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Court : Rajasthan

Decided On : Feb-01-1984

Reported in : 1984WLN(UC)137

Judge : K.S. Lodha, J.

Appeal No. : S.B. Civil First Appeals No. 109/72 and 25/73

Appellant : Jalam Singh and ors.

Respondent : Smt. NaraIn Kanwar and ors.

Disposition : Appeal allowed

Judgement :

K.S. Lodha, J.

1. These two appeals arise out of the judgment and decree of the lefrred Addl District Judge No. 1, Jodhdur dated 8-4-72 by which the plaintiff Jalam Singh's suit was partly decreed. He claimed 1/3 share in the properties shown in Schedules A, B, C and D filed along with the plaint. He has been ganted only 1/6 share in one Haveli situated at Jodhpur. The rest of his suit has been dismissed. Jalam Singh, therefore, claims a decree for 1/3 share in all the properties whereas Smt. Narain Kanwar and others in their appeal urged that the plaintiff is not entitled even to 1/6 share in the Haveli

2. The facts giving rise to these appalls briefly stated are that Shri Sajjan Singh was a Jagirdar of Sanderao, which was a scheduled jagir under the Matwar Land Revenue Act, Shri Sajjan Singh died on 1/-/52 leaving behind three sons Bhim Singh, Takhat Siogh and Jalam Singh. Bhim Sinih was the eldest and according to the rule of pnoi) geniture applicable to the scheduled jagirs his succession was sanctioned by the Rajpramukh. Bhim Singh also died on 20-5-61 leaving behind him his widow Smt. Narain Kanwar and two daughters Kutmri Rajendra Kanwar and Pushpeadra Kanwar. The plaintiff Jalam Singh claims that the property left by Shri Sajjan Singh was joint Hindu family property and Bhim Singh was only the Karta of the family Shri Jalam Singh and his other brother Takhat Singi were also entitled to equal shares in that property with Bhim Singh Bhim Singh was managing the whole property during his life-time and after his death, his widow Stnt. Narain Kanwar is managing the same, on benalf of the joint family. The plaintiff asked for partition but the defendant Smt. Narain Kanwar declined and. therefore, he has brought the present suit.

3. Schedule A comprises of immovable properties situated at Sanderao as also a Havcli at Jodhpur. Schedule B contains the list of ornaments, cash, incomes etc. Schedule C contains the list of vehicles, cattle and other animals etc. and Schedule D contains the list of utensils and sundry articles said to be belonging to the joint Hindu family. The plaintiff claims to be point possession of the property.

4. Defendants No. 1 to 3, namely Smt. Narain Kanwar and the two daughters of deceased Bhim Singh filed a joint written statetement and contested the suit. Defendant No. 4 Takhat Singh remained ex-pa-te. The case of the defendants No. 1 to 3 was that the properties in dispute are not join Hindu t family properties but the exclusively belong to deceased Bhim Singh and devolved upon the defendants No. 1 to 3. According to firm, the jagir was impartible and was governed by the rule of premogeniture. Therefore, on the I death of Sajjan Singh, it devloped upon Bhim Singh alone to the exclusion of j his other two brothers Takhat Singh and Jalam Singh. It was denied that Shri Sajjan Singh or after his death Shri Bhim Singh managed the properties I as Karta Khandan or manager but they were the sole Jagirdar in their respective periods. It was also alleged that the valuation of the properties mentioned by the plaintiff was excessive. They denied that the plaintiff

or the defendant No. 4 were in joint possession of any part of the property. They I' had already been given their shre of maintenance known as Chhut bhai f Bant or 'Ajeevika' and were resideng sep irately. Their case further was that I the home at Jodhpur had been purchased by the deceased Bhim Singh from his personal income and the filaintiff was never possession of any part of it I In the additional pleas, they reiterated that the jagir Sanderao being a schedule led agir was governed by the rule of primogenture and only the eldest linear male descendant of the Jagirdar was entitled to directed and the younger bro-f there were only entitled in maintenance. They could not claim any partition. It was also stated that the plaintiff and defendant No. 4 had already been given their 'Chbut bhai 'Bant' by Shri Sajjan Singh himself during his f life-time. There was no Hindu family, nor any joint Hindu family property. It was further alleged that when Shri Bhim Singh succeeded Shri Sajjan Singh be further give suit more lands, ornaments etc to his younger r brothers out of the benevolence and affection, through intervention of Shri Sumernath Gortu as an arbitrator. Thus, according to them, the defendants were not entitled to claim any parties. In the alternative, they also pleaded verse possession and the bar of limitation. Insufficiency of court fee was so pleaded. A plea was also raised that the plaintiff could not chillenge i.e. succession of Shri Bhim Singh to Shri Sajjan Singh as the same had already been recognised. So also after the resumption of jagir properties, declared as personal properties of Shri Bhim Singh could not be disputed in this suit as Sections 37, 46 and 47 of the Rajasthan Land Reforms and Resumption of Jagir Act created a bar in this respect. On the pleadings of the parties, the following issues were framed:

(1) Whether the parties are members of a joint Hindu family and the plaintiff is entitled to 1/8 share in it?

(2) What are the properties and their values to be partitioned belonging to the joint family?

(3)(a) Whether after the death of Sajjansingh on 17-4-52, Shri Bhim Singh deceased being the eldest son of Sajjitnsingh succeeded validly to the Thikana jagir; if so what will be its effect on the suit?

(4) Whether the plaintiff and the defendant Takhat Singh separated from their father in 1950 after receiving their Chhut bbai bunt or Ajeevika or in any case in 1959 from their elder brother Thakur Bhimsingh?

(5) Did the plaintiff and defendant No. 4 raised any dispute after the death of their father as alleged in para 11 of the written statement and whether the said dispute was referred and settled through arbitration as alleged in the said para?

(6)A Whether the defendants Nos. 1 to 3 have been in adverse possession of the suit property for more than 12 years prior to the filing of the present suit?

(6)B Whether the suit is time barred?

(7) Whether the suit is barred by Sections 37,46 and 47 of the Rajasthan Land Reforms and Resumption of Jagirs Act?

(8) Whether the court fee paid is sufficient?

(9) What relief is the plaintiff entitled?

After taking the evidence of the parties and hearing them, the learned Addl. District Judge No. I Jodhpur, partly decreed the suit as stated above. His main findings were as under.

5. On issue No. 3A, he was of the view that the succession of Shri Bhim Singh recognised by the Rajpratnukh on 1-10-53 in accordance with the provisions of the Marwar Land Revenue Act, and the Rajasthan Jagirs Decision and Proceedings (Validation) Act, 1955 could not be challenged in the civil suit so far as the jagir is concerned. under issue No. 38, he found that under the Mirwar Land Revenue Act and the custom prevailing in Marwar, the younger brothers of the Jagiriar ware only entitled to maintenance or 'Chhut bhai bunt' but could not ask for partition of the jagir. Under issue No. 4, he found that Sari Sajjan Singh and not given and 'Chhut bhai bunt' to the plaintif or Takhat Singh and although some settlement appears to have taken place between Shri Bhim Singh and his two brothers through the intervention of Shri Sumernath Gortu, that settlement does not appear to have been acted upon and the plaintiff and defendant No. 4 have not been

proved to have been separated or given 'Chhut bhai bunt'. He, however, was further of the opinion that the question of 'Chhut bhai bunt' or the maintenance could not be gone into in this suit and the plaintiff could claim relief under the provisions of the Rajasthan Land Reforms & Resurnption of Jagirs Act. Under issue No. 4, he was of the view that there was no arbitration through Shti Sumernath Gortu but only some settlement was tried to be arrived at though it was not acted upon, Issues No. 6A and 6B regarding adverse possession and limitation were decided against the defendants No. 1 to 3. Under issue No 7, he found that the claim for share in the Haveli was not barred but regarding compensation and other properties, it was barred in view of the provisions of the Rajasthan Land Reforms and Resumption of Jagirs Act. Under issue No. 8, he found that the plaintiff was liable to pay ad-valorem court fee in respect of the share of the Haveli, under issue No. 1, he found only the Haveli to be joint having been purchased in the joint names of Shri Sajjan Singh and Shri Bhim Singh and that, therefore, the plaintiff had 1/6 share in it. The other properties were not joint and the plaintiff could not claim any share. Consequently, he decided issue No. 2 accordingly though he did not think it necessary to certain the valuation of the other properties. On the above findings, he granted a decree for 1/6 share in the Haveli in favour of the plaintiff. Hence these appeals as aforesaid.

6. I have heared the learned Counsel for the parties and have gone rough the record.

7. I shall first take up the appeal filed by Jalam Singh. The contention of the learned Counsel for the appellant Jalam Singh is that the property ft by Shri Sajjan Singh was a joint Hindu family property. In the life-time 'Shri Sajjan Singh, he was managing it as the Karta and after his death, the property devolved upon his three sons Bhim Singh. Takhat Singh and Jalam singh and Bhim Singh being the eldest, managed it as a Karta of the joint family. Therefore, the plaintiff Jalam Singh and defendant No. 4 Takhat singh have a right in this property and are entitled to get it partitioned. He Further submitted that in any case, after the jagir was resumed under the Rajasthan Land Reforms and Resumption of Jagirs Act, the property left with Shri Bhim Singh cannot be said to be jagir property and it would not be governed by the rule of primogeniture and therefore, all the three brothers will

have equal share in that property. That property no more remained, impartible. His third contention was that so far as the Haveli is concerned, it is situated at Jodhpur and is not a part of the jagir. It was purchased by Shri Sajjan Singh and the name of Shri Bhim Singh had merely been mentioned along with the name of Shri Sajjan Singh in the sale deed out of love and affection as he was the eldest son of Shri Sajjan Singh. Shri Bhim ingh, therefore could not have claimed J/2 share in this property along with Shri Sajjan Singh and the learned Addl. District Judge was wrong in holding that the property jointly belonged to Sajjan Singh and Shri Bhim Singh and, therefore, the plainiff had only 1/6 share in this Haveli. On the other hand, it was contended by the learned Counsel for Smt. Narain Kan war id her daughters that the learned Addl. District Judge was justified in siding that the properties other than the Haveli were impartible and the plaintiff had no share in them. So for a, the Haveli is concerned, his contention was that the learned Add. District Judge had made out a new case for the plaintiff in as much as the plaintiff had never made any difference between the haveli and the other jagir properties and, therefore, the learned, Addl. District Judge was wrong in granting even 1/5 share to the plaintiff in this Haveii.

8. I have given my careful consideration to the rival contentions. It may at once be stated the so far as jagir is concerned, it is admittedly a scheduled jagir under the Marwar Land Revenue Act and even the plaintiff and all his other witnesses have clearly admitted that they were governed by the rule of pretnogeniture. Section 182 of the Marwar Land Revenue Act clearly lays down that succession to such a jagir shall be governed by the rule of premogeniture. Therefore, on the death of Shri Sajjan Sitfgh, Shri Bhim Singh being the eldest son got the Jagir under this rule and his succession had been recognised by the Rajpramukh on 1-10-53 vide order Ex.DW.5/i. The learned Addl. District Judge has rightly held that this succession cannot be called into question before any civil court. This finding of the learned Addl. District Judge under issue No. 3A has not been and could not be challenged by the learned Counsel for the appellant Jalam Singh. That being so, his contention that the property excluding the Haveli was Joint Hindu family property as such cannot be accepted. No doubt in a limited sense this property can be deemed to be joint Hindu family property to the extent that even though on account of the applicability of the rule of primogentiture, it was impartible. It would

be governed by the rule of survivorship which is one of the incidences of a joint Hindu Family property. In this connection, it would be proper and convenient to refer to the basic authority of the Privy Council reported in Shiba Prasad v. Prayag Kumari . It was observed as under:

Impartibility is essentially a creature of custom. In the case of ordinary joint family property, the members of the family have : (1) right of partition; (2) the right to restrain alienations by the head of the family except for necessity : (3) the right of maintenance; and (4) the tight of survivorship. The first of these rights cannot exist in the case of an impartible estate, though ancestral, from the very nature of the estate. The second is incompatible with the custom of impartibility as laid down in Satraj Kuarfs case (9) and Rama Krishana v. Venkuta Kumasa (11) and so also the third as held in Gangahara v. Rajah of Pittarpur (12), To this extent the general law of the Mitakshara has been superseded by custom, and the impartible estate, though ancestral, is clothed with the incidents of self acquired and separate property. But the right of survivorship is not inconsistent with the custom of impartibility. This right therefore, still remains, and this is what was held in Baijnaih's case (8). To this extent the estate still retains its character of joint family property, and its devolution is governed by the general Mitakshara law applicable to such property. Though the other rights which a co-parcener acquired by birth in joint family property no longer exist, the birth-right of the senior member to take by survivorship still remains. Nor is this right a mere spes succession similar to that of a reversioner succeeding on the death of a Hindu widow to her husband's estate. It is a right which is capable of being renounced and surrendered.

This authority has been followed by there Lordships of the Supreme Court in Pushpavathi Vijayaram v. P. Visweswar AIR 1964 SC 118 and State of UP v. Rukmini Raman AIR 1971 SC 1687 Again in its turn, this court in Thakur Gopal Singh v. CWT and The Commissioner of Wealth Tax Rajasthan, Jaipur v. Thakur Bhairon Singh 1975 CTR (Raj.)(1) have followed these authorities. It has been mide clear by these authorities that the rule of primogeniture makes the property impartible and, therefore, although the first three rights in a joint family property, namely, the right of parti don, the right to restrain alienations by the head of the family except for necessity and the right of maintenance may not be available to

the junior members of the family, the fourth right i.e. the right of survivorship is available to them and it is on account of this right of survivorship that the property can still be said to be retaining the character of joint family property. Therefore, in the present case, the junior members could have asked for a partition of the property and only survivorship could not have been claimed by them if and when the occassion arose but there again the survivorship is restricted to the eldest male linear descendent. The learned Counsel for the appellant Jalam Singh referred to the authorities reported in State of U.P's case (Supra) and Bhaiya Ramanuj v. Lalu Maheshanuj AIR 181 SC 1937. But in my opinion, these authorities do not help him. I have already stated above that the principle governing such an estate has been laid down by the Privy Council and has been followed by the Supreme Court. In State of U.P.'s case (Supra) also, as already stated above, this principle has been reiterated and the jointness of the property which is impartible has been taken in the limited sense. So far as Bhaiya Ramanufs case (supra) is concerned, it is clearly distinguishable on the facts in as much as in that case the impartiality of the estate had come to an end after coming into force of the Hindu Succession Act and the matter was governed by regulation 10 of 1800 which only recognised a custom of succession to the landed estates by the rule of primogeniture, which was not saved under the Hindu Succession Act but in the present case as already stated above, the matter is not governed merely by custom prevalent before the coming into force of the Hindu Succession Act but by the rule of primogeniture embodied in Section 182 of the Marwar Land Revenue Act, which has been recognised further under the Rajasthan Jagir Decisions & Proceedings Validation Act, 1955. Such a rule is, therefore, saved under Clause (2) of sections of the Hindu Succession Act.

9. It would be proper and convenient here to refer to Nagesh Bisto v. Khando Tirmal : [1982]3SCR341 . In the Supreme Court case, the matter related to Watander and the position there was that all the Watanders were entitled to the property although only one of them held the hereditary office of Watandar.

10. Therefore, it is abundantly clear that the jagir was impartible and the junior members could not have claimed partition.

11. The contention that after the resumption of the jagir, remaining estate lost its character of impartibility and, therefore, it could have been partitioned, also cannot be accepted because under the Rajasthan Land Reforms and Resumption of Jagirs Act, certain jagir lands had been resumed by the State but the remaining properties left out of the jagir still remained the property of the Jagirdar under Section 23 of the Rajasthan Land Reforms & Resumption of Jagirs Act and such property as also the compensation received or receivable by the Jagirdar would still retain the same character. Reference in this connection may be made to The Commissioner of Wealth Tax. Rajaithan, Jaipur's case (supra) wherein it has been held relying upon Ramchandrarao v. Ramchandrarao (45) Mad. 320 PC that the conversion will not alter or change the nature of the estate.

12. Faced with this situation, the learned Counsel for the appellant Jalam Singh urged that in any case, the other movable properties left by Shn Sajjan Singh, which have been described in Schedules B, C and D are concerned, they could not be claimed to be impartible as they were not part of the jagir and in those properties at least the plaintiff and Shri Takhat Singh were entitled to claim a share. In my opinion, such a contention is now not open to the appellant in as much as the plaintiff-appellant had not drawn any such distinction between the jagir and the other properties either in his pleadings or even otherwise before the trial court except the Haveli for which a finding has been given in his favour by the learned Addl. District Judge. A new case cannot be allowed to be made out for the first time in appeal and second place, the properties mentioned in these schedules also appear to be a part and parcel or a part the parafernalia of the jagir and, therefore, the plaintiff cannot claim any share in these properties.

13. Now coming to the case of the Haveli, it may at once be stated that strictly speaking the Haveli which is situated at Jodhpur cannot be dtemed to be part of the jagir and to this extent, I agree with the learned Addl. District Judge. The term 'Jagir' has been defined under Section 2(h) of the Rajasthan Land Reforms & Resumption of Jagirs Act and the Haveli certainly does not fall within that definition as held by the learned Addl. District Judge but all the same it does appear that the parties have always treated this Haveli as a part of the jagir and they impressed this Haveli with the stamp of impartiality. It is well known that Jagirdars of the

erstwhile Jodhpur State had to render services to the State and for that purpose, they had to bay at the State Capital i.e. Jodhpur and had to maintain the staff and other necessary cavellary etc. and for the purpose, they used to have their own residential accommodation known by the name of the jagir itself. In these circumstances, if Shri Sajjan Singh also purchased the haveli at Jodhpur, it was a haveli for the purpose of the jagir itself and, therefore, it is to be treated on the same lines as the jagir itself. It is tiertinent to note that the plaintiff also did not plead any other character of the Haveli and he treated the jagir properties and the Haveli on the same lines in his plaint. Therefore, a new case could not have been made out by the learned Addl. District Judge and the plaintiff cannot be allowed to claim a different status for the Haveli. The Haveli is known by the name of the jagir itself as would be clear from the statement of the deceased Shri Bhim Singh made before the City Munsif, Jodhpur wherein he had stated.

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When the Haveli is being thus treated it also partakes the nature of impartibility Reference in this connection may be made to Daljeet Singh v. Thakur Sheonath Singh 1969 WLN 70. It may of course be mentioned that in that case the house had been constructed by the Jagirdar with the aid of the cash grants made by the State but that in my opinion, should not make difference in as much as here admittedly, the house had been purchased by Shri Sajjan Singh as Jagirdar of Sanderao.

14. Similarly the facts of non-inclusion of this Haveli in the list of orivate properties filed before the Jagir Commissioner under Section 23 of the Rajasthan Land Reforms & Resumption of Jagirs Act is also of no consequence when as already stated above the Haveli does not strictlv speaking form a part of the jagir as defined under the said Act. That being so, I am clearly of the opinion that the learned Addl. District Judse was wrong in holding that this Haveli was joint family property and the plaintiff was entitled to 1/6 share in it. And, therefore, there is no further question of his claiming 1/3 share in it. The plaintiff's appeal must, therefore, fai.

15. This brings me to the other appeal filed by the defendants As a corollary of my findings in the appeal filed by the plaintiff in respect of the Haveli, it is clear that the decree for 1/6 share in the Haveli granted the learned Addl. District Judge cannot be maintained. Therefore the appeal deserves to be accepted.

16. The result, therefore, is that the appeal filed by Shri Jalam Singh fails and is hereby dismissed. The appeal filed by Smt. Narain Kanwar and others succeeds and the decree of the learned Addl. District Judge granting 1/6 share to the plaintiff in the haveli in dispute is set aside. The plaintiff' suit thus stands dismissed. Looking to all the circumstances e the case, r shall leave the parties to bear their own costs of this Court.

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