

SachIn Gupta and ors. Vs. B.S. Gupta

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Court : Delhi

Decided On : May-16-1986

Reported in : ILR1986Delhi76

Judge : Sultan Singh, J.

Acts : Hindu Adoption and Maintenance Act, 1956 - Sections 3

Appeal No. : Interim Application No. 7159 of 1985 and Suit No. 727 of 1983

Appellant : SachIn Gupta and ors.

Respondent : B.S. Gupta

Advocate for Pet/Ap. : B.N. Nayar,; Sudha Srivastava,; A.D. Singh and;

Judgement :

Sultan Singh, J.

(1) Sachin Gupta (Plaintiff No. 1) is the son, Miss Reema Gupta (Plaintiff No. 2) is the daughter and Smt. Sushma Gupta (Plaintiff No. 3) is the wife of Shri B. S. Gupta, defendant. The plaintiffs claim partition and rendition of accounts, with respect to the following two properties :

(A)Two flats on first and second floors of Raghunath Sadan Building at 7B, Netaji Subhash Marg, Delhi.

(B) One Self-Financing Scheme Dda Flat No. 320 Hauz Khas, 'New Delhi, consisting of three rooms with amenities and garage.

(2) The plaintiffs allege that the said two properties are ancestral properties which fell to the shares of parties by virtue of the petition decree dated 28th April, 1972 in Suit No. 40 of 1972 Atma Swarup and others vs. Anand Swarup and others decided by this court, that the defendant is the Karta and the Manager and has been looking after the Joint Hindu Family properties since 28th April, 1972 when the decree in the partition suit was passed. The plaintiffs do not wish to keep the said two properties joint and seek partition besides accounts.

(3) The defendant in his written statement has raised various pleas and the issues were framed on 24th April, 1984. Para 24 of the written statement is as under :

'24. That para 24 of the plaint is misconceived. In fact no cause of action accrues to the plaintiff's. It is submitted that the plaintiffs did not ask for partition of the property but in any case the defendant is ready and willing to partition the Raghunath Sadan property (first and second floors) between himself and his wife and son. However, the shares would be determined after setting apart the marriage and other expenses of the plaintiff No. 2.'

(4) On the basis of admission of the defendant in para 24 of the written statement, the plaintiffs have filed this application under Order 12 rule 6 of the Code of Civil Procedure for the passing of a preliminary decree for partition of two flats on first floor and second floor of Raghunath Sadan Building at 7B, Netaji Subash Marg, Delhi and for an appointment of a local commissioner to partition the property by metes and bounds.

(5) In reply the defendant submits that he has no Huf property. He however, admits that he got the above property at 7B, Netaji Subash Marg, Delhi by decree in suit No. 40 of 1972 of this Court but the plaintiffs have no right, title and interest in that property and that it is his absolute property. It has further however been admitted by the defendant that Raghunath Sadan Building belonged to his grand father and acquired by him by decree in Suit No. 40 of 1972 decided on 28th April, 1972. The defendant further pleads that during the life time of father the daughter

is not entitled to any share in the property and the shares of the parties are to be determined after setting apart the marriage and other expenses of the daughter (plaintiff No. 2).

(6) The question involved is very short. Admittedly the property in question fell to the share of the defendant by a decree dated 28th April, 1972 in Suit No. 40 of 1972 Atma Swarup and others vs. Anand Swarup and others. It is also admitted by the defendant that the property which had fallen to his share originally belonged to his grand father. In other words, it is admitted by the defendant that this is ancestral property.

(7) All property inherited by a male Hindu from his father, father's father or father's father's father, is ancestral property. The essential feature of ancestral property according to the Mitakshara Law is that the sons, grandsons and great grandsons of the person who inherits it, acquire an interest in it by birth. Their rights attach to it at the moment of their birth (Mulla's Hindu Law, Fifteenth Edition Para 223). Thus there can be no dispute that the two flats at Raghunath Sadan Building, 7B, Netaji Subash Marg, Delhi are ancestral properties, and the son of the defendant acquired an interest in it at the time of his birth. The defendant and his sons 'are the members of coparceners. A son has a right to claim partition with respect to the coparcenary property during the life time of his father. In Mayne's Hindu Law Twelfth Edition para 442 it has been observed that any coparcener may sue for a partition, and every coparcener is entitled to a share upon partition, that under the Dayabhaga Law the son has no right to demand partition of property held by his father during his life and Mitakshara on the other hand expressly declares that son has a right to demand partition. Thus the son (plaintiff No. 1) of the defendant has a right to claim partition of the ancestral property during the life time of his father..

(8) A wife cannot herself demand a partition. But if a partition does take place between her husband and his son, she is entitled to receive a share equal to that of a son and to hold and enjoy that share separately even from her husband (Mulla's Hindu Law, Fifteenth Edition para 315). In other words, it must be held that plaintiff No. 1 and plaintiff No. 3 are entitled to a share at the time of partition' of the ancestral property. The two flats on first floor and second floor of Raghunath

Sadan Building, 7B, Netaji Subhash Marg, Delhi are admittedly a part of the ancestral property and as such the plaintiff No. 1 and plaintiff No. 3 and defendant are entitled to share the said property equally. Each of them has 1/3rd share in the said property.

(9) As regards the daughter, plaintiff No. 2 the position is also very well settled. Where a partition takes place during the life of the father, the daughter has no right to any special apportionment. She continues under his protection till her marriage. He is bound to maintain her and to pay her marriage expenses (Mayne's Hindu Law, Twelfth Edition para 461). Thus I hold that plaintiff No. 2 daughter has no right to claim partition of the ancestral property and she is not entitled to any share during the life of the defendant.

(10) The defendant submits that a provision should be made out of this property for the marriage and other maintenance expenses of the daughter before partition. Section 20 of the Hindu Adoptions and Maintenance Act provides for maintenance of children and aged parents. The obligation to maintain a daughter is of father specially an unmarried daughter who is unable to maintain herself out of her own earnings or property. It is not the case of the defendant that the daughter has any property or has any source of income. It is, therefore, the responsibility of the defendant to maintain the daughter and provide for her marriage expenses. The word 'maintenance' under Section 3(b) of the Hindu Adoptions and Maintenance Act, 1956 include.- the reasonable expenses of an incident to marriage, of an unmarried daughter. Thus under the Hindu Adoptions and Maintenance Act the liability of defendant to provide maintenance and marriage expenses for the daughter. I am, therefore, of the opinion that no provision either for the marriage or other expenses of plaintiff No. 2 can be made out of the properties to be partitioned. On the basis of the admission of the defendant in para 24 of the written statement I am satisfied that the plaintiff is entitled to a preliminary decree for partition. I therefore pass a preliminary decree for partition of two flats on first floor and second floor of Raghunath Sadan Building, 7B, Netaji Subhash Marg, Delhi, between the son (Plaintiff No. 1) wife (plaintiff No. 3) and father, defendant in equal shares.

(11) I appoint Shri Amitabh Narayan, Advocate, 44, Daryaganj, New Delhi a? local commissioner to suggest the mode of partition. His fee is initially fixed at Rs. 30001- to be paid equally by three co-sharers i.e. plaintiff No. 1, plaintiff No. 3 and defendant. No order as to costs.

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