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Court : Chhattisgarh

Decided On : Aug-24-2007

Reported in : 2007(4)MPHT39(CG)

Judge : D.R. Deshmukh, J.

Appellant : Krishna Kumar Soni and ors.

Respondent : Rajulal Soni and ors.

Advocate for Def. : Shri. Vimlesh Bajpai, Shri. R.P. Tripathi

Advocate for Pet/Ap. : Shri. Sanjay K. Agrawal

Disposition : Appeal dismissed

Judgement :

D.R. Deshmukh, J.

1. Being aggrieved by the judgment and decree dated 24-4-2001 passed by Shri M, Katulkar, VIth Additional District Judge, Durg, in Civil Suit No. 11-A/ 2000 granting partition of the joint family property and severance of one-forth share of the respondent/plaintiff, the appellants/defendants have preferred this appeal.

2. The following facts are not disputed in this appeal:

Chandulal Soni was the owner of the suit house as shown in the map annexed to the plaint situated in Motipara, in front of Luchki Talab, Durg. The respondent/plaintiff Rajulal Soni, appellants/defendants No. 9, Kamta Prasad Soni and No. 10, Babulal Soni and Makhanlal Soni were the sons of Chandulal Soni. Makhanlal Soni was the eldest amongst the sons. The appellants/ defendants-Nos. 1 to 6 are the sons, No. 7, the daughter and No. 8, the widow of Makhanlal Soni. After the death of Chandulal Soni in 1956, under a family arrangement, late Makhanlal Soni and his three brothers continued to reside in portions of the suit house which were in their occupation. Names of Makhanlal Soni, Kamta Prasad Soni, Babulal Soni and Rajulal Soni are jointly recorded over the suit property in the Nazul Records.

3. The respondent/plaintiff instituted the suit for partition and separation of his one-fourth share specifically pleading that the suit property was joint and had never been partitioned. Under a family arrangement, the coparceners were in separate possession of different portions of the suit property as mentioned in the map annexed to the plaint. It was also pleaded that the double storied house in question was constructed by late Chandulal Soni and not by Makhanlal Soni. It was staled that cause of action for institution of the suit arose when the appellants/defendants refused to give him a shop situated on the ground floor for business of his sons.

4. The appellants/defendants Nos. 1 to 8 pleaded that Makhanlal Soni and his three brothers had partitioned the suit property under a family an arrangement, under which the ground floor had fallen to the share of Makhanlal Soni. Makhanlal soni had constructed a hall, shops, latrine at his own expense. It was also pleaded that Makhanlal Soni had incurred the entire expenditure in the construction of the suit house.

5. Respondent Nos. 2 and 3/defendant Nos. 9 and 10, i.e... Kamta Prasad Soni and Babulal Soni, the brothers of Makhanlal Soni admitted the plain! allegations in toto and prayed that the suit for partition be decreed.

6. The learned VIth Additional District Judge, Durg, upon appreciation of evidence, held that the appellants/defendants had failed to prove that after death of

Chandulal Soni, the suit property was partitioned; between the parties and upon severance of the joint status the coparceners, were in separate possession of their respective shares. It also recorded a finding that the appellants/defendants had failed to prove that Makhanlal Soni had incurred the entire expenditure in construction of the suit property. On these premises, it granted a decree for partition of the suit property and severance of one-fourth share of the respondent/plaintiff.

7. Shri Sanjay K. Agrawal, learned Counsel for the appellants/ defendants argued that in the plaint there was a clear and unequivocal admission by the respondent/plaintiff that under a family arrangement, Makhanlal Soni and his brothers were in separate possession of portions of the suit property. It was also contended that the unrebutted testimony of Dhanabai.(D.W. 2), the widow of Makhanlal Soni proved that Makhanlal Soni had incurred the entire expenditure in construction of the suit house. It was argued that the parties were in separate possession of their respective shares as per family arrangement since more than 50 years and it is only after the death of Makhanlal Soni, the respondent/plaintiff had filed the suit for partition because of refusal by the legal representatives of Makhanlal Soni to give to him a shop at the ground floor for the purpose of business of his sons, Reliance was placed on Pata Sahu and Anr. v. Hiru Sahu and Ors. : AIR1991 Pat276 and Radhamoni Bhuiyunin and Ors. v. Dibakar Bhuiya and Ors. : AIR1991 Pat95 , while arguing that there was severance of joint family status since over 50 years and the parties were in separate mess and separate residence of their respective portions, which was a definite and unequivocal indication of the intention of the members of the joint family to separate themselves from the family and enjoy their respective shares in severality. Reliance was also placed on Kalyani v. Narayanam : [1980]2SCR1130 .

8. On the other hand, Shri Vimlesh Bajpai, learned Counsel for the respondent/plaintiff argued in support of the impugned judgment and contended that the property stood joint in the names of the four brothers. Reliance was placed on Girijanandini Devi and Ors. v. Bijendra Narain Choudhary : [1967]1SCR93 and Roop Chand v. Indradevi and Ors. : AIR 1997 MP200 . It was submitted that the sale-deed dated 11-10-1957, Exh. D-7, through which Makhanlal Soni had sold

the suit property to Foolchand proved that the double storied suit house was already existing, which negatived the evidence of Dhanabai (D.W. 2) that the double storied suit house was constructed at the expense of her husband Makhanlal Soni. It was also contended that the appellants/defendants had failed to prove the existence of an unequivocal intention of the coparceners to sever the joint family status at the time of the family arrangement.

9. Shri R.P. Tripathi, learned Counsel for respondent Nos. 2 and 3 adopted the arguments advanced by Shri Vimlesh Bajpai, learned Counsel for the respondent/plaintiff.

10. In Kalyani v. Narayanam (supra), the law relating to partition of a Mitakshara Hindu undivided family was laid down by the Apex Court in the following terms:

Partition is a word of technical import in Hindu Law. Partition in one sense is a severance of joint status and coparcener of a coparcenary is entitled to claim it as a matter of his individual volition. In this narrow sense all that is necessary to constitute partition is a definite and unequivocal indication of his intention by a member of a joint family to separate himself from the family and enjoy his share in severality. Such an unequivocal intention to separate brings about a disruption of joint family status, at any rate in respect of separating member or members and thereby puts and end to the coparcenary with right of survivorship and such separated member holds from the time of disruption of joint family as tenant-in-common. Such partition has an impact on devolution of share of such member. It goes to his heirs displacing survivorship. Such partition irrespective of whether it is accompanied or followed by division of properties by metes and bounds covers both a division of right and division of property. A disruption of joint family status by a definite and unequivocal indication to separate implies separation in interest and in right, although, not immediately followed by a de facto actual division of the subject matter. This may at any time, be claimed by virtue of the separate right. A physical and actual division of property by metes and bounds follows from disruption of status and would be termed partition in a broader sense.

Thus, in order to constitute the partition of the joint family property severance of joint status and a definite and unequivocal indication of the intention by the

members of the Joint Hindu Family to separate themselves and to enjoy their respective shares in severality is required to be established by the party, who pleads that under the family arrangement, there was a disruption of status under a definite and unequivocal indication of the intention by the members of the joint family to separate and to enjoy their shares in severality. Only such an unequivocal intention to separate brings about the disruption of joint family status. In Pata Sahu and Anr. v. Hiru Sahu and Ors. (supra), it was held that mere fact of separate mess and separate residence by themselves are not conclusive proof of partition.

11. The decision of the High Court of Madhya Pradesh in Roop Chand v. Indradevi and Ors. (supra), applies to the present case with full force as the facts were identical to the present case. In that case the plaintiff/appellant had filed a civil suit for partition of the house specified in the plaint, situated in the town of Bhind. The plaintiff was claiming one-fourth share in the said house. The plaintiff alleged that this house was purchased in the year 1947 by his father. His father had died. The plaintiff and his three brothers, who are respondents, had equal shares of one-fourth in the said house. After sometime, the living of the plaintiff and his brothers was separated and they continued to live in separate portions of the same house for quite sometime. Later on one of the defendants mortgaged his share in the same house by mortgage-deed dated 17-4-1992 to one Shri Prakash Shivhare and put him in possession. The dispute arose later on in respect of the living and dealing with the portions of the same house. The plaintiff was aggrieved of his possession being interfered with by the defendants, and filed a suit for partition. It was held that mere admission that the four brothers were living separately in the same house and doing separate business did not permit raising a presumption that there was a family settlement to deal with the property independently of their shares. The house stood in the name of four brothers jointly. There was no mutation of co-shares of their different shares and in that view of the matter, no presumption could be raised of any settlement much less that of a partition.

12. The Apex Court has in Girijanandini Devi and Ors. v. Bijendra Narain Choudhary (supra), while placing reliance on a decision of the Judicial Committee of the Privy Counsel in Palani Ammal v. Muthuvenkatacharia Moniagar AIR 1925

PC 49, held that it is the unequivocal intention to sever followed by the conduct of the coparceners which seeks to effectuate that intention that partition results. Mere specification of share without evidence of intention to sever does not result in partition. It was held that in order to constitute partition the conduct of the coparceners must evidence unequivocally the intention to sever the joint family status.

13. Bearing in mind the principles laid down by the Apex Court, it requires consideration whether the appellants/defendants have been able to prove such an unequivocal intention to sever the joint family status by a family arrangement. Dhanabai (D.W. 2), the widow of Makhanlal Soni has admitted in Para 10 that the suit property was never partitioned. In Para 8, she admitted that all the four sons of Chandulal Soni were living jointly in the suit property. In Para 3, she stated that no dispute regarding partition ever arose between the parties before filing of the suit. Defendant No. 2, Pillulal Soni has also admitted in Para 8 that no partition had ever taken place and Makhanlal Soni and his brothers were in respective possession of the portions under the family arrangement. It is also not in dispute that the suit property was jointly recorded in the name of Makhanlal Soni and his three brothers. The evidence of Dhanabai (D.W. 2) that Makhanlal Soni had got the suit house constructed at his own expense is belied by the contents of Exh. P-7, which is the sale-deed executed by Makhanlal Soni in favour of Foolchand on 11-10-1957 showing that a double storied pakka house situated in Luchkipara was sold. The documentary evidence on record shows that the financial condition of the family had weakened due to which the suit house was required to besold by Makhanlal Soni to Foolchand vide Exh. D-6 it) 1957. This contradicts the averment that Makhanlal Soni had incurred the entire expenditure, in constructing the suit house and fortifies the conclusion drawn by the learned VIth Additional District Judge, Durg that the suit house was constructed by Chandulal Soni during his lifetime.

14. The respondent/plaintiff has led evidence to show that the suit property was recorded jointly in the name of all brothers and the cause of action for filing the suit for partition arose when after the death of Makhanlal Soni, the appellant/defendants refused to give him a shop at the ground floor for business

for his sons. Respondent Nos. 2 and 3, i.e., the defendant Nos. 9 and 10, Kamta Prasad Soni and Babulal Soni have admitted the plaint in tola. Rajulal Soni (plaintiff), P.W. 1, Kamta Prasad Soni, P.W. 2 deposed that after the death of Chandulal Soni since the ground floor of' the suit house was vacant, it was occupied by Makhanlal Soni and three brothers, i.e., Rajulal Soni, Kamta Prasad Soni and Babulal Soni continued living on the first floor.

15. The learned VIth Additional District Judge, Durg has objectively appreciated the evidence, oral as well as documentary consistently with the law relating to partition and recorded a well-reasoned finding that the appellants/ defendants have failed to prove that under a family arrangement there was complete severance of joint family status between the parties and has rightly held that such family arrangement could not be construed to be a partition between the parties. Thus, no interference with the impugned judgment and decree is called for.

16. In the result, the appeal fails and is dismissed. In the circumstances, the parties shall bear their own cost.

A decree shall be drawn accordingly.

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