

Amara Dei Vs. Arjuna Dhal

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Court : Orissa

Decided On : Mar-29-1967

Reported in : AIR1968Ori62; 33(1967)CLT732

Judge : G.K. Misra, J.

Acts : [Partition Act, 1893](#) - Sections 4

Appeal No. : Second Appeal No. 258 of 1964

Appellant : Amara Dei

Respondent : Arjuna Dhal

Advocate for Def. : R.N. Sinha and ;S.S. Basu, Advs.

Advocate for Pet/Ap. : L.K. Dasgupta, ;J.M. Mitra and ;S.C. Ghose, Advs.

Disposition : Appeal dismissed

Judgement :

G.K. Misra, J.

1. Bhobani and Sapani were brothers. Plaintiff is the son of Bhobani. Sapani died 30 years ago leaving behind his widowed daughter Ajodhya, who was married to Dibakar. Both of them are dead and used to reside in the house of Sapani after his death. Amari (defendant) is the foster daughter of Ajodhya. The disputed property

comprises of four plots -- plot 1621 --. 16 acre, plot 1626 --. 64 acre, plot 1618 --. 10 acre and plot 1617 -- .06 acre. Sapani executed a registered deed of gift (Ex. C) in favour of Ajodhya on 9-7-26 in respect of undivided half share in plots 1618, 1621 and 1626. He executed a registered deed of sale (Ex. D) in favour of Dibakar on 25-5-32 in respect of undivided half of plot 1617. Sapani predeceased Ajodhya and on his death, his interest in plot 1617 devolved upon Ajodhya. Thus Ajodhya became the owner in possession of the undivided half of the disputed lands. She executed a registered deed of gift (Ex. B) on 20-6-59 in favour of the defendant in respect of her entire interest in the disputed lands.

Plaintiff's suit is for partition of the undivided homestead and for purchase of the interest of the defendant in the undivided homestead under Section 4 of the Partition Act (hereinafter referred to as the Act). Defendant contested the suit alleging that there was a partition by metes and bounds and Section 4 of the Act had no application. The courts below have concurrently found that the homestead was never divided by metes and bounds. This finding has not been rightly assailed by Mr. Dasgupta. The finding is well founded in law inasmuch as all the aforesaid documents state in unequivocal terms that the transfers covered only the undivided half of the entire disputed property.

2. The only question for consideration in this appeal is whether on the aforesaid finding plaintiff is entitled to the relief under Section 4 of the Act. Admittedly Amari is the foster daughter of Ajodhya and is not connected with her either by blood or affinity. Mr. Dasgupta, however, contends that the definition of 'family' in Section 4 of the Act has consistently received a liberal construction, and on the admitted position that Amari resided in the house with her husband for a pretty length of time as a foster daughter, she should come within the sweep of the liberal definition of an 'undivided family' The contention, though attractive, is not acceptable, there being no authority in support even on the basis of the wide definition of the expression 'undivided family' in Section 4 of the Act. This question has been elaborately discussed in 31 Cut LT 380 = (AIR 1965 Orissa 1111 Paluni v. Rathi and Second Appeal No. 35 of 1962 Hadi v. Sadanand. It is unnecessary to repeat the same arguments in this case

The dictum of Sir Ashutosh Mukherjee in (1910) 12 Cal LJ 525 has been accepted as the foundation for the definition of the word 'family' in Section 4 of the Act. Though in that case, while discussing the wide amplitude of the word 'family' there is some observation that some times servants residing in the house for a pretty long time have been included as the members of the family. That cannot be accepted as an authoritative pronouncement that servants should be included within the concept of undivided family with reference to Section 4 of the Act Their Lordships made it absolutely clear that the only plausible criterion to be adopted in such cases was that there must be some relationship by blood or affinity which obviously includes marriage, otherwise it would lead to disastrous consequences. An illustration may make the matter clear. A Mohammedan driver remains in an orthodox Hindu family as a servant for over 30 years. The question posed is 'is he entitled to resort to Section 4 of the Act?' The answer must obviously be in the negative. The same principle would apply to the case of a foster daughter who has no relationship by marriage or blood. Though apparently it works out injustice in the sense that a foster daughter, on whom affection was bestowed ever since from her childhood, is to be driven out from her hearth and home after the death of the mother, in principle she cannot be permitted to resist the plaintiff invoking the benefits under Section 4 of the Act.

3. The result of the aforesaid discussion is that the half of the disputed lands with structure is to be valued and the plaintiff would be given the option of purchasing the same.

4. In the result, the second appeal fails and is dismissed, but, in the circumstances, parties to bear their own costs throughout.