

Manohar Singh Vs. Karan Singh

Manohar Singh Vs. Karan Singh

SooperKanoon Citation : sooperkanoon.com/763672

Court : Rajasthan

Decided On : Jul-25-1977

Reported in : 1977WLN(UC)248

Judge : S.N. Modi and; R.L. Gupta, JJ.

Appeal No. : D.B. Civil Special Appeal No. 29 of 1970

Appellant : Manohar Singh

Respondent : Karan Singh

Judgement :

S.N. Modi, J.

1. This appeal is directed against the judgment and decree of the learned Singh Judge of this Court dated September 16, 1969.

2. Briefly stated that relevant facts of the case are that Ranjeet Singh died on April 25y 1954 leaving behind two sons, the plaintiff Manohar Singh and the defendant Karasingh. Manoharsingh filed a suit for partition of joint family property consisting of two houses described in pare. 3 (ka) and 3 (kha) of the plaint and the movables described in Schedule A attached to the plaint. The plaintiff alleged that the property described in pare 3 (ka) was ancestral and the property described in Para 3 (kha) was purchased by Ranjeet Singh for Rs. 3199/- under the sale-deed-dated

September 29, 1946. In the sale-deed, the names of two sons Manohar Singh and Karan Singh along with Ranjeet Singh were mentioned as vendees. The plaintiff, further alleged that he had also paid part of the consideration of the sale price in purchasing the house and as this house was joint Hindu family property. Since the defendant Karan Singh did not agree for partition of the joint family properties, a notice was sent by him on May 9, 1958, and ultimately he instituted the suit for partition of the immovable joint family properties mentioned in Para 3 (ka) and 3 (kha) of the plaint and movables described in Schedule A. The plaintiff claimed half share in the entire joint family property and also prayed for a declaration that the gift-deed executed by the plaintiff's father on August 10, 1946 in favour of Karan Singh in respect of house described in para 3 (kha) be declared null and void as against the plaintiff.

3. The suit was resisted by the defendant Karan Singh. He admitted that the house property described in para 3 (ka) was ancestral property but stated that its southern portion was in a dilapidated condition which was reconstructed by the defendant by incurring expenditure of Rs. 5995/- under the written permission of Ranjeet Singh dated May 28, 1949. The defendant further pleaded that there had been a partition between the parties during the life time of their father. As regards property described in Para 3 (kha) it was pleaded that this property was purchased by Ranjeet Singh out of his own earnings. It, therefore, belonged to Ranjeet Singh who rightly made a gift in his favour. In respect of movable property, the case of the defendant was that no movable property was inherited by him.

4. The trial court, on the consideration of the evidence led by the parties, came to the conclusion that both the houses mentioned in para 3 (ka) and 3 (kha) were joint family properties except the portion constructed by the defendant out of his own earning. It was also held that the defendant had spent Rs. 5995/- in making improvements.

5. As regards movable property the trial court found that there was no evidence to prove that any movable property belonging to Ranjeet Singh was in possession of the defendant. On the above findings, the trial court passed a preliminary decree declaring half share of the plaintiff in the two houses mentioned in Para 3 (ka) and

3 (kha) of the plaint, but added a condition that the plaintiff will have to pay Rs. 2997.50 parse to the defendant; failing which the portion constructed by Karan Singh in property 3 (ka) will be excluded from partition. Dissatisfied with the said decree, both the parties preferred appeal in this Court. The learned Single Judge has found that the two houses mentioned in para 3 (ka) and 3 (kha) are joint family properties belonging to the plaintiff and defendant and both of them have half share in them except the newly constructed portion of the house in 3 (ka). The learned Single Judge has further found that there is no proof that any movable property liable to the partition existed in the hands of the defendant. The learned Single Judge has further found that the gift-deed executed by Ranjeet Singh in favour of the defendant was inoperative against the plaintiff. In the result the learned Single Judge dismissed the appeal filed by the plaintiff but partly allowed the appeal filed by the defendant & set aside the direction of the trial court to the effect that the plaintiff will also have half share in the portion of 3 (ka) house constructed by the defendant on payment of Rs. 2997.50 parse to the defendant. The learned Single Judge accordingly modified the decree and excluded the portion of 3 (ka) house constructed by the defendant from partition; and allowed the plaintiff to recover from the defendant half of the value of the land on which the new construction was made by the defendant. According to the learned Judge only the land was joint family property and not the super structure standing on it. The learned Single Judge has maintained the direction of the trial court that on the application made by any of the parties a Commissioner shall be appointed to divide the property by metes and bounds and then a final decree shall be passed. The learned Single Judge then added:

While passing the final decree so far as practicable, it shall be kept in mind that the entire property described in 3 (a) 3 (ka) should go to the defendant as he had made certain constructions in it and the entire house described in Para 3(b) 3(kha) of the plaint should go to the plaintiff and the parties may be compensated in cash for any inequalities in adopting this method of partition.

It is against this decree that the plaintiff has filed this appeal.

6. It is contended on behalf of the plaintiff appellant that the learned Single judge had committed gross error in holding that the defendant made he the a new construction on the joint land belonging to the parties. His contention is that the defendant simply made improvements on the existing structure and also made some new construction over a portion of the property described in pare 3(ka). It is, therefore, urged that the plaintiff is not only entitled to get half of the value of the land on which improvements were made by the defendant but also half of the value of the then existing structure. In our opinion this contention is well founded On perusal of the pleadings of the parties and the evidence on the record, it is amply clear that the defendant, besides new ay constructing some apartments also renovated the existing construction, on the portion of the property mentioned in Para 3 (ka). The plaintiff must, therefore, get not only half of the value of the land but also half of the value of the then existing construction.

7. As regards determination of the value of the land and the then existing building, it will be for the Commissioner and the trial court to go into that question at the time of passing the final decree.

8. The second contention of the learned Counsel for the plaintiff-appellant is that the learned Single Judge was not justified in observing that the entire house described in pare 3 (ka) should go to the share of the defendant and the entire house described in Para 3 (kha) should go to the share of the plaintiff. According to the learned Counsel it should be left to the Commissioner in what manner he would divide the two houses by metes and bounds. In our opinion, though it cat not be said that the observations made by the learned Single judge are improper or inequitable but since the plaintiff feels aggrieved by the above observation made to the learned Single Judge we leave it to the Commission tine to partition both the houses, except the portion of 3 (ka) exclusively renovated and constructed by the defendant, by metes and bounds or to make suitable adjustment by paying compensation for any inequalities arising out of division of the two houses by metes and bounds.

9. We now turn to the cross objection on behalf of the defendant. It is coextended on behalf of the defendant that the gift made by Ranjeet Singh was a valid one

and in any case it could not have been cancelled after expiry of period of limitation. We find no substance in the above contention The gift was held inoperative as the property mentioned therein was treated as ancestral property.

10. We find no merits in the cross objection and dismiss the same with no order as to costs. In the result we allow the appeal in part, modify the decree of the court below and pass the following preliminary decree in its place:

(1) The plaintiff and the defendant will have half share in the houses described in para 3 (ka) and 3 (kha) except the portion of 3 (ka) house which has been renovated and constructed by the defendant. This renovated and constructed portion of 3 (ka) house will be allotted to the share of the defendant but the latter will have to pay to the plaintiff half the value of the land on which this portion of 3 (ka) house exists as also half the value of the super structure which existed Prior to the defendant's renovating or reconstructing it.

(2) Any of the parties shall have the right to apply for appointment of the Commissioner to divide by metes & bounds the two houses described in 3(ka) and 3 (kha) except the renovated and constructed portion of 3 (ka) house.

(3) The Commissioner may compensate any party in cash for any inequalities arising in dividing the particle properties by metes and bounds.

(4) The gift deed Ex. A/12 executed by Ranjeet Singh in favour of the defendant is held inoperative against the interest of the plaintiff.

(5) The parties shall bear their own costs throughout.