

Ramchandra Vs. Balla Singh (deceased by L.R.'s) and Ors.

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Court : Allahabad

Decided On : Jul-23-1985

Reported in : AIR1986All193

Judge : N.N. Sharma, J.

Acts : Hindu Law; [Transfer of Property Act, 1882](#) - Sections 41

Appeal No. : Second Appeal No. 2381 of 1974

Appellant : Ramchandra

Respondent : Balla Singh (deceased by L.R.'s) and Ors.

Advocate for Pet/Ap. : M.A. Qadeer, Adv.

Disposition : Appeal dismissed

Judgement :

N.N. Sharma, J.

1. This is a defendant's appeal directed against the decree of Shri S. K. Varma, learned III Addl. District Judge, Shahjahanpur dt. 24-8-1974 in civil appeal No. 32 of 1973, by which learned appellate Court dismissed the said appeal and affirmed the judgment and decree recorded by Sri B. K. Sharma, learned Civil Judge, Shahjahanpur on 26-4-1973 in Suit No. 308 of 1969. Civil Judge decreed the suit

with costs. The following pedigree which was not controverted before me shall be helpful to appreciate the points involved.

Balla Singh

(Plff. No. 1)

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Sita Ram Ram Singh

Plff. No. 2 Defdt. No. 1

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Babu Mathal

(Plff. No. 3) (Plff. No. 4)

2. Thus the plaintiffs and defendant 1 are interrelated. Defendant No. 1 is the vendor and defendant 2 is the main contesting defendant Ram Chandra vendee.

3. The suit was filed on 1-9-1969. Relief sought was for cancellation of the sale deed dt. 15-10-1968 executed by defendant 1 in favour of defendant No. 2 about the disputed house detailed at the foot of the plaint.

4. It was averred that plaintiff and defendant No. 1 are members of the joint Hindu family; Balla Singh was Karta of the family. Defendant No. 1 wrongly executed the sale deed in favour of defendant 2 about the northern portion of the said house. Vendee entered in possession on the basis of the sale deed over the northern, portion.

5. The sale deed was executed without legal necessity and without the consent of other coparceners. Thus the relief sought was for cancellation of the sale deed as well as recovery of possession over the northern portion of the disputed house.

5A. Defendant 1 did not contest the claim.

6. Ram Chandra maintained that the house was not one unit on the spot but was actually divided in two portions and the northern portion was owned and possessed by Ram Singh, vendor and the southern portion was owned by Sita Ram, plaintiff 2 Ram Singh validly transferred the northern portion to the contesting defendant.

7. Balla Singh had renounced the world about 16 years of as (sic) prior to the filing of the suit and became an ascetic. Prior to the renunciation of the world Ball Singh divided the house in two portions and had given northern portion to Ram Singh and southern portion to Sita Ram, Ram Singh was fully competent to alienate his share. Vendee also sought protection under Section 41 of T. P. Act. Learned Civil Judge found under issue No. 1 that the disputed house was the ancestral property of plaintiff and defendant 1, he further found under issue No. 2 that Balla Singh did not become Sadhu. He further found under issue No. 3 that Balla Singh had not given northern portion to Ram Singh, defendant 1 Under issue No. 4 it was found that Section 41 of Transfer of Property Act did not bar the suit.

8. In the result claim was allowed.

8A. Aggrieved by his decision this appeal was preferred.

8B. I have heard Sri M. A. Qadeer, learned counsel for the plaintiff.

8C. None appeared for respondents.

9. The first point pressed on behalf of the appellant was that Balla Singh became a Sadhu and renounced the world. He had performed the necessary ceremonies and adopted the Code of conduct prescribed for ascetics and lived in a Marha. Balla Singh himself did not come forward to rebut the testimony of five witnesses examined in defence. Even his son Ram Singh testified that his father became an

ascetic.

10. Both the Courts below misdirected themselves by placing the burden on wrong shoulders. The evidence of plaintiffs was not scrutinised first. It was for the plaintiffs to prove their case. Plaintiffs could not succeed by weakness in defence. D.Ws. 1 to 5 testified that Balla Singh became Sanyasi about 15 or 16 years ago. Nanhey Singh, D.W. 1, testified that Balla Singh lived in a Marha in Mathana. However, he admitted that Balla Singh did not embrace Sanyas in his presence. He simply says Balla Singh wearing saffron clothes. Reliance was mainly place on the testimony of Mahadeo, D.W. 3 and Ram Singh D.W. 4 who testified that Balla Singh had taken Sanyas from Baba Shyam Dass after incantation of Mantras. They could not testify about the ceremonies except shaving of head and change in saffron clothes. Sunder Lal. D.W. 2 also conceded that Balla Singh had removed his necklace about 1 1/2 years ago.

11. Plaintiff Balla Singh P.W. 1, testified that he never renounced the world nor performed any of the ceremonies prescribed by Hindu Law for becoming a Sanyasi.

12. Sita Ram, P.W.2 also testified to the same effect. P.W. 2, Sita Ram who is a co-villager denied that Balla Singh ever became a Sadhu.

13. Learned Civil Judge observed that at the time of his deposition Balla Singh was wearing ordinary clothes and not yellow or saffron clothes. The suit was also filed soon after execution of the sale deed in favour of the vendees. So the point to be considered is who is a Sanyasi under Hindu Law?

14. In order to become a Sanyasi it is not merely necessary that a person may make declaration to the effect that he has renounced the world or may put on saffron clothes but he has to undergo all the ceremonies-prescribed in Hindu Law. In *Madhusudhan Mohapatra v. Gobind Sabat* reported in : AIR1965 Ori54 it was observed :--

'A mere expression of a desire to become a Sanyasi either orally or in writing is not enough to make out a case of renunciation of the world, so as to bring about a civil

death in the eye of law, but the formalities necessary for acquiring the status of a Sanyasi have to be undergone. There must be materials to show that he intended to cease all connections with his properties.

15. In *Satyanarayana Avadham v. Hindu Religious Endowments Board, Madras*, reported in AIR 1957 Andh Pra 824 it was held:--

'The assumption of the name of a Sanyasi could not change the status and bring about a civil death of a person unless there was initiation by a Guru into the order of Sanyasis by the appropriate Mantra.'

16. The requisite ceremonies which were essential for renunciation of the work and for becoming an ascetic were laid in *Ramakrishan Rao v. Srinivasarao* reported in : AIR 1960 AP449 in following terms :--

The requirement for the initiation of a Brahmin as a Sanyasi is that he should perform the eight shraddhas or even twelve according to some. These eight shraddhas are to Devas, Rishis, Divyas, Manushas, the Bhutas, Pitrus, Matrus and oneself. The performance of Jeeva Shraddham or Atma Shraddham is the last of the first preliminaries after which civil death takes place, though according to some, this is not necessary. Some say that he should also perform the Prajapati sacrifice which involves the making over of all the wealth one possesses. He should also take obeisance to the learned Brahmins and invoke their blessings. Then, performing the purification ceremony he should shave himself and bathe duly. He should then give up all his property, excepting or reserving the articles relating to the sacrifice etc., to his sons etc. and placing the staff etc. should stand in a temple, road or other place, do homage to the divines (Vedas) and sup water. He should then recite the Trivrit Prasanna Mantram, after which there is no turning back. He should then perform the Presha Mantram which is the renunciation of the world, his family, his children and his property, etc.'

17. This Court also in *Baldeo Prasad v. Arya Prati Nidhi Sabha*, reported in : AIR1930 All643 took a similar view. It was observed that the person has to perform Prajapathiyesthi and finally Viraja homam as were pointed out in *Kondul Row v. Swamulavaru*, 33 Mad LJ 63 : (AIR 1918 Mad 402). The relevant portion is

extracted as below :--

'Then he has to perform Prajapathiyesthi and finally Viraja homam. These are sacrifices in fire and are a purificatory ceremony. At the end of the ceremonies the postulant has no property at all, for even the sacrificial vessels if they are of wood must be burnt in the fire and if they are of metal must be given to the priest.'

18. The evidence on record as adduced in defence does not show that any of the aforesaid ceremonies were performed by Balla Singh. There could be none better than Balla Singh himself who by his statement and conduct demonstrated that he was never a Sanyasi. So this point was correctly found by both the Courts below against the defence.

19. The next contention was that there was a partition of the house as there were two doors. This is essentially a question of fact. Both the Courts below pointed out various contradictions about the opening of the doors. Balla Singh himself denied the allegation that before renunciation of the world he had partitioned the house in two portions. His testimony was supported by other P. Ws. which was believed by the Courts below. There is no document about partition nor there is any other evidence or circumstance in the case which may point out partition by means of metes and bounds as set up in defence. The house was ancestral and had been shown to be coparcenary property. The sale deed in question did not mention any legal necessity to execute the same, joint family is normal unit of the Hindu society. Distinction between joint and coparcenary is well established. Since it was the ancestral property of coparceners in which the children had their share by birth and other coparceners had fluctuating interest with the births and deaths in the family no alienation of this property could be done by vendor without the consent of the other coparcener as it is the essence of such property that its transfer is not possible unless it is for legal necessity or bona fide with the concurrence of the coparceners.

20. Thus the plaintiffs were entitled to the cancellation of the sale deed and to recover the possession. This is again a concurrent finding of fact which cannot be disturbed by me in this appeal. Mere fact that defendant No. 1 was occupying a portion in ancestral house could not make him ostensible owner of such property

so as to attract the provisions of Section 41 of Transfer of Property Act.

21. In this view of the matter I do not find any merit in this appeal which is dismissed. Cost easy.

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