

Haraprasad Das and ors. Vs. Jagamohan Das and ors.

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Court : Orissa

Decided On : Jan-25-1973

Reported in : AIR1973Ori227

Judge : R.N. Misra, J.

Acts : Hindu Law

Appeal No. : Second Appeal No. 268 of 1969

Appellant : Haraprasad Das and ors.

Respondent : Jagamohan Das and ors.

Advocate for Def. : B.B. Mohanty, ;M. Hazra, ;C. Pani and ;D. Mohanty, Advs.

Advocate for Pet/Ap. : G. Rath and ;R.K. Patra, Advs.

Disposition : Appeal dismissed

Judgement :

R.N. Misra, J.

1. The plaintiffs are in appeal against the affirming decree of the learned District Judge of Puri arising out of a suit for Partition. They sued for the relief of partition claiming 3/5ths of the disputed property. The genealogy given in the trial Court's judgement is extracted for convenience.

BALABHADRA

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|||

Padmacharan Radhacharan Madhab

|| (adopted to

----- | Gadadhar-

|||| a stranger)

Chaitab Kruchna Rama- | widow - Hadi

died in 1926 D.6 Krushna | (D.2)

Nakhatramani ||

D.7 ----- Jagamohan

||| D.1

Nimai Jaynarayan Jagamohan -widow

| D.8 D.1 Indurekha

| (adopted to D.1/a

----- Madhab). |

||||

Janakiballav Ramabhallav Sachidananda -----

D.3 D.4 D.5. |||

The plaintiffs alleged that Madhab had been adopted out to a stranger Gadadhar and thus lost his family to with Balabhadra. Madhab acquired substantial properties, but died when Jagamohan was young. Jagamohan and the defendant No. 2 were looked after in Balabhadra's family and it is the plaintiff's allegation that though they had no connection with each other the defendants prevailed upon Jagamohan to enter into a family arrangement in 1954 (Ext. C-I) by which out of the 45 acres of land which Jagamohan owned 36 acres were taken away and only 3 acres out of the property belonging to Balabhadra's family was given to Jagamohan. There was no consideration for surrendering 36 acres of land and the arrangement was a void one. It was further claimed that there had been certain alienations made by the defendant No. 2 in favour of others. The defendant No. 2 being a pre-1937 Act widow had no right of alienation. Accordingly those sales are void and conveyed no title.

2. The defendants in their written statement disputed the claim of adoption of the defendant No. 1 by Madhab. It was alleged that the defendant No. 2 had the authority to adopt given by her husband, but the defendant No. 1 was not taken in adoption. Gadadhar was poor and Madhab had no assets. Madhab, therefore, came and lived in the family of Balabhadra for support. The members of Balabhadra's family were the landlords. They acquired all the properties in the name of Madhab and Jagamohan with a view to avoiding merger of tenant's rights acquired by them since they were the landlords. There were many disputes which were resolved by the family settlement. The alienations by the defendant No. 2 were claimed to be valid and in accordance with law.

3. The learned Trial Judge found that Cadadhar had adopted Madhab. He further found that Ext C-1 was not fraudulent find had been acted upon. The plaintiffs were not born by the date of Ext. CM. The defendant No. 1 was the full owner and as such the plaintiffs had no locus stand to challenge Ext. C-1. The alienations by the defendant No. 2 were void and as such the Plaintiffs could challenge the same

though they were born after the transactions. Accordingly he decreed the relief of partition in regard to 3/5ths share in the properties alienated by the defendant No. 2. but the property covered under Ext. C-1 which was, shown in the A schedule of the plaint was left out of partition.

4. The Plaintiffs appealed in regard to their claim with reference to the A schedule property. The defendants filed a cross-appeal in regard to the decree setting aside the alienations by the defendant No. 2. The learned Appellate Judge found that the plaintiffs were born after 1950. The defendant No. 1 had been adopted to Madhab. He found that Ext. C-1 was fraudulent because it was unconscionable and without consideration. Yet he found the arrangement to be binding. The appeal as also the cross-appeal were dismissed. In this Court the plaintiffs are in second appeal. The defendants have also filed a cross-appeal in regard to the alienations by the defendant No. 2 and they dispute the finding of the learned Appellate Judge regarding the fraudulent character of Ext. C-1.

5. Mr. Rath, the learned counsel for the appellants, contends that Ext. C-1 cannot be taken to be any arrangement acceptable in law. The defendant No. 1 was a complete stranger to the family and therefore, he had no jointness of title or interest and his properties could not be put into the hotchpot for effecting a partition. Unless there was joint title in all the properties, by a mere deed of partition the properties of the defendant No. 1 could not be put into the pool for partition. The properties of the defendant No. 1 continued to be Ms not affected by Ext. C-1 and the plaintiffs, though born after the date of the document, are still entitled to claim title.

6. The short Question for consideration is as to whether Ext. C-1 is a family arrangement. Their Lordships of the Supreme Court in AIR 1955 SC 481 *Madho Das v. Mukand Ram* indicated that a compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognising the right of the others, as they had previously asserted it to the portions allotted to them respectively. That explains why no conveyance is

required in these cases to pass the title from the one in whom it resides to the person receiving it under the family arrangement. It is assumed that the title claimed by the person receiving the property under the arrangement had always resided in him or her so far as the property falling to his or her share is concerned and therefore no conveyance is necessary. But, the principle can be carried further and so strongly do the Courts lean in favour of family arrangements that bring about harmony in a family and do justice to its various members and avoid, in anticipation, future disputes which might ruin them all that they have no hesitation in taking the next step (fraud apart) and upholding an arrangement under which one set of members abandons all claim to all title and interest in all the properties in dispute and acknowledges that the sole and absolute title to all the properties resides in only one of their member and are content to take such properties as are assigned to their shares as sifts pure and simple from him or her or as a conveyance for consideration when consideration is present. The position was reaffirmed in AIR 1966 SC 323. *Ram Charan v. Gira Nandini*. It was held that the transaction of a family settlement entered into by the parties who are members of a family bona fide to put an end to the dispute among themselves, is not a transfer. It is not also the creation of an interest. For, in a family settlement each party takes a share in the property by virtue of the independent title which is admitted to that extent by the other parties. Every party who takes benefit under it need not necessarily be shown to have, under the law a claim to a share in the property-All that is necessary to show is that the parties are related to each other in some way and have a possible claim to the property or a claim or even a semblance of a claim on some other ground as say affection. In a later case AIR 1971 SC 1041 *Krishna, Beharilal y. Gulabchand* while following their earlier decision in 1966 their Lordships stated that the word 'family' in the context of a family arrangement is not to be understood in a narrow sense of being a group of persons who are recognised in law as having a right of succession or having a claim to a share in the property in dispute. If the dispute which is settled is one between near relations, then the settlement of such a dispute can be considered as a family arrangement

7. In this case the defendant No. 1 admittedly belonged to the branch of Balabhadra. The defendants alleged that the defendant No. 1's adoption was in

dispute. If the defendant No. 1 was not succeeding as an adopted son to Madhab he would have had no right to the property. Jagamohan was a close relation of the other defendants. It was only when adoption was upheld that his title to Madhab's properties became perfect. There is some evidence that even Gadadhar was a relation of the family by the family arrangement Jagamohan's adoption was approved and accented by the other members of the family. The cloud that lay on his title got cleared. That indeed was the real consideration. The courts below have found that the arrangement has been acted upon. The defendant No. 1 who was a full owner at the relevant time consciously entered into the arrangement and has not disputed the same. The plaintiffs have come with the present suit in 1964. It is true that Jagamohan had not executed any document conveying his title in favour of the defendants, but if the document is taken as a family arrangement no such document was necessary as indicated by Lordships of the Supreme Court in the decision of 1955 referred to above. That is the very basis of a family arrangement. Different parties who are related to each other and had disputes to settle agreed to treat all the properties belonging to them to be put into a pool and got them allotted to themselves separately This is what was done in Ext. C-1'. I find considerable force in the contention of the respondents that the lower appellate court was not correct in treating Ext. C-1 as a fraudulent transaction. The consideration in giving up 36 acres of land belonging to the defendant No. 1 was not the receipt of the 3 acres of land from Balabhadra's family. It was resolving the dispute relating to adoption of the defendant No. 1 To avoid future trouble and buy peace in the family the family arrangement was entered into It has been given effect to and acted upon. Once it is taken as a family arrangement it must be taken to be binding and the plaintiffs who were subsequently born would not be entitled to dispute the arrangement. Their claim in regard to Partition of A schedule property has, therefore been rightly rejected.

8. Coming to the claim of the defendants in the court below I do not find any merit in it. Both the courts concurrently have found against them. Mr. Mohanty also does not seriously press it. Therefore, the appeal and the cross-appeal must fail. As both parties have lost. I think it appropriate to direct both parties to bear their own costs in this Court.

