

Partap Singh Vs. Dalip Singh

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Court : Allahabad

Decided On : Jan-22-1930

Reported in : AIR1930All537

Appellant : Partap Singh

Respondent : Dalip Singh

Judgement :

Bennet, J.

1. These are two first appeals, one being No. 439 of 1926 brought by Partap Singh against Dalip Singh and the other No. 198 of 1928 by Dalip Singh against Mt. Ghasiti and Partap Singh. The family tree is as follows:

Partap Singh _____|_____||Mt. Ghasiti Mt. Nankadei (died| 16 or 17 years ago).Bir Singh (died as a |minor in 1925) ||_____||_____||Dalip Singh
Surat Singh

2. On 20th October 1921 Surat Singh separated from the joint family by a deed of partition to which his father and brother Dalip Singh were parties.

3. On 30th May 1923 there was a registered deed of partition by which Dalip Singh separated, obtaining one-third share of the joint family property and the remaining two-thirds shares were retained by Partap Singh and his minor son Bir Singh who

was then alive. Subsequently Dalip Singh brought a suit No. 161 of 1924 against his father Partap Singh claiming damages for fraud, but he withdrew that suit. Again on 20th November 1924 Dalip Singh sued for partition against Partap Singh and Bir Singh in suit No. 256 of 1924 on the ground that the deed of partition of 30th May 1923 was unfair, and that he desired that the properties should be re-partitioned. During the pendency of that suit Bir Singh died, and on 5th September 1925 Dalip Singh withdrew his suit, and on 12th September 1925 Dalip Singh filed his present suit No. 303 of 1925, claiming half share of the family property. That suit by Dalip Singh was brought against his father Partap Singh alone. On 13th August 1926 Mt. Ghasiti, wife of Partap Singh and stepmother of Dalip Singh, made an application to the Court asking that she should be joined as a party to that suit, and that she should get a share on partition. That application was rejected, because it was held it was made late after the evidence for the plaintiff had been closed, and the Court proceeded to grant a decree to Dalip Singh for half of the joint family property on 24th August 1926. Prior to this decree on 21st August 1926, Mt. Ghasiti brought a suit No. 239 of 1926 against her husband Partap Singh and her step-son Dalip Singh, claiming that she should get a declaration that at the time of partition between her husband and her stepson she was entitled to one-third or at least one-fourth of the family property. On 30th March 1928 a different Subordinate Judge has granted a decree to Mt. Ghasiti that she is entitled to a share in the family property equal to the respective shares of her husband and her stepson, i.e., one-third of the joint family property.

4. It is, therefore, evident that the partition Court is faced with a considerable difficulty as there are two conflicting decrees, one of which lays down that this joint family property is to be divided into two equal shares between Partap Singh and Dalip Singh, and the other decree declares that it is to be divided into three equal shares between Dalip Singh, Partap Singh and Mt. Ghasiti. We have heard these two appeals together as it is impossible to decide one without reference to the other.

5. We will first deal with the first appeal No. 439 of 1926 by Partap Singh. That appeal is chiefly against the finding of the learned Subordinate Judge that there was a fraud committed by Partap Singh on his son Dalip Singh. We have been

taken through the evidence in this connexion which consists chiefly of the finding of a commissioner appointed by the Court. The commissioner's report shows that the total value of the family property in 1923 was Rs. 1,12,663 and the total value of the property allotted to Dalip Singh was Rs. 21,490, that is Dalip Singh received a little less than one-fifth of the family property, whereas the deed of partition, states that he is to receive one-third. This conclusion is further supported by a calculation given by a witness, Ratan Singh, as to the rental value of the family property. This calculation shows that Dalip Singh received property yielding one-sixth rental of the joint family property.

6. We consider that the learned Subordinate Judge was correct in finding that there was fraud which vitiated the partition deed of 30th May 1923. Accordingly we agree with his conclusion that the partition deed should be set aside. It is common ground between learned counsel on either side that this deed of partition effected a partition of the joint family and that subsequent to that partition the property ceased to be joint family property, though it still may have remained as joint property. We do not agree with the finding of the learned Subordinate Judge on this point and we consider that the learned Subordinate Judge was in error in holding that the plaintiff still remained a member of a joint Hindu family after that partition. We may note that even apart from the deed of partition the suit for partition, which the plaintiff brought in 1924, would also have the effect of separating the joint family.

7. It was contended by the learned counsel for Partap Singh that regard was to be had to the state of the joint family in 1923 in order to ascertain the amount of share to which Dalip Singh is now entitled. On the other hand it was contended for Dalip Singh that we should have regard to the persons composing the joint family who happened to be alive at the date of suit. This point is of importance, because the minor Bir Singh, who was alive in 1923, was dead before the date of the present suit. Therefore there is now one person less in the joint family to take a share on partition. Is advantage of this fact to accrue to Dalip Singh or is it to accrue to other members of the joint family? We consider that Dalip Singh must be regarded as having separated from the joint family in 1923, and therefore the subsequent death of a member of the joint family cannot increase the share to which he is now

entitled.

8. We now turn to the appeal of Dalip Singh against the decree in favour of Mt. Ghasiti. The first point with which we are concerned is the argument that whatever rights Mt. Ghasiti might be entitled to under Hindu law she has lost those rights by her failure to put forward a claim in 1923 to a share on the partition effected by the deed of 30th May 1923, that is that by acquiescence in the position that only the male members of the family should divide the property between them, she has lost her rights to obtain a share now. As is usual in oral evidence we find that each side overstated their case grossly. Mt. Ghasiti put forward the case that she was not aware at all that there was any division of the property in 1923. She was not supported in her allegation by her father Fateh Chand or by her husband Partap Singh. Her husband Partap Singh says: 'I did not consult my wife when I separated from Dalip Singh or Surat Singh.' But the allegation that he did not consult her is quite different from the allegation that she was not aware of what was taking place. On the other hand, we have the statement of Dalip Singh: 'This partition was talked over in the chauk in the presence of the plaintiff (Mt. Ghasiti).' Mt. Bhagwande, wife of Dalip Singh, has given evidence that Mt. Ghasiti knew all about the partition and that there was a dispute in regard to the ornaments of Dalip Singh's mother and that Mt. Ghasiti was successful in inducing her husband to give her those ornaments. We, therefore, consider that Mt. Ghasiti did know that there was a partition taking place at the time that it took place, and that she did not make any claim to have a share in that partition.

9. But it is nowhere stated in evidence that Mt. Ghasiti had any knowledge in 1923 that she had a right to receive a share on partition. The proposition of law that a Hindu mother in the position of Mt. Ghasiti is entitled to a share on partition is not a proposition which is at all well known, and in fact we have had a long and able argument from the learned counsel on the opposite side that she is not entitled to any share on a partition. Under the circumstances of the present case we consider, therefore, that there is no bar of acquiescence against the assertion by Mt. Ghasiti of the rights to which she is entitled under Hindu law.

10. We now come to a consideration of what those rights are. In Mitakshara Ch. 1, Section 7, it is laid down:

When a distribution is made during the life of the father, the participation of his wives equally with his sons, has been directed,

11. In Hindu law-books on' Inheritance by Mr. S.S. Setlur, p. 9, there is quoted a text of Yajnavalkya in dealing with the partition by a father:

If he make the allotments equal, his wives, to whom no separate property has been given by the husband or the father-in-law, must be rendered partakers of like portions.

12. Sir Tej Bahadur Sapru, on behalf of Dalip Singh, has laid before us various rulings as follows: In Bilaso v. Dinanath [1881] 3 All. 88 a Pull Bench of this Court considered the text of Mitakshara and held that the mother could share with the sons after the death of the father. That ruling did not consider the case of a partition made during the lifetime of the father. In Beti Kunwar v. Janki Kunwar [1911] 33 All. 118, there was also the case of a partition among the sons after the death of the father, and it was held that the mother had a right to a share on the ground that she would have been entitled to it on partition.

13. On the other hand, Dr. Katju, who has ably argued the case on behalf of Mt. Ghasiti, refers to Dalar Koeri v. Dwarkanath [1905] 32 Cal. 234. In this case the family tree was as follows:

Dwarkanath _____ | _____ | |=Dular Koeri =Mt. Maina
KoeriBrindranath |plaintiff. Sons Defts. 2, 3and 4.

14. This was a case of partition during the lifetime of the father, and it was held that his two wives had rights to shares and the property was divided into nine shares.

15. The next case to which allusion was made is Sheo Narain v. Janki Prasad [1912] 34 All. 505. In this case the family tree was as follows:

Janki Prasad Deft.=Mt. Ramdei _____|_____ |Bishambhar, Sheo Narain, plaintiff,defendant. |Lachmi Narain, defendant.

16. There was before the Full Bench a question as to whether Janki Prasad's mother, Mt. Maina, the grandmother of the plaintiff, had a right to a share in a partition, and it was held that the texts of Mitakshara and other authorities only relate to the wife of the father and not to the mother of the father in the partition between a father and his sons. Accordingly it was held that the grandmother was not entitled to a share in a partition between the father and his sons, but it was nowhere contested that the lower Court was not correct in awarding a share to Mt. Ramdei, the wife of Janki Prasad, the father with whom the partition was being made in that case. Accordingly we may consider by implication that this Pull Bench ruling supports the claim of the wife of a father to a partition along with the father and his sons.

17. We consider that the texts of Mitakshara and Yajnavalkya and the authorities which we have quoted are authority for the proposition that where there is a partition between a Hindu father and his sons the wife of the Hindu father has a right to a share equal to that of the father or the sons. Accordingly we consider that in the present case Mt. Ghasiti has a right to a share equally with her husband and sons. Taking the state of the family, as it stood in 1923, there were at the time the father, the mother and two sons in the undivided family. Accordingly the share of Mt. Ghasiti in 1923 was one-fourth of the joint family property.

18. One other matter remains for decision and that is who obtained the benefit of the death of Bir Singh subsequent to the partition of 1923 and before the present suit. By that partition the property was divided into two shares one of which was allotted to Dalip Singh and the remainder of the property was to be held jointly by Partap Singh and his son Bir Singh. Therefore we consider that Partap Singh and his son Bir Singh continued to form a joint Hindu family and on the death of Bir Singh. Partap Singh took the whole of that property which had belonged previously to the joint family by survivorship.

19. We now come to the effect of our decision on the two appeals before us. The appeal No. 198 of 1928 by Dalip Singh is allowed to this extent that we hold that

the share which is to be allotted to Mt. Ghasiti is to be one-fourth and not one-third. Costs in this appeal will be granted proportionately to success and failure.

20. In the appeal of Partap Singh No. 439 of 1926, we hold that the share of Dalip Singh is one-fourth and the share of Partap Singh is one-half. As to costs, we allow each side half costs.

21. The result is that in F.A. No. 439 we direct that the lower Court will make Mt. Ghasiti a party and in carrying out the partition she will be allotted one-fourth share of the property less the ornaments of the value of Rs. 500 which we hold, with the Court below, she received at the time of her marriage.

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