

Parbhu Lal Vs. Badri

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SooperKanoon Citation : sooperkanoon.com/463909

Court : Allahabad

Decided On : Feb-23-1934

Reported in : AIR1934All719

Appellant : Parbhu Lal

Respondent : Badri

Judgement :

Mukerji, J.

1. This is an appeal from the judgment of a learned single Judge of this Court and to appreciate our judgment it would be necessary to know the facts with some detail. The plaintiff who is the appellant before us brought the suit out of which this appeal has arisen for the ejectment of the defendant from a part of a house on the allegation that the defendant had rented the same from the plaintiff, on a small rent, and having not paid the rent was in arrear and had refused to quit the premises in spite of notice to quit being given to him. The defence was that the defendant was an adopted son of the plaintiff, that the plaintiff was old and unfit to do any work and that out of the earnings of the defendant the house had been purchased. The Court of first instance framed three issues, namely : (1) Whether the house in suit belongs exclusively to the plaintiff or does it belong jointly to the parties and was purchased by joint money? (2) Is the defendant an adopted son of the plaintiff and is his adoption valid? (3) Did the defendant take the house in suit

on hire from the plaintiff? If so, on what rent

2. The Court found on issue 2 that there was no adoption at all and further found that the house belonged to the plaintiff having been purchased by him and that the defendant having lived for a long time with the plaintiff lived on the premises in the same way as he did before and that there was no contract of hiring. The learned Munsif decreed the suit on the ground that the property being the plaintiff's the defendant was bound to vacate it at the instance of the former. The defendant went up in appeal to the lower appellate Court and the judgment of the learned Subordinate Judge on appeal has been a matter of great controversy in this Court. We shall come to the judgment later on. The appeal came up before a learned Single Judge of this Court and it was dismissed mainly on the ground that it was concluded by a finding of fact and the counsel for the appellant was not in a position to certify that there was no evidence to support the finding. In this Letters Patent appeal the learned Counsel for the respondent has argued that the learned Counsel for the appellant has urged a point which was not urged before the learned single Judge and that there, fore we should not hear him. On this point, decisions of their Lordships of the Privy Council are conclusive. A point of law may be taken at any time, provided that for the decision of that point no fresh finding be necessary. If the facts admitted or if the findings of the Court be enough for the decision of the point of law, a Court is bound to hear it and if necessary, give effect to it. In the case, of *Suraj Mal v. Triton Insurance Co. Ltd.* , a point of law was taken for the first time before their Lordships of the Privy Council and was given effect to. Since then, there have been other decisions of their Lordships of the Privy Council and the practice of the English Courts is to the same effect. In *Prem Narain v. Ram Charan* , the want of proper sanction by the Local Government was allowed to be taken in a suit instituted under Section 92, Civil P.C., for the first time by their Lordships of the Privy Council though the point had never been urged in India. In the *Official Liquidator of M.E. Moolla & Sons Ltd. v. Perrin B. Burjorjee* , their Lordships quoted with approval the following from an English decision of the appeal Court:

When a question of law is raised for the first time in a Court of last resort upon the construction of a document or upon facts either admitted or proved beyond

controversy, it is not only competent but expedient in the interests of justice to entertain the plea.

3. In view of these Privy Council pronouncements, the Full Bench decision of this Court which limited the points of law which could be taken for the first time in the High Court must be deemed to be no longer good law : vide, *Ram Kinkar Rai v. Tufani Ahir* : AIR1931 All35 . Now, we take up the judgment of the learned Subordinate Judge whose findings of facts are to be accepted by us in second appeal. It appears that the defendant's case underwent change from time to time. We have already mentioned that his plea against the plaintiff's claim for ejectment was two-fold, namely, he was the adopted son of the plaintiff and, impliedly therefore had such right in the house of the joint family as the plaintiff himself, and that the plaintiff had become incapable of earning and the property was purchased with defendant's own money. The last plea implied that the plaintiff had no interest whatsoever in the property in suit. When the statement of the parties was recorded under Order 10, Rule 2 the defendant stated that his earnings were kept with the plaintiff's and with this joint fund, the house, a part of which was in suit, had been purchased. The learned Subordinate Judge, in our opinion, entirely misconceived the defence when he formulated the same in his judgment in the following language:

He further pleaded that he was depositing his earnings with the plaintiff and out of the blend* ed fund of the family this house was purchased....

4. The learned Subordinate Judge found in agreement with the Munsif that the defendant had not been adopted by the plaintiff. He found that the defendant had been left by his mother as a mere child with the plaintiff, that the plaintiff brought up the defendant and that the defendant lived with him like his own child and messed with the plaintiff member of his family. He further found that it was the plaintiff who had rented a shop for the defendant to occupy and that it was the plaintiff who arranged for and defrayed the expenses of the defendant's marriage. Now, on these findings there could be no question of 'blended fund of the family.' It is possible that the learned Judge in stating the facts of the case was merely trying to put in a small compass the defendant's pleadings, but we fear that his idea that

the defendant somehow or other was a member of a joint family with the plaintiff has coloured his judgment materially. The learned Subordinate Judge found as to the payment of the consideration as follows:

On going through the evidence on this record, I have to agree with the learned Munaif that so far as the sale-deed goes, it does not indicate that the defendant had any share in it and that there was no definite evidence on behalf of the defendant that he paid any part of the consideration.

5. This was a clear finding of fact that the defendant had failed to prove that he had paid any part of the consideration money. The learned Judge then found that since the defendant began to earn, he handed over his earnings to the plaintiff and lived with the plaintiff. Having said so, the learned Judge remarked as follows:

Though the plaintiff did not give a legal status to the defendants, both lived together like members of a joint family for a long time and it is almost impossible to say that the consideration of the deed came from the exclusive purse of the plaintiff.

6. It is on the finding just quoted that great stress has been laid by the learned Counsel for the respondent as being conclusive of the case against the plaintiff. The learned Subordinate Judge admits that there was no question of the joint family between the parties. The fact then that the defendant's earnings were kept by the plaintiff with his own earnings would not make the coffers of the plaintiff the coffers of a joint Hindu family nor even the coffers of people who are partners in any venture. From the mere fact that the defendant's earnings are kept with the plaintiff, it would not follow as a matter of law that any purchase made by the plaintiff would also be the defendant's property.

7. We have already pointed out that the learned Judge was not satisfied that there was any definite evidence that the defendant had paid any part of the consideration money. If that was so, it was wrong on the part of the learned Subordinate Judge to infer from the fact that the defendant's money was kept by the plaintiff with his own, that the defendant became the owner of the property. Some legal relationship must be shown which would entitle the defendant to claim

the property on account of the only fact found that the money of the parties was kept by the plaintiff. Either the family must be joint or the parties must be in the position of partners so that the act of one may be the act for all the partners and it must be further shown that in the matter of purchasing a house the plaintiff was acting as a partner of the defendant.

8. If it be true that the defendant has separate funds of his own and he deposits the same with the plaintiff, the purchase would not be for the benefit of the defendant even if it be a fact that, in making the purchase, the plaintiff, for want of sufficient funds of his own had to use for the time being the defendant's money. On the findings of the learned Subordinate Judge therefore it does not follow, indeed it is impossible to hold that the defendant has any interest in the property in suit.

9. It was strongly argued on behalf of the respondent by Mr. Peare Lal Banerji that we should remit an issue to the lower appellate Court to find out whether the relationship between the parties was really not that of partners because the defendant stated in his examination that : 'out of the joint funds the property had been purchased.' We have not found it necessary to remit any such issue. We have heard the entire evidence of the defendant and we are of opinion that the statement quoted above was only a part of the defendant's general case. The statement was never meant to be a separate or independent plea raising an independent issue.

10. The result is that the appeal succeeds. We set aside the decree of this Court and the decree of the learned Subordinate Judge and restore the decree of the Munsif decreeing the plaintiff's suit with proportionate costs. The appellant will have his costs in the Court of the Subordinate Judge and at the two hearings of this Court proportionate to his success and shall pay costs to the respondent in proportion to the latter's success.