisfied and/or thinks that the family settlement ought to have been in a particular manner as per his liking.

15. To quell any doubt, we have verified the Exhibit-A, deed of settlement. Same, is a hand written one prepared by the D W-2, the f deed writer. All the brothers have signed each ' and every page of the deed of family settlement. It also contains their thumb impressions. As regards the alleged alteration made in the deed what we find is that there are some changes relating to the name of the particular road and person in the boundary. We do not find any change in respect of the most material and vital aspects of the matter, which is the property under

family settlement and distribution of respective shares thereof to the plaintiff and the defendants.

16. The learned Civil Judge in appreciation of the evidence on record has dismissed the suit. The plaintiff/appellant being party to the family settlement, could not have prayed for partition of the suit property stood already partitioned among the brothers. It a case of approbate and reprobate. Further in the plaint initially filed there is no mention of any alteration being made in the deed of family settlement. Only contention was that the defendant Nos.2 and 3 obtained the signatures of the defendant No. 1 and the plaintiff deceitfully and fraudulently. There was also no challenge to the deed of family settlement, which the plaintiff knew to be in existence with his clear signature as a token of acceptance of the same.

17. For all the aforesaid reasons, we do not find any merit in the appeal and we concur with the findings arrived at by the learned Trial Court.

18. Consequently, the appeal is dismissed without, however, any order as to cost.

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