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

Brahm Narayan and anr. Vs. Minor Rajesh Kumar and ors.

Brahm Narayan and anr. Vs. Minor Rajesh Kumar and ors.

SooperKanoon Citation : sooperkanoon.com/500747

Court : Madhya Pradesh

Decided On : Aug-24-1991

Reported in : AIR1992MP297

Judge : T.N. Singh, J.

Acts : Hindu Law; Evidence Act, 1872 - Sections 114

Appeal No. : F.A. No. 32 of 1988

Appellant : Brahm Narayan and anr.

Respondent : Minor Rajesh Kumar and ors.

Advocate for Def. : R.D. Jain, Adv.

Advocate for Pet/Ap. : H.D. Gupta, Adv.

Disposition : Appeal dismissed

Judgement :

T.N. Singh, J.

1. Plaintiffs, who have appealed, instituted a suit on 17-12-1985, praying, inter alia, for declaration that the deed of Gift (Ex. D/3), executed on 9-12-1983 by defendant No. 1 Ramchandra, was void and mutation on that basis was also void. The Deed was executed by the said defendant, who died during the course of trial after filing

his written statement. He made a gift of certain lands in favour of defendant/respondents Rakesh Kumar and Abinash Kumar, both minors, represented by their natural guardian, father, Shrikrishna Sharma, who had accepted the same on their behalf. Indeed, the main relief claimed was for the land described in para 1 of the plaint to be declared ancestal property of the parties and that along with the plaintiffs, defendant No. 4, (Mewaram), be declared as owner in equal shares in that land. Suit has been dismissed in toto.

2. Plaintiffs' case, as stated in para 1 of the plaint, is that though defendant Ramchandra was registered as Bhumiswami in respect of the ten plots, of the Survey Numbers specified, the land in question was ancestral property. In the total area of 4.537 hectares, he had 1/2 share. Nirpatlal was common ancestor of the parties. Ramchandra was issueless and plaintiffs along with defendant No. 4 (Mewaram herein respondent No. 3) were his prospective heirs and successors. In para No. 9,1 the genealogy is set out. It is disclosed therein that Nirpat had two sons, Moharman and Ramchandra, abovenamed. Moharman was dead. He left behind three sons; Mewaram (defendant No. 4); Gandharva (also dead) whose son Kalicharan was plaintiff No. 2 and Brahm Narayan (plaintiff No. 1). Progeny of Mewaram is also disclosed. Among his three sons, Jagdish, Banwari and Shrikrishna, it is disclosed that the last-mentioned Shrikrishna had two sons, Rajesh Kumar and Abinash Kumar (minors), figuring in the suit as defendants No. 2 and 3. In para 3, the averment is that ignoring and overlooking the fact that Ramchandra had got the property from his father Nirpat along with Moharman, (great grandfather of defendants 2 and 3). Under undue influence of Shrikrishna, father of defendants 2 and 3, he had executed a Deed of Gift on 9-12-1983 in their favour illegally and on that basis, Patwari mutated their names on 8-1-1984 which was confirmed on 27-2-1984.

3. Separate written statements were filed on behalf of defendant No. 1 (Ramchandra) and the two donees, defendants Nos. 2 and 3, through their natural guardian and father, Shrikrishna. Defendant No. 4 did not file any written statement and did not contest the suit. The case of defendant No. 1 was that the plaintiffs and defendant No. 4 were not his prospective heirs and successors though he was issueless. For last sixty years after his father's death, he and his

brother Moharman were living separately. He ceased to have any relationship with the plaintiffs and defendant No. 4 and they could not claim to be his prospective heirs and successor. He admitted, however, that in the suit property described in para 1 of the plaint, he had 1 / 2 share and that till 9-12-1983, he was in possession thereof and was cultivating the lands of his share. He had given possession, after executing the Deed of Gift in favour of defendants Nos. 2 and 3, and that was accepted on their behalf by their natural guardian and father, Shrikrishna and since then, they are continuing in. possession of the land gifted. He also stated that plaintiff Brahm Narayan, during lifetime of his father, Moharman, was given in .adoption to one Mata Prasad and he ceased thereafter to have any relationship with the family. Accordingly, the said plaintiff had no right to sue him and to claim any relief against him in respect of the suit land. After Nirpat's death, Ramchandra and Moharman did not continue to live as coparceners and both started living separately.

In the written statement filed on behalf of defendants Nos. 2 and 3, averments made were almost on same lines, but additionally, it was also stated that no undue influence was exercised by their father Shrikrishna on defendant Ramchandra and the latter had executed the Deed of Gift voluntarily.

4. On pleadings, several issues were framed. In deciding issue No. (2), it was held that defendant Ramchandra had executed voluntarily the Deed of Gift dated 9-12-1983 and the father of defendants Nos. 2 and 3, Shrikrishna, had not exercised any undue influence on him. The other important issue, Issue No. (3), was decided holding it as not proved that Ramchandra had no right to transfer the suit land and indeed, that issue was decided analogously with issue No. (5), holding that Ramchandra's family was a divided family and during his lifetime, the plaintiffs could have no right, title and interest in the lands of Ramchandra. It was, however, also held in deciding issue No. (4) that adoption of plaintiff No. I by Mata Prasad had not been proved.

5. As staled earlier, Ramchandra was dead before the evidence stage, but Shrikrishna, father of defendants 2 and 3, examined himself as D. W. 5 and he also examined four other witnesses. Of them, D.W 3, Document Writer proved the

Deed of Gift (Ex. D.3), while D.W. 4, Advocate Shri Satya Narayan, proved that he had drawn up and filed the written statement on instructions of the deceased defendant Ramchandra. Both plaintiffs Brahm Narayan and Kalicharan examined themselves, as P.Ws. 1 and 4 respectively. They also examined two other witnesses P.W. Rambharose and P. W. 3, Shriram, both daughter's sons of deceased Nirpat.

6. In his evidence, P. W. 1 stated that deceased defendant Ramchandra and his father, deceased Moharman, were brothers and that Ramchandra was unmarried. He proved, Ex. P/6, stating that in Samvat 2023 and 2024, Moharman's name had been mutated in the suit land in respect of which he also proved Exs. P/7 and P/12. He further stated that after death of his grandfather, Nirpat, the two brothers Moharman and Ramchandra lived together; they had not separated. But, at the same time, he stated also that he and his brothers were cultivating 'Ramchandra's land.' He denied that he was Mata Prasad's son or was given to the latter in adoption. At para 9 of his evidence, he admitted that he had executed sale-deed in respect of his share in Survey No. 86 and, therefore, that Survey Number was not included in the suit land described in para No. 1 of the plaint. That deed was executed 15 or 16 years ago; the registration of the Deed took place at Bhind 10 years after his father's death in Samvat 23 (2023). He also admitted that in that sale-deed, no price was mentioned as that was a Partition Deed among brothers.

7. P. W. 2 stated that for the last 15 years the two plaintiffs (Brahm Narayan and Kalicharan) and Mewaram were living separately. He also staled that Ramchandra's land were cultivated by Moharmans's son. P. W 3, however, struck a discordant note stating that Rsmchandra used to cultivate his own land and when he became physcially incapable, he got the same cultivated on Batai system. He too admitted (like P.W 2), in his cross-examination, that Mewaram and Gandharva were living separately. P. W. 4 admitted in his evidence that he was in Government service and was posted at Mandsaur. His father Gandharva died 41 years ago. For the last 20 years, he was in service. He admitted in his cross-examination that he has seen since, his childhood, Brahm Narayan living separately in the house which he had constructed himself. On the date of his evidence, he gave his age 41 years.

8. The Patwari, deposing as D. W. 1, proved Ex. D/2, Bhu Adhikar Rin Pustika; and stated that the Book was in respect of Khata No. 41. In respect of that Khata, the Bhumiswamis recorded, Mewaram son of Moharman and Gandharva's son Kalicharan had each 1/4th share while Shrikrishna's sons Rajesh Kumar and Abinash Kumar had 1/2 share jointly. In this context, reference may be appropriately made to the khasras proved by the plaintiffs, namely, Exs. P/6 et. seq. for Samvat 2023 to Samvat 2035. These khasras show that Moharman; Mewaram jointly held these lands with two others as bhumiswamis; in Ex. P/9, for the Samvat Years 2032 to 2035, 1/2 share is recorded in the name of Mewaram, Brahm Narayan and Kalicharan and in Ramchandra's name, 1/2 share separately. The same khasras also show that land revenue was being paid separately by the two groups of bhumiswamis, in 1/2 shares.

9. Shrikrishna, deposing as D.W. 5, stated that Ramchandra and Moharman, the two brothers lived separately. His share of land, Ramchandra cultivated himself and when he became old, he got the same cultivated on Batai system. During his lifetime, Ramchandra did not live jointly with anyone. He denied that on Ramchandra's death (which took place at his house at Bhind) his last rites were performed jointly by Mewaram, Brahm Narayan and Kalicharan. He stated that the funeral pyre was lit by his younger son when Ramchandra was cremated; he was above 80 years of age when he died. D.W. 2, aged 60 years at the time of his evidence, deposed that Moharman's daughter was married to his brother Baburam; they were both dead. He knew the family and he knew both Brahm Narayan and Ramchandra. He stated that Ramchandra lived separately from Moharman and used to cultivate his own lands and that the two brothers had 1/2 share each in the ancestral land. In his cross-examination, he denied that Ramchandra lived jointly either with Moharman or with his son.

10. The only substantial contention forcefully pressed in this appeal is that the parties being governed admittedly by Benaras School of Mitakshara Hindu Law, Ramchandra's gift was void as there was no partition of the ancestral property. Shri H.D. Gupta, appellants's counsel, contended that there was presumption of jointness and that it was necessary for the defendants 2 and 3, tjie donees, to establish that there was a partition by metes and bounds between Ramchandra

and other coparceners, but that has not been proved. In this connection, it is however to be noted that the absence of partition by metes and bounds had not been set up in the plaint. It is also not stated as to how the descendants of Nirpat continued to maintain the coparcenary status up to fifth generation. Indeed, significantly, it was not even averred that severance of the joint family had not taken place and that the parties continued to own and possess jointly the ancestral land described in para No. 1 of the plaint.

11. On evidence, the position established as undisputed is that in Revenue records, mutation was in two groups of the successors of deceased Nirpat, the common ancestor of the parties. Kharsras filed clearly establish the position that Ramchandra had been mutated separately in respect of 1/2 share in the relevant Khata (agricultural holding of the family). He paid also land revenue separately, for his 1/2 share. P.Ws. 1, 2 and 3 have endeavoured to establish that joint board and lodging, the family had not given up because Ramchandra was unmarried. It is not possible to accept that position because P.Ws. 2 and 3 stated further that some members of the family were living separately for 15 years; indeed, in so far as plaintiff Brahm Narayan was concerned, the evidence is that he had constructed a separate house for his residence and indeed, in his own evidence, he even admitted that Survey No. 86 of the Khata, mutated in his name, he had transferred to his brother and the 'sale-deed' was executed by way of 'partition'. In 1983, when Deed of Gift was executed, obviously, there was no coparcenary. There is total want of evidence in that regard in respect either to joint board or lodging or of joint ownership or possession of the family holding by the parties. Reference by the witnesses to 'Ramchandra's land' being tilled by Moharman's sons establish also the position that Ramchandara had separated. Indeed, in his written statement Ramchandra's case was that the separation had taken place before 60 years ago and indeed in the Deed of Gift, his age, he gave as 88 years.

12. Legal position which cannot be disputed is that no coparcener can dispose of his undivided interest in coparcenary property by gift and that such transaction is void. Although jointness is presumed, that does not deny a coparcener the right to separate from the joint family and cause disruption of the joint family. Shastric Law is clear that 'wealth of the father and paternal grandfather becomes the property of

his sons and of his grandsons, in the right of their being sons and grandsons respectively and that is an inheritance not liable to obstruction'. (See, Colebrook's translation of . Mitakshara (Commentary by Vijananesvara on the Institutes of Vajnavalkya), Chapter I, Section I, para 3). It is stated, ibid, para 4 -- 'Partition (Vibhaga) is the adjustment of the ownership of many persons in the aggregate wealth by assigning particular portions of the aggregate to a several ownership'. From Gautam's text is quoted at para 8, ibid, the sentence -- 'An owner is by inheritance, purchase, partition, seizure, or findings', at para 19, Narada's injunction is quoted -- 'Excepting what is gained by valour, the wealth of a wife, and what is acquired by science which are three sorts of property exempt from partition .....'. Obviously, therefore, the presumption of jointness does not affect any coparcener's right to sever his connection from the joint family to enjoy full ownership in severality, separately, of his share in the joint family property. Whether actual division of property by metes and bounds is necessary for disruption of a Mitakshara Hindu joint family? Whether exercise by any coparcener of his right to hold and defined share in the coparcenary property, is relatable purely to his violation? What are the requirements of, or evidence pertaining to, severance? These are the basic legal questions to be examined in this case.

13. There are, happily, more than one authoritative decisions touching the above questions. Reference may be appropriately made first to Girja Bai's case AIR 1916 PC 104. It has been held that equivocal declaration of intention to separate effects* severance in status and division of property by metes and bounds follow thereafter. For the view taken, their Lordships referred to their earlier decision in the case of Appovier alias Seetaramier, (1886) XI MIA 75. The Judicial Committee of the Privy Council held therein that when a division of shares was agreed upon between members of an undivided family, their act operated as conversion of the tenancy and brought about the change of the status of the family; the joint tenancy was converted into tenancy-in-common, making the members of the previously undivided family a divided family in respect of the property. The same view was reiterated by the Privy Council in Rajah Suraneni's csae, (1869) XIII MIA 113. In Mst. Jatti AIR 1923 PC 136, their Lordships held that there is no presumption that when one coparcener separates from others the laller remain united; an agreement amongst the remaining members of joint family to remain united or to

reunite must be proved like any other fact. The same view is expressed by their Lordships of the Supreme Court in A. Raghavamma's case AIR 1964 SC 136, they held there is no presumption whether rest continued joint or separate.

14. The right of a coparcener to separate being indepdehdent of normal presumption of jointness of Hindu family, was considered also in Bhagwati Prasad AIR 1952 SC 72 and it was held that it would be a question of fact to be determined in each case upon evidence relating to intention of the parties whether there was a separation amongst other members too. Their Lordships added, 'the burden would undoubtedly lie on the party who asserts the existence of a particular state of things on the basis of which he claims relief,' and in that connection, they cited, with approval, Privy Council's decision in Balkrishna (1931) 58 Ind App 220 : (AIR 1931 PC 154) Palaniammal (1925) 52 Ind App 83 : (AIR 1925 PC 49) and Balabux, (1903) 30 Ind App 130. With respect to the facts of that case, they upheld plaintiffs' stand that because of the disruption of the joint status, it would be immaterial if subsequently the coparceners lived together in commensaiity or dealt with their property in such manner as is ordinarily done by members of a joint Hindu family. On that point, the decision in Girijanandini AIR 1967 SC 1124 also deserves notice. Therein too it has been held that once the shares are defined, the parties may thereafter choose to divide the property by metes and bounds or may continue to live together and enjoy the property in common as before. If they live together, the mode of enjoyment alone remains joint, but not the tenure of the property. In regard to evidence of separation, the Judicial Committee of the Privy Council held Ram Pershad Singh, (1903) ILR XXX Cal 231, that conduct of the parlies can be taken into consideration to divine their intention as to separation and for that the entire circumstances of the case could be taken into consideration. In Bhagwan Dayal AIR 1962 SC 287, it was held, 'in the case of old transactions when no contemporaneous documents are maintained and when most of the active participants in the transactions have passed away, though the burden still remains on the person who asserts that there was a partition, it is permissible to fill up gaps more readily by reasonable inference than in a case where the evidence is not obliterated by passage of time'. A Division Bench of this Court in Dattatraya v. Shakuntalabai AIR 1956 Nag 95, has held that Jamabandi entries may provide appropriately reasonable guidance to determine

the question of separation; when cesser of commensaiity is established, although not conclusive of separation, that would still be an element of determine judicially if the joint family had disrupted.

15. In the instant case, plaintiffs having assailed gift made by deceased respondent Ramchandra, it was their burden to plead and prove that on the date of execution of the Deed of Gift, the property in question was undivided property of the parties; that it was not the property of the donor of his full and absolute ownership as recited in the Deed, but his interest therein was that of a coparcener. In such a case, the plaintiffs could not rely merely on the general presumption of joint-ness of a Hindu family. Indeed, law, as discussed above, is well settled, I reiterate, that coparcener's right to sever and cause disruption in the joint family is not defeated by the general presumption of jointness. It is also settled law that the change in status takes place when any coparcener merely expresses his intention to separate and that intention can be gathered from his conduct and surrounding circumstances of the case. It is not necessary that there should be actual distribution of shares and the coparceners to be put in possession of specific parts of the property on the basis of a partition by metes and bounds. In the instant case, evidence, on record establishs clearly and categorically that deceased defendant Ramchandara, the donor, did separate from the joint family of his father Nirpat. Although it is not conclusively established as to when severance took place, whether immediately on Nirpat's death or subsequently, it is still established clearly that on the date on which the Deed of Gift was executed, there was no joint family of Nirpat owning and possessing the ancestral property as joint tenants. Plaintiff Brahm Narayan had himself executed what he admits to be a partition deed, in his brother's favour while there is also preponderance of evidence that the coparceners alive on the date of execution of the Deed of Gift were living separately and there was cesser of commensality. It is impossible, therefore, to hold the Deed of Gift (Ex. D/3) to be tainted or illegal in any manner. No declaration can, therefore, be granted that the said Deed is void; the other prayer also cannot be granted for the same reason to declare that right, title and interest in the suit land covered by the Deed vested in the plaintiffs and defendant No. 4 (Mewaram) by right of survivorship. Obviously the single finding that Nirpat's joint family did not exist on the date of execution of that deed and that there was

disruption of the joint family prior thereto resulting in severance of joint status of the parties effectively and adequately rebuffs both prayers.

16. In the result, the appeal fails and is dismissed. The judgment and decree passed by the trial Court are affirmed. Parties are, however, left to bear their own costs in this Court.

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