

Banarsi Devi Vs. Veera Devi and ors.

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Court : Punjab and Haryana

Decided On : Jul-11-2003

Reported in : (2003)135PLR856

Judge : M.M. Kumar, J.

Appeal No. : Regular Second Appeal No. 3133 of 2003

Appellant : Banarsi Devi

Respondent : Veera Devi and ors.

Advocate for Pet/Ap. : Puneet Jindal, Adv.

Disposition : Appeal dismissed

Judgement :

M.M. Kumar, J.

1. This is plaintiff's appeal filed under Section 100 of the Code of Civil Procedure, 1908 (for brevity, 'the Code') preferred by one Ba-narsi Dass against the concurrent findings of facts recorded by both the Courts below holding that he is not entitled to partition of the suit property by way of separate possession because the partition had already taken place during the life time of the father of the plaintiff-appellant as well as defendant-respondents. It has also been held that on the basis of partition which has taken place during the life time of Balaki Ram their

father, the parties are in separate possession of their respective shares.

2. The plaintiff-appellant instituted Civil Suit No. 253 of 1994 on 12.8.1994 against the defendant-respondents for partition by way of separate possession in respect of the suit property. The property was owned by Balaki Ram, father of the plaintiff-appellant as well as defendant-respondents. It has been averred by the plaintiff-appellate that two properties purchased by his father were the self acquired properties. His father died intestate in the year 1979. Therefore, it was to be inherited by all his heirs, namely, five sons who are plaintiff-appellants and defendant-respondents and two daughters who are defendant-respondents 11 and 12. Equal share in the properties in respect of all the sons and daughters has been claimed alleging that all of them are still cosharers as the partition of above said properties has not taken place and the defendant-respondents are in possession of more than their share.

3. In the written statement, the stand taken by the defendant-respondents is that defendant-respondent Rattal Lal had earlier filed a suit for partition in respect of the disputed property. In that suit, the plaintiff-appellant was also impleaded as a party who had filed a written statement admitting that partition had already taken place between the plaintiff-appellant and defendant-respondents. A certified copy of the written statement filed by the plaintiff-appellant has been proved on record as Ex.D1. In paragraph 2 of the plaint signed by defendant-respondent Rattan Lal, it was pleaded that after the death of Balaki Ram, they inherited the property exclusively on the basis of family settlement made during the life time of their father. It was further averred that plaintiff-appellant alongwith defendant-respondents were given equal shares. On the basis of family settlement, the plaintiff-appellant and defendant-respondents became exclusive owners of the suit property. The contents of the plaint were admitted by the plaintiff-appellant in his written statement with the averments that such a partition has taken place in 1965 but it has been asserted that the plaintiff-appellant opposed the partition. On the basis of aforementioned pleadings of the parties, both the Courts recorded the findings that the parties in accordance with the partition which had taken place in the year 1965 have been in exclusive possession of the property falling to their share. Therefore, no suit for partition was maintainable. It has also been held that

the plaintiff-appellant is estopped by his act and conduct from filing the present suit. The suit filed on 12.8.1994 has also been held to be time barred.

4. I have heard Mr. Puneet Jindal, learned counsel for the plaintiff-appellant who has argued that an admission made by a party in the written statement can be explained by adducing evidence that it was erroneous. According to the learned counsel in paragraph 2 of the plaint filed by Rattan Lal defendant-respondent, it was merely averred that a family settlement has taken place and no mention was made of any family partition. The learned counsel submitted that in law the concept of family partition is entirely different than the family settlement because the former results into binding legal consequences. Another submission made by the learned counsel is that once jointness of rights with other co-sharers is shown, then no family partition could be inferred. For the aforementioned submission, the learned counsel has placed reliance on a judgment of Orissa High Court in case of *Brajananda Pradhan v. Sachidananda Pradhan and Ors.*, A.I.R. 1990 Orissa 29.

5. After hearing the learned counsel and perusing the judgments of both the Courts below, I am of the considered view that this appeal is devoid of any merit. The concurrent findings recorded by both the Courts below unequivocally show that the partition in respect of the suit property had taken place in the year 1965 during the life time of father of the plaintiff-appellant and all parties are in their respective possession. These findings are based on an express admission made by the plaintiff-appellant himself in the written statement Ex.D1 when one of the defendant-respondents Rattan Lal had filed the suit. It is a different matter that the plaintiff-appellant was not happy the way shares were distributed among the parties but the fact remains that partition had taken place during the life time of Balaki Ram in the year 1965. Once such an admission has come on record, then no suit for partition could be maintained by the plaintiff-appellant. For the aforementioned view reliance can be placed on a judgment of the Supreme Court in the case of *Prakash Chand Sharma v. Narender Nath Sharma*, A.I.R. 1976 S.C. 2456.

6. It is further evident that the admission made by the plaintiff-appellant has not been explained by him by producing any evidence to prove that the stand taken by

him against his own interest in the aforementioned written statement Ex.DI was erroneous. Therefore, there is no scope for interference in the pure findings of fact recorded by both the Courts below, the appeal is without any merit and is, thus, liable to be dismissed.

7. The argument raised by Mr. Jindal learned counsel for the plaintiff-appellant that the expression 'family partition' has a legal connotation resulting in some consequences does not need any detail consideration because the findings of facts as recorded by the Courts below show that family settlement or family partition has resulted into separate possession and there is no finding that the parties are in joint possession as was the factual position before the Orissa High Court in Brajananda Pradhan's case (supra). The observations of the learned Additional District Judge in this regard are enough to dispel any doubt and the same read as under;-

'.... The plaintiff alongwith defendants No. 1 to 4 were given equal share in the above mentioned property, whereas defendants No. 2 and 3 were adjusted in another plot which was also owned by the father of the plaintiff and defendants, on the basis of this settlement made by the father of the plaintiff and defendant alongwith defendants No. 1 to 4 became the exclusive owner of the above mentioned property. The parties are not in good relations. So it has become very difficult to enjoy the property jointly. The property above mentioned is jointly possessed and owned by the plaintiff alongwith defendants No. 1 to 4. Thus, he prayed for partition of the suit property. The defendants have also proved on the file Ext.D2, copy of the written statement filed by Banarsi Dass, plaintiff, who was defendant No. 4 in that litigation and the present plaintiff in para No. 3 of the written statement took the stand that he (plaintiff) had opposed the family partition in question being unequal and illogical in share for the deceased father of the parties had allocated lesser share to him. It means that in earlier litigation the plaintiff admitted that in fact family partition had taken place during the life time of his father but he had been given lesser share than what he is entitled to.'

8. The learned Additional District Judge has rightly relied upon a judgment of the Supreme Court in the case of Basant Singh v. Janki Singh and Ors., A.I.R. 1967

S.C. 341 for the proposition that an admission made by a party in the pleadings signed and verified by him can be read as evidence against him. Such admission cannot, however, be regarded as conclusive when relied upon in other suits and the party can show that the same is untrue. It is in this context that the following observations have been made by the learned Additional District Judge;-

'... In view of the law laid down in the above discussed authorities, the admission made by the plaintiff himself in the earlier litigation is to be treated as final and binding on him as the plaintiff is unable to lead any evidence to prove that the said stand taken up by him and the admission made by him against his own interest is untrue.'

9. I am further of the view that mere use of particular expression would not determine the nature of a transaction. One has to look at the substance of such a transaction. It is evident that in pursuance to family settlement/partition made in 1965, all the parties have been found to be in their exclusive possession in respect of their share. In substance, it is family partition which may or may not be strictly in accordance with their respective share. Such deviation in share would hardly make any difference at this stage. Therefore, there is no substance in the argument raised on behalf of the plaintiff-appellant.

For the reasons recorded above, this appeal fails and the same is dismissed.

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