

Salim Ullah and ors. Vs. Faqir Ullah and ors.

Salim Ullah and ors. Vs. Faqir Ullah and ors.

SooperKanoon Citation : sooperkanoon.com/462374

Court : Allahabad

Decided On : Nov-21-1946

Reported in : AIR1948All142

Appellant : Salim Ullah and ors.

Respondent : Faqir Ullah and ors.

Judgement :

Sinha, J.

1. This is an appeal by the defendants and arises out of a suit for partition. The only question which now awaits decision is whether the appellants are entitled to the benefit of Section 4, Partition Act (Act 4[iv] of 1893). The Courts below have refused them this benefit and they have come to this Court in second appeal. For a proper appreciation of the true legal position it is necessary to go into the facts in some detail. There is a pedigree attached to the plaint:

ABDULLAH

|

|||||

Waliullah Babu ahmatullah=Mt. Bodha Alim Ullah Niamatullah

||

_____ | _____ |

||||

Nasrullah Khairullah Ishaq Mohd. Hussain=Masooma

|

_____ | _____

|||||

Moqimullah=Mt. Ulfat Mohammad Rasulan Saleha=Shafi Amina

2. The property in dispute consists of three houses and originally belonged to Mohammad husain. The appellants Salimullah is the son, Mt. Moquima Bibi the daughter and Mt. Salima Bibi the widow of Shafiullah. This Shafiullah was the father of Mt. Masooma, the widow of Mohammad Husain. The other defendants, Mt. Ulfat, Nasrullah, Mohd. Shafi and Mt. Amina Bibi are to be found in the above genealogical table. The story which is unfolded in the plaint is briefly this.

3. Mohammad Husain died in 1924 leaving a widow Mt. Masooma, two sons Moqimullah and Mohammad, and three daughters Rasulaii, Saleha, and Amina. Moqimullah died leaving a widow Mt Ulfat, mother, Mt. Masooma, and a brother, Mohammad and three sisters, who all became his heirs. Mohammad also died some time after and left, as his heirs, his mother and two sisters. Waliullah is the father of the three plaintiffs, Faqir Ullah, Salamat Ullah and Inayat Ullah. The next to die was Rahmat Ullah leaving as his heirs Nasrullali, Ishaqullal and Khairullah and Mt. Bodha. His death was followed by the death of Mt. Masooma, who left, as her heirs, her three daughters and her mother Mt. Salima, and her brother Salimullah. Then took place some other deaths in the family, with which we are not concerned.

4. The case of the plaintiff, in substance, was that, as a result of the suit brought by the defendants in 1937, (Suit No. 757 of 1937), two out of three houses and a portion of the third house were allotted to the defendants. Mt. Amina sold her entire interest and Mohammad Shafi his interest to the extent of a half, to the plaintiffs on 2-11-1942 and 3-12-1942. The plaintiffs, therefore, claim 380512 sihams out of a total of 530375 sihams which represented the interest of Mohammad Husain.

5. The defence raised a number of pleas, but the only one which needs consideration now, is the one founded on Section 4, Partition Act. Both the Courts below have, as mentioned above, refused to the appellants this advantage on the grounds that they do not fall within the definition of the words 'undivided family' in Section 4 of the Act.

6. The learned Counsel for the appellants contends that the appellants came within the definition of the words 'undivided family' and both the Courts below have misconceived the true legal position. As observed by Sen J. in *Masitullah v. Umrao* : AIR1929 All414 :

The object of this section is to enable the members of an undivided family to buy out a stranger who has purchased the share of one or the other of the co-owners

and to prevent a partition of the dwelling house if its effect is to destroy the intrinsic value of the entire property. It is thus clear that the defendants will be entitled to the benefits of this section if they answer the legal test.

7. The word 'family' must, in the very nature of things, be treated as a word of wide connotation. It has been defined in Oxford English Dictionary, Vol. 1, 1936 edition, in these terms:

The body of persons who live in one house or under one head including parents, children, servants etc.... The group consisting of parents and their children whether living together or not; in wider sense all those who are nearly connected by blood or affinity.

The italics are mine. Blood, therefore, is not the only tie.

8. As observed by Kindersley V.C. in *Green v. marshden* (1853) 1 Drew. 646, the word 'family' is, in itself, a word of a most loose and 'flexible description.' In *Burt v. Hellyar* (1872) 14 Eq 160 it was observed that

family is a popular and not a technical expression and its meaning is often controlled by the context.

Indeed in a later case, *Wilson v. Cochran* (1869) 31 Texas 677, the matter was put perhaps in a IHOEC general form;

The term family embraces a collective body of persons living together in one house or within the curtilage. In legal phrase this is the generic description of a 'family'. It embraces a household comprised of parents or children or other relatives or domestic servants, in short, every collective body of persons living together within the same curtilage, subsisting in common, and directing their attention to a common object, the promotion of their mutual interests and social happiness. This is the most popular acceptance of the word.

9. Curtilage has been defined as a courtyard or garden appurtenant to a house.

10. The matter came up for consideration in *Kshirode Chandra v. Saroda Prosad* ('10) 12 C.L.J. 525. Mr. Justice, later Sir Asutosh Mookerjee, referred with approval to the English cases mentioned above and summed up his own view in these terms:

The word 'family' as used in the Partition Act, ought to be given a liberal and comprehensive meaning and it includes a group of persons related in blood, who live in one house or under one head or management.

There is nothing in the Partition Act to warrant the suggestion that the term 'family' was intended to be used in a very narrow and restricted sense, namely, a body of persons who can trace their descent from a common ancestor.

11. It is true that the expression used in the judgment is 'related in blood' but that was perhaps enough for the purposes of that case. The fact remains that the English connotation of the word 'family' was referred to by the Ramed Judge with

approval. The view which has consistently prevailed, at least in this Court, since the well known case in *Sultan Begam v. Debi Prasad* ('08) 30 All. 324 is in accord with what has been said above. Sir John Stanley, delivering the judgment of the Court, observed:

(a) The words 'undivided family' as used in this section appear to be borrowed from Section 44, T.P. Act.

(b) The words 'undivided family' must be taken to mean 'undivided qua the dwelling house in question, and a family which owns the house but not divided'.

12. The principle underlying the section and the authorities, both English and Indian, appears, to be to maintain the integrity of a body of people knit together by the tie of common residence. The advent of a stranger is bound to lead to disruption.

13. Judged by these standards it cannot be said that the present defendants are not members of that undivided family and are not entitled to the benefit of Section 4, Partition Act.

14. The IRamed Counsel for the respondent, however, contends that the plaintiffs are themselves the heirs of Mohammad Husain more directly than the defendants. According to the pedigree they certainly are, but it must be borne in mind that it was to the defendants that these three houses - two of them in whole and one in part - were allotted as a result of the suit of 1937. The quondam character of the relationship of the plaintiffs cannot be taken into consideration. This was clearly held in *Bhuban Mohan v. Brojendra Chandra* : AIR1941 Cal311 . The crucial time is the time when the partition is sought. At that crucial moment the plaintiffs were strangers to these houses, it was the defendants and defendants alone who constituted the 'undivided family' within the meaning of the Partition Act.

15. I am of opinion that the defendants are entitled to the benefits of Section 4, Partition Act. The IRamed Munsif should have followed the procedure prescribed by that section. I, therefore, allow the appeal, set aside the decree of the Courts below and send the case back to the Court of first instance with a direction to re-

admit the case to its original number and proceed and hear it according to law.
Costs on parties. Leave to appeal under the Letters Patent is refused.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com