

Mt. Parbati Devi Vs. Bansi Dhar and ors.

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Court : Allahabad

Decided On : Sep-02-1943

Reported in : AIR1943All360

Appellant : Mt. Parbati Devi

Respondent : Bansi Dhar and ors.

Judgement :

Collister, J.

1. This is an appeal under the Letters Patent from a decision of a learned Judge of this Court. There was a joint Hindu family consisting of three brothers, their mother and their sister. The name of the mother is Mt. Parwati Devi and she is the appellant before us. The two surviving brothers are Banwari Lal and Shiam Lal. The third brother--now deceased -- was Gulzari Lal. Gulzari Lal instituted a suit for partition of the joint family property against his two brothers, his sister and his mother, and in that suit a man named Bansidhar, who held some of the property under a mortgage executed by Banwari Lal and Shiam Lal, was also impleaded as a defendant. During the pendency of the suit Gulzari Lal--who was unmarried -- died, and on his death his mother, Mt. Parwati Devi, the appellant before us, was at her request substituted as plaintiff to the suit. The trial Court passed a preliminary decree in favour of the appellant, holding that she was entitled to a one-fourth share in the property as the heir of Gulzari Lal and to another one-

fourth share as the mother of Banwari Lal, Shiam Lal and Gulzari Lal. We are not concerned in this appeal with what was decreed in favour of the sister. Subsequently, a final decree was passed in the above terms in favour of appellant. Upon an appeal by Bansidhar, the lower appellate Court found that the appellant was not entitled to sue for partition at all, and the learned Judge accordingly allowed the appeal and dismissed the suit. Mt. Parwati Devi thereafter appealed to this Court and the learned Judge who heard the appeal was of opinion that she was entitled to a one-third share in the property as the heir of Gulzari Lal, but that she was not entitled to any further share in her capacity as mother. He accordingly passed a preliminary decree for partition in favour of the appellant in respect to the one-third share of Gulzari Lal.

2. The question for our decision is whether in the circumstances the appellant was or was not entitled at partition, in her capacity as mother, to a share equal to the share of a son. In a Hindu family a mother is entitled to maintenance so long as the family remains joint. If the sons effect a partition between themselves, the mother is entitled at the time of partition to a share equal to the share of a son, and this she receives in lieu of maintenance. But she herself is not competent to bring an action for partition of the joint property of the family. Moreover, when a share is allotted to her at partition, anything which she may have already received from her husband as her stridhan will be taken into account in the computation of her share. These principles of Hindu law are, I think, well established. In *Jodoonath Dey Sircar v. Brojonath Dey Sircar* ('74) 12 Beng. L. R. 385, it was held that, on partition of the family property by the sons after their father's death, the mother is entitled to a share equal to that of a son; but if before partition she has received property from the father, either by gift or by will, amounting to more than a son's share, she is entitled to nothing more on partition, whereas if what she has received is less than a son's share, she is entitled on partition to as much as will make her total share in the property equal to the share of a son. At p. 390 the learned Judge says:

Altogether, I have no doubt that, according to Hindu law the mother is entitled to as much as, and no more than, will make what she in the whole received from her husband's estate equal to a son's share.

3. Thus, according to this authority, what a mother is entitled to have as the result of a partition by the sons is a share equal to the share of a son and nothing in excess thereof. *Jodoonath Dey Sircar v. Brojonath Dey Sircar* ('74) 12 Beng. L. R. 385 was approved and followed by a Bench of the same Court in *Kishori Mohun Ghose v. Moni Mohun Ghose* ('86) 12 Cal. 165. In *Beti Kuar v. Janki Kuar* ('11) 33 All. 118 at p. 121 a Bench of our Court observed:

No doubt under the Mitakshara, upon a partition being made by sons after the death of their father, the mother is entitled to a share equal to that of a son. But we are of opinion that she would obtain such share only if an actual partition took place between the sons.

4. A little further on the learned Judges say:

We do not think that a mere severance of interest, where no actual division of the property takes place, confers on the mother a right to a share equal to that of each of her sons. It has been held that a mother has no right to compel a partition.... It is only when the sons actually divide the property and effect a complete partition that the mother can get a share. There is nothing in the Mitakshara from which we may infer that, upon a mere severance of the joint status of a Hindu family, the mother can claim a share.

5. The last observation was cited with approval by the High Court of Bombay in *Raoji Bhikaji v. Anant Laxman* ('18) 5 A.I.R. 1918 Bom. 175 at p. 545, and later by their Lordships of the Privy Council in *Pratapmull Agarwalla v. Dhanbati Bibi* . Thus, there can be no doubt that, upon a suit for partition between the sons, the mother is entitled at the time of partition, but not before, to a share equal to the share of a son; but the law does not allow her to have, in the whole, anything in excess of such share from the estate after taking into account whatever she may have separately received from her husband. It remains for us to apply the law to the facts of the case which is under our consideration. Before the suit was instituted by Gulzari Lal, his mother was entitled to maintenance only as a member of an undivided Hindu family. The filing of the plaint was tantamount to an unequivocal intention on the part of Gulzari Lal to separate himself from the family, and I agree with the reasoning of the learned Judge of this Court that at the death

of Gulzari Lal the status of the family must be held to have been disrupted. Before Gulzari Lal's death, his mother was a defendant and qua mother would have been entitled to a son's share when partition was effected. When Gulzari Lal died, she succeeded as heir to his separate and defined interest in the property. In other words, she became a tenant-in-common with her two surviving sons and in that capacity she continued the suit as plaintiff, and it is not contested before us that she is entitled to have Gulzari Lal's one-third share partitioned off. But she had no right to claim as a plaintiff, suing as the heir to Gulzari Lal's defined share also to which she would have been entitled as a mother at the time of partition if Gulzari Lal had not died and had proceeded with his suit. She has received by inheritance the share of a son and there does not appear to be any provision in Hindu law which would entitle her to claim in the suit a further son's share in the estate. In my opinion, the view taken by the learned Judge of this Court is correct and this appeal should be dismissed.

Allsop, J.

6. I have had the advantage of seeing my learned brother's judgment and I agree with the conclusion at which he has arrived. I have no doubt that the family was disrupted by the clearly expressed intention of Gulzari Lal when he instituted his suit for partition. If the property had been divided up at that time by actual distribution or by metes and bounds, the mother as such would have been entitled to one-fourth of the property. Her contention is, therefore, easy to understand. She was allowed to continue the suit on behalf of Gulzari Lal as representing his estate. She maintains that the estate is entitled to one-fourth of the property at partition and that this constitutes no reason why she should be deprived of the one-fourth share which she would have obtained as a mother if Gulzari Lal had continued to live. In my judgment, however, there is a fallacy in her argument. If Gulzari Lal had lived she would have been entitled to a one-fourth share in her husband's property only by way of maintenance and only at the time of actual division. She was not one of the coparceners and did not get a share as one of the tenants-in-common at the time when the family was disrupted. As Gulzari Lal has not left a widow, surviving him, or any children, the mother will personally get his share of the property. The question whether she is to get a share as a mother

must be considered with respect to the time when the actual distribution takes place and her right to such a share must depend upon her title to be maintained. My brother Collister has referred to the decision in Jodoonath Dey Sircar v. Brojonath Dey Sircar ('74) 12 Beng. L. R. 385. It was there laid down that any property which a widow might already have received from her husband would be deducted from the share which she would receive at partition. The law ensures only that the mother should receive an adequate part of the property so that she may be able to maintain herself and the rule is that an adequate amount of the property shall be equivalent to the share of a son. As the mother is to get one-third of the property as the representative of Gulzari Lal, that is adequate for her maintenance and she should not receive any more. It is the share which she would have received if Gulzari Lal had not disrupted the family and the two surviving sons had decided to partition the property after his death. I agree that the appeal should be dismissed with costs.

7. The appeal is dismissed with costs.

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