

Hemanta Kumar Banerjee and ors. Vs. Satish Chandra Banerjee and ors.

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Court : Kolkata

Decided On : Apr-01-1941

Reported in : AIR1941Cal635

Appellant : Hemanta Kumar Banerjee and ors.

Respondent : Satish Chandra Banerjee and ors.

Judgement :

B.K. Mukherjea, J.

1. The facts giving rise to this second appeal and the connected civil Revision Case No. 1815 of 1940 may be shortly stated as follows: The plaintiffs and the defendants in the suit, out of which this appeal arises, are cosharers in respect of certain joint properties which they inherited from their common ancestor, one Earn Ratan Banerjee. Ram Ratan died leaving behind him his three sons, namely Shib Narayan, Pitambar and Gopal. Defendants 1 to 3 are the heirs of Shibnarayan while the plaintiffs and the pro forma defendants are the heirs of the other two brothers Pitambar and Gopal. Amongst the properties, which belonged to the descendants of Ram Ratan, there was a plot of land at Chetla in the district of 24-Parganas, being premises No. 3, Chetla Hat Road, a portion of which was acquired by the Government under the Land Acquisition Act. This property which was owned by all the parties, stood in the name of Shib Narayan alone and consequently defendants 1 to 3, who are the heirs of Shib Narayan figured as the

only claimants in the land acquisition proceedings and the award was made exclusively in their names. The date of the award is 21st July 1930. There was a reference thereafter at the instance of defendants 1 to 3 under Section 18, Land Acquisition Act, which was unsuccessful, and the compensation money awarded to these three claimants, after deducting all costs, stood at Rs. 7857-6-8.

2. In 1931 plaintiff 1, Hemanta Kumar, filed a suit in the Court of the first Subordinate Judge at Alipur against all his cosharers praying for a declaration that the acquired property (which was item 5 in the plaint schedule) as well as certain other properties belonged jointly to all the cosharers. There was a further prayer for declaration of specific shares of the parties in the joint lands. This suit was decreed by the trial Court on 16th September 1932 and the decision was not challenged by way of appeal by any of the defendants. Thereafter Hemanta Kumar, plaintiff 1, in the present suit, together with the other heirs of Pitambar and Gopal applied to the Land Acquisition Court for payment of their proportionate shares in the compensation money on the basis of the decree made in the title suit mentioned above. The Land Acquisition Court refused this application, holding that the proper remedy of the applicants lay in a suit under Section 31 (2), Land Acquisition Act. Thereafter a petition of revision was presented to this Court against this order, under Section 115, Civil P. C, and a rule was obtained which was eventually discharged on 22nd July 1936. On 8th August 1936, defendants 1 to 3 applied to the Land Acquisition Court for payment of the entire compensation money awarded to them. In this application it was stated that defendants 1 and 2 were entitled to a moiety share of the compensation money, while the other half was payable to defendant 3, who was a Hindu widow. This application was allowed; half of the total amount awarded as compensation was paid to defendants 1 and 2, while the other half, which was payable to defendant 3 was invested in Government promissory notes under the provisions of Section 32, Land Acquisition Act, she being a limited owner with restricted powers of alienation.

3. On 22nd February 1938 the present suit was instituted by Hemanta Kumar alone against defendants 1 to 3, and the claim related to his own share in the compensation money amounting to Rs. 384 odd annas. The other heirs of

Pitambar and Gopal were made pro forma defendants in the suit. The pro forma defendants 4 to 8 later on applied to be made co-plaintiffs. Their prayer was allowed, and the claim of the original and added defendants having exceeded the pecuniary jurisdiction of the Court of the Munsif, the suit was tried by the Subordinate Judge, First Court, Alipur. The reliefs claimed by the plaintiffs were of a three-fold character: In the first place, they prayed for a declaration of their right to certain shares in the compensation money that was allowed in the land acquisition proceedings including the amount that was withdrawn by defendants 1 and 2. In the second place, they prayed for recovery of half of the amounts payable in their shares from defendants 1 and 2 who had withdrawn half of the compensation money. The third prayer was that the plaintiffs might be regarded as claimants in the apportionment case and their names might be inserted as parties in the said proceedings.

4. The suit was contested by defendants 1 and 2 only. In the written statement filed by them they denied that the property acquired was the joint property of the parties and asserted their exclusive title to the compensation money. This plea, however, was abandoned at the time of the trial, and during the hearing of the suit the defendants admitted the plaintiff's joint title to the property acquired as well as their shares in the compensation money that was awarded. They contended, however, that as the compensation money represented only one of the items of the joint property, the plaintiffs could not sue for recovery of their shares in that item alone without instituting a suit for partition in respect of the entire joint estate. It was said that the money which was received by defendants 1 and 2 could be debited against them when accounts would be finally taken in the partition suit. This contention found favour with the trial Court who decreed the plaintiff's suit in part. The plaintiffs were held to be joint owners of the property acquired along with the defendants, and the specific shares claimed by them in the compensation money were declared. Their prayer for refund of the money withdrawn by defendants 1 and 2, as well as the prayer for insertion of their names in the land acquisition proceedings were refused. On appeal this decision was affirmed by the Additional District Judge of 24-Parganas. It is against this appellate decree that the present second appeal has been taken.

5. As has been said already, the other half of the compensation money which was warded to defendant 3 was invested in Government promissory notes under Section 32 (2) of the Act. The plaintiffs made no prayer in the plaint for recovery of any portion of this amount. All that they prayed for was a declaration of their right to certain shares in this money. After they got this declaration from the trial Judge, they presented an application to the Land Acquisition Court for payment of their shares in the money that remained deposited in the Land Acquisition Court in the name of defendant 3. This application was rejected by the Land Acquisition Court on 17th August 1910 and it is against his order that civil Revision No. 1815 of 1940 was obtained. By an order made by this Court, the rule and the appeal have been heard together. The only question for determination in this appeal is as to whether the Courts below were right in law in refusing the plaintiffs a decree for recovery of their shares in the compensation money which was withdrawn by defendants 1 and 2, on the ground that to grant such relief would be, in effect, to allow a partial partition, which the law prohibits.

6. On hearing the learned advocates on both sides we are of opinion that the view taken by the Courts below is not right and cannot be supported. We do not think that the present suit is either in form or in substance a suit for partition. It is a money suit which is contemplated by Section 31 (2), Land Acquisition Act. It is not disputed that the plaintiffs were the joint owners, with the defendants, of the property which was the subject-matter of the land acquisition proceedings, and if an award had been made in their joint names, there is no doubt that each one of the cosharers would have been able to withdraw a portion of the compensation money according to his share, even though there was no question of partition of their other joint properties. In the present case, the amount of compensation money to which the plaintiffs were legally entitled had been illegally withdrawn by defendants 1 and 2, and consequently they are under a liability to pay the money back to the plaintiffs and this liability is expressly recognized by the proviso to Section 31 (2), Land Acquisition Act. If the view taken by the Courts below was right, then in every case when there is a joint award in favour of two or more persons, a case of partial partition will arise and the provisions of the Land Acquisition Act itself would be rendered nugatory. It would then not be proper for the Collector or the Land Acquisition Judge to pay a proportionate amount of

compensation money to one of the cosharers unless they were satisfied that there were no other properties jointly owned by them nor could any power of investment or purchase be exercised under Section 32, Land Acquisition Act, if one of the undivided co-owners happened to be a widow or any-other limited owner. It is true that the compensation money stands as a substitute for the property itself. In law all the co-sharers are entitled to enjoy and possess the common property jointly, and if one of them asserts an exclusive title to any portion of such property and ousts his cosharers from enjoyment or possession of the same, the latter can certainly institute a suit for recovery of joint possession in respect of this particular item without being obliged to sue for partition of the entire joint estate. When a joint property is acquired under the Land Acquisition Act, the enjoyment, which the co-owners are entitled to under the Act, is to get proportionate share of the compensation money that is given by the award. If one cosharer receives anything in excess of his share, he should be bound to refund it to the true owners, and this is a right, which as I have said above, is recognized by the proviso to Section 31 (2), Land Acquisition Act.

7. But even assuming that the present suit, in substance, is one for partition, I do not think that it should fail on the ground that it did not embrace all the joint properties of the parties. The rule that there cannot be a partial partition of a joint estate is not an inelastic rule which admits of no exception. It has been held that the application of this rule may be relaxed, if the circumstances of a particular case or the interests of justice so require : vide *Rajendra Kumar v. Brojendra Kumar* ('23) 10 AIR 1923 Cal 501, *Kali Charan v. Kiranbala Debi* ('19) 6 AIR 1919 Cal 243 and *Tarini Charan v. Debendra Lal* ('35) 39 CWN 1044. The rule is aimed at preventing multiplicity of litigation which would result if separate suits for partition could be instituted in respect of fragments of a joint estate. It is certainly advantageous to file one suit in respect of all the joint properties where all questions relating to equitable distribution and adjustment of accounts can be finally determined. In the present case, however, no such mischievous consequences are likely to result. The rights of the parties can be effectively adjusted with regard to this one item of the joint estate which was the subject-matter of the land acquisition proceedings, and which now being converted into money has practically ceased to exist; and this can be done without affecting in

the least the rights of the parties to the other joint properties. None of the co-owners will be inconvenienced or prejudiced in any way and no multiplicity of litigation is likely to arise.

8. It is argued by Dr. Basak that as the plaintiffs themselves have realized profits out of the joint estate far in excess of their legitimate shares, all these matters could be adjusted if only a comprehensive suit for partition was instituted; and defendants 1 to 3 are entitled to take this plea by way of an equitable defence. We do not think that this contention of Dr. Basak is sound. In the first place, in withdrawing the compensation money defendants 1 and 2 could not be said to have realized profits of the joint estate which might or might not be in excess of their shares. They have appropriated the entire corpus of one item of the joint estate and this they have done in clear denial of the plaintiffs rights. In the second place, it transpires from evidence and as has been found as a fact by the Courts below, that there is a practice in this family according to which periodical accounts are taken and receipts by one individual cosharer out of the joint estate, if they are in excess of his share, are taken into consideration and accounts are adjusted accordingly. If the plaintiffs had received anything in excess of their shares from other joint properties, this could undoubtedly be the subject-matter of periodical adjustment of accounts and it is not necessary for that purpose to institute a suit for partition. We are satisfied that the defence which was put forward by the defendants is neither equitable nor just and we would not be justified in countenancing this plea at all.

9. The result therefore is that the appeal succeeds, the judgment and decree of the lower appellate Court are varied and it is directed that in addition to the reliefs given by the lower appellate Court, there will be a decree for a sum of Rs. 2447-18-0 against defendants 1 and 2. This amount will carry interest at the rate of 6 per cent. per annum from the date of the suit till the date of realization. The plaintiffs will be entitled to their costs in all the Courts.

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10. We now come to the rule which was obtained by the plaintiffs against the order of the Land Acquisition Judge dismissing their application for payment of their

shares in the other moiety of the compensation money which was invested in Government promissory notes in the name of Rajo Bala under Section 32, Land Acquisition Act. In our opinion the Land Acquisition Judge was quite right in holding that Section 32 (2) (section 32 (1) (b) (ii)?), Land Acquisition Act, had no application to the facts of the present case. Under Section 32, Land Acquisition Act, when the land in respect whereof any compensation money is awarded belonged to a person who had no power to alienate the same, the Land Acquisition Court has got, in the first place, to make an order of investment and the money is to be invested either in the purchase of other lands to be held under the like title and conditions of ownership, or if such purchase cannot be effected forthwith then in such Government or other approved securities as the Court shall think fit. In case it is invested in Government securities, it remains in deposit in Court until the same is applied either in the purchase of lands or in payment to the person or persons becoming absolutely entitled thereto. The last clause, in our opinion, contemplates a case where the disability has ceased or the estate vests absolutely in a full owner after the termination of the limited estate. It presupposes a valid deposit under Sub-section (1) and. cannot have any reference to a case like the present where the property is found not to belong either wholly or in part to the person in whose favour the award is made and in whose name the money lies deposited; but is found to belong to some other person who is not a party to the award at all.

11. Mr. Mukherjee, who has argued the case with great ability and thoroughness, has contended before us that even if Section 32 is not applicable to the facts of the present case his clients should not be without a remedy. He has however not been able to draw our attention to any specific section of the Land Acquisition Act under which a relief of this character can be had by an application to the Land Acquisition Judge. Section 31 (2), (proviso 3?) of the Act, lays down that nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto. This apparently contemplates a civil suit, and it is not clear whether a Hindu widow or other limited owner in whose favour the money is invested under the provisions of Section 32, cannot be said to be a person who has 'received the money' within the meaning of this proviso. It would rather seem

unjust that while the legal owner would have the right to recover the compensation money if it was unjustly withdrawn by another person, yet he would have no rights whatsoever if this other person happened to be a limited owner with restricted powers to alienate the property. It is further to be pointed out, that the right to get a refund of the money is not created by the proviso to Section 31 (2). That proviso simply recognizes] the right which exists independently of the section. It is however not necessary for us] to decide this point in the present case, as in the suit, which was instituted by the plaintiffs, they did not pray for actual recovery of the amount that remained in deposit in the Land Acquisition Court; and it is also not necessary for us to discuss as to whether or not a civil Court has any authority to give any directions to the Land Acquisition Court regarding the distribution or disposal of such money, when apparently no such question was raised in the suit itself. It is conceded that there is no specific provision in the Land Acquisition Act, providing for a case like this. It has been argued by Mr. Mukherjee that the Land Acquisition Court is bound to pay respect to a decision of a civil Court and in a proper case it can exercise its inherent powers under Section 151, Civil P.C. It is not proper for us sitting as a Court of revision to express any definite opinion on this point. The petitioners would certainly be entitled to institute a civil suit for further and appropriate reliefs with regard to the money that is lying in deposit in the Land Acquisition Court; and they may also, if so advised, apply for a review of the award or for exercise of its inherent powers by the Land Acquisition Court. But having regard to the view we are taking, viz. that Section 32 (2), (Section 32 (1) (b) (ii)?), of the Act, has no application to the facts of the present case, we do not think that we should be justified in giving any such directions ourselves. The result therefore is that the rule is discharged. We make no order as to costs.

Biswas, J.

12. I agree.