

Parasmal and ors. Vs. Balehraj and ors.

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Court : Rajasthan

Decided On : Dec-05-1980

Reported in : 1980WLN(UC)527

Judge : D.P. Gupta, J.

Appeal No. : S.B. Civil Regular Second Appeal No. 150 of 1967

Appellant : Parasmal and ors.

Respondent : Balehraj and ors.

Disposition : Appeal dismissed

Judgement :

D.P. Gupta, J.

1. This is a second appeal by, the plaintiff Parasmal and his sons and grandson for partition of an ancestral property described as a 'nohra'.

2. The case of the plaintiffs is that the 'nohra' in dispute was the ancestral property of the plaintiffs and the defendants Nos. 1 to 5, 6, 9 and 10 and was in their joint possession. The plaintiffs produced a pedigree table and claimed 1/4th share in the 'nohra' in dispute and prayed for partition by metes and bounds and separate possession of the portion of the 'nohra' falling to their share. The contesting defendants admitted that the disputed 'nohra' was ancestral property of the parties

and had not been partitioned so far however, they denied the pedigree set up by the plaintiffs and claimed that the contesting defendants had got 1/7th share each in the property in dispute. The trial court accepted the plaintiffs' contention and held that the plaintiffs had 1/4th share in the disputed property and passed a preliminary decree for partition, declaring 1/4th share of the plaintiffs in the disputed 'nohra'.

3. The defendants filed an appeal and challenged the finding of the trial court regarding the pedigree set up by the plaintiffs. Learned Senior Civil Judge accepted the appeal and held that the pedigree set up by the plaintiffs was not proved and relying upon the document Ex. 3, the first appellate court held that the plaintiffs as well as the contesting defendants had 1/7th share such in the disputed 'nohra'. He, therefore, partly accepted the appeal filed by the defendants and modified the preliminary decree passed by the trial court and the plaintiffs share was declared to be 1/7th in the disputed property. It was also held that the defendant No. 1 along with defendant No. 2, 3 and 4 together had got 1/7th share each while defendant No. 5 had 1/7th share to himself Defendant No. 6 had 2/7th share but defendants Nos. 7 and 8 together had 1/7th share and defendants Nos. 9 and 10 also had 1/7th share. The appellate court directed, that the property in dispute may be divided by metes and bounds, in accordance with the aforesaid shares determined by the Court. The rest of the plaintiff's claim was dismissed.

4. In this second appeal, the main argument of the learned Counsel for the appellants is that the pedigree set up by the plaintiffs should have been held to be proved. The first appellate court has elaborately disputed the matter in question and has given valid reasons for holding that pedigree Ex. 1 has not been proved in accordance with law. In the first instance, the plaintiffs produced pedigree Ex. 2, but when they discovered that the same was incorrect, another pedigree Ex. 1 was produced. The solitary witness, who has tried to prove the pedigree is Parasmal (PW 1). Although he has given elaborate and detailed account about the pedigree of the parties; yet he has not disclosed the source of his knowledge or information as to how he came to know about such long pedigree of his ancestors ascending upto the 28th degree. It is not the case of the plaintiff Parasmal that he had seen Raichand or Ramchand, his ancestors in the 7th or 8th degree, nor he has

explained as to how he came to know about Lalchand and his descendants as also about Akey Raj and his descendants. The plaintiff Parasmal should have disclosed his source of knowledge about the ancestors in the 7th or 8th degree, whom had no opportunity of seeing and who were dead long ago. In the pedigree table Ex. 1, Moda Ram does not appear to have any son, but in his statement as PW 1 Parasmal stated that Modaram had two sons, viz. Ganraj and Durjan Mal. In the pedigree Ex. 1 these two persons have been shown as sons of Askaran. However, in his statement as PW 1, plaintiff Parasmal has not stated that Askaran had any son. Thus there is considerable discrepancy between the statement of plaintiff Parasmal PW 1 and the pedigree table Ex. 1. The provisions of Sub-section (5) of Section 32 of the Evidence Act provide that whenever the statement relating to the existence of any relationship by blood, marriage or adoption is in dispute then the statement made by a person or persons having special means of knowledge regarding the relationship by blood; marriage or adoption of such persons and such a statement would be admissible in evidence. Thus the person making a statement about the existence of any relationship must prove the special means of his knowledge. It is for the person who makes such a statement to disclose that he had any special means of knowledge and it cannot be left to chance or for cross-examination to disclose whether the statement made by such person about relationship by blood, marriage, succession or adoption has any basis, which could give it some value or render it admissible in evidence. As a matter of fact, learned Counsel for the appellants did not seriously contest the finding recorded by the learned Senior Civil Judge and he was unable to point out as to where the first appellate court has gone wrong in deciding the question of admissibility of the pedigree table.

5. Under Sub-section (6) of Section 32 of the Evidence Act, a family pedigree can become admissible in evidence, even though the writer or the person who dictated it is not known, if the same is adopted by a person having special means of knowledge. However, if the person who had scribed the disputed entries in the said pedigree table or the person at whose instance such entries were made is not known or the person who seeks to prove such entries fails to disclose special means of knowledge, then the statement based on such entries is of no value. In *Shivaji v. Jotha* (1) their Lordships of the Division Bench of this Court, relying

upon the decision of their Lordships of the Privy Council in *Abdul Ghafur v. Mt. Hassain Bibi* (2) AIR 1931 P.C. 45, rejected the pedigree table and the statement of the witness based thereon, as the person who sought to produce the pedigree failed to show his special source of knowledge.

6. There is no reliable evidence on record to support the plaintiffs case with regard to the pedigree. As a matter of fact, the plaintiffs produced the pedigree Ex. 2 along with the plaint but they subsequently shifted their stand and plaintiff Parasmal, while appearing in the witnessbox relied upon the pedigree table Ex. 1 and his shifting stands go to show that it would be unsafe to rely upon either the pedigree table Ex. 1 or on the oral testimony of plaintiff Parasmal in respect thereof.

7. The document Ex. 3, which has been produced by the plaintiffs themselves, was executed by Kishan Mai, son of Sereh Mal, one of the ancestors of the parties, in favour of Sultanmal, father of plaintiff Parasmal, as also in favour of Gajraj, Issardas, Shivchand, Gumanmal and another and it shows that the aforesaid parties were incurring expenses for the litigation in respect of the 'nohra' in dispute as well as for its repairs in equal shares. In the document Ex. 3, it has been recited that the expenses incurred over certain repairs of the disputed 'nohra' amounted to Rs. 49/- and the plaintiff Parasmal's father Sultanmal paid Rs. 7/-, as his share of such expenses. On the basis of this document it clearly emerges that the plaintiff as also the other parties, whose names have been mentioned in the document Ex. 3, had $\frac{1}{7}$ th share each in the 'nohra' in dispute and that appears to be the reason why they said $\frac{1}{7}$ th share of the expenses incurred in making repairs to the said 'nohra'. The first appellate court has relied upon this document Ex. 3 for coming to the conclusion that the plaintiffs had $\frac{1}{7}$ th share in the disputed 'nohra' and the conclusion arrived at by it cannot be said to be unjustified. If the plaintiffs had $\frac{1}{4}$ th share in the said 'nohra' as claimed by them, then Sultanmal, father of plaintiff Parasmal, would not have paid only $\frac{1}{7}$ th share of the expenses incurred for repairing the 'nohra'. Ordinarily it is expected that in a joint property, the co-sharers thereof would bear the expenses incurred in making repairs in proportion to their respective shares in such joint property. The plaintiff Parasmal, in his cross-examination, admitted that the document Ex. 3 was produced by him,

but he denied any knowledge about the payment of Rs. 7/- by his father. The document Ex. 3 was produced by plaintiff Parasmal himself and it is difficult to understand as to how he can get away therefore, unless he is able to show that the contents of such document were incorrect. The plaintiffs have not been able to show that for any special reason Sultanmal, father of plaintiff Parasmal paid less amount towards repairs of the 'nohra', than the amount he was liable to pay according to his share in the 'nohra'. I am in agreement with the learned Senior Civil Judge in this respect and hold that Ex. 3 properly discloses the shares of the parties in the 'nohra' in dispute, because when the expenses incurred in repairing the said 'nohra' were shared equally by the parties as 1/7th share each, then the normal inference which should be drawn from such a conduct of the parties is that they had equal share in the 'nohra' in dispute.

8. In this view of the matter, I find no justification for interfering with the finding recorded by the first appellate court and with the preliminary decree passed by the learned Senior Civil Judge. The appeal has, therefore no merit and is dismissed. The parties are left to bear their own costs of this appeal.