

Gokal Dass and ors. Vs. Devinder Dass and ors.

Gokal Dass and ors. Vs. Devinder Dass and ors.

SooperKanoon Citation : sooperkanoon.com/888656

Court : Himachal Pradesh

Decided On : Jun-01-1949

Reported in : AIR1949HP11

Appellant : Gokal Dass and ors.

Respondent : Devinder Dass and ors.

Judgement :

Bannerji, J.C.

1. This is an appeal from a judgment and decree dated 11th Magb, 2004 B., of the District Judge, Bushahr State, dismissing the suit of the plaintiffs.
2. The appeal originally lay to the Court of the Chief Judicial Officer, Kasumpti, which was the High Court of the Simla Hill States. But all those appeals, applications and revisions, which lay to the Court of the Chief Judicial Officer, Kasumpti have been transferred by Notification No. J. 79-15/48 dated 14th January 1949, to the Judicial Committee for disposal.
3. In this appeal, there has been no appearance for the respondent but Shri Thakur Dass, Advocate on behalf of the appellants, has presented the case with a fairness and candour which I very much appreciate. He has confined his arguments to one point only, namely, whether the pedigree table, Ex. p-1, attached to the khewat and the mutation proceedings (Ex. p-2) relied upon by the contesting defendants (res. pondents) could disentitle the present plaintiffs from

claiming the property in suit as joint property and further, whether the plaintiffs could claim equal shares with the defendants in that property.

4. The disputed pedigree of the parties showing their descent from one Dilli, who died long before the first settlement (Kanuni Bandobast) in 1892, the relation between them and the position they have respectively taken up in the litigation, out of which this appeal has arisen, is Ex. P-1, attached to the khewat. It runs as follows:

DILLI



|||||||

Ramdhan Maidu Maniram Khajra S S S S

(no issue)

(1) (2) (3) (4) Four Sona



descendants

(Pro forma defendants)

9 to 23

RAMDHAN



||

Badri Dampi

||

Zalmi Kalidas

_____ | _____ |

|||||

Farzi Jatu Uchchu Ramsukh _____ | _____

|||||||

| Rupdas | Mandass Karam Padam Bhag Devi

Jawali | | (Pro forma Chand Sukh Chand Lal

| Kedar Dass | defendant 8) _____

| (plaintiff 10) | (Plaintiffs 5 to 8.)

_____ |

||||

Shis Sainj Dasso |

Ram Ram (plaintiff 3) |

_____ |

(Pro forma |

defendants |

5 & 6) |

|

_____ | _____

|||

Lachman Dharam Jonku

| (Pro forma |

| defendant 7) |

| _____|_____

|||

| Zalamsukh (plaintiff 4) Gopal Dass (plaintiff 9)

_____||_____

||

Gokal Dass (plaintiff 1) Sarwan Dass (plaintiff 2)

MANJRAM

|

Dauda

|

Janki

|

Haridas

|

Ramcharan

_____||_____

||||

(Defendants 1 to 4)

5. The plaintiffs, Gokal and Sarwan, are the grandsons of Uchchu. Uchchu is a son of Zalmi, who is a grandson of Ramdhan. Dassoo plaintiff 3, is the great-grandson of Zalmi and Zalam Sukh and Gopal Dass, plaintiffs 4 and 9, are the grandsons of Uchchu. Karam Chand, Padam Sukh, Bhagchand and Devi Lal, plaintiffs 6 to 8, are the great-grandsons of Ramdhan. Devinder, Bhawani, Banarsi and Dwarka, the contesting defendants 1 to 4, are the direct descendants of one Maniram, who is the brother of Ramdhan. The pro forma Defendants, Shish Ram, Sainj Ram, Dharam Dass and Man Dass are the descendants of Ramdhan. There are other pro forma defendants against whom no relief is claimed, who are the direct descendants of the four sons of dilli, but had long parted from Dilli's other sons, Ramdhan and maniram.

6. A paragraph of the plaint filed by the plaintiffs sets out that the members of the suit, excluding the pro forma defendants 9 to 23, are the members of joint Hindu family governed by the Mitakshara law and that no partition of any kind has ever been effected between these parties relating to the suit property.

7. In their written statement, the contesting defendants denied that the parties to the suit were still joint and averred that in accordance with the pedigree, Ex. P-1, attached to the khewat at the time of the first settlement in 1892, they were entitled to the share that fell to their ancestor, Maniram, According to this pedigree, Maniram had a son Dauda and Dauda's son was Janki and Janki's son was Haridas. The defendants averred that the property in dispute in this suit had been in their exclusive possession and if the plaintiffs had any right to claim it as joint property, their claim was barred by time.

8. On these pleadings, the District Judge framed six issues. In his judgment, the issue regarding limitation was decided in favour of the plaintiffs.

9. The material issues, Nos. 1 and 2, which he decided against the plaintiffs and finally, on the finding of those issues, dismissed the suit, are given below: (1) Whether Dauda died issueless and therefore as the son of Dauda? (2) Whether Dauda was not the son of Khazra and Maniram from their joint wife?

10. It may be mentioned here that the issue No. 3, which related to whether the property was joint or not, was decided in favour of the plaintiffs. The learned Judge concluded on this issue that 'it cannot be said that the defendants possessed the land exclusively.'

11. The learned Counsel contended before me that the pedigree table, Ex. P-1, attached to the khewat, which was propounded by Haridas, purporting to be the son of Janki and grandson of Dauda, was incorrect. This Janki was really a son of Badri, and a brother of Zalmi. Dauda had died issueless because his son Raufca predeceased him. In order to obtain the share of Dauda, Haridas, who was a very clever and intelligent person and held the position of lambardar set out in that pedigree that his father, Janki, was the only son of Dauda. It was further contended that the learned trial Judge was wrong to say that sanctity attached to this pedigree table and that the presumption of the correctness of the revenue records could not be rebutted.

12. In my judgment, a pedigree table prepared for purposes of settlement, which is the basis of the entries in khewat, is relevant under Section 35, Evidence Act, if prepared in discharge of public duty. (See *Bajinath v. Bahadur* A.I.R.1926 Oudh.101. Further, it has been held by their Lordships of the Privy Council in *Mt. Biro v. Atama Ram*, that Sub-section (5) of Section 32 embraces every statement made by the deceased person as to relationship if (1) he had special means of knowledge and (2) it was made ante litem motam. These are the only prerequisites to its admission and it does not affect its admissibility whether it was made in a judicial proceeding or otherwise. In my opinion, the pedigree table was admissible in evidence.

13. The next point is, whether the pedigree table represents the true state of the family relationships at the time the khewat was made. It is common ground that Dauda was living at that time, when the first settlement took place. There is no

dispute that this pedigree table was propounded by Haridas. Dauda had no hand in the preparation of this pedigree table. He was the best person, who could have stated before the authorities the pedigree of his family. The learned Counsel has drawn my attention to Appendix VII, attached to the Punjab Settlement Manual by Sir James M. Douie, Edition 4, 1930. It is laid down there that

the Kanungo or Patwari, having collected the owners in the village, will put the last jamabandi before him, and draw up a genealogical tree of the owners, or if there is one in the previous records, correct that to date.

The learned Counsel argues that there was no necessity on the part of Dauda, even if he had directed Haridas to draw up the genealogical tree, to give the table beyond his own. Paragraph 7, Appendix VIII of the same manual directs that in cases where a father and a son both own land in separate holdings, the son's name in the genealogical tree should be entered in red ink. In the circumstances, it is urged before me that the pedigree table is not true.

14. As regards the correctness of the Be-venue records, it has been held by their Lordships of the Privy Council in *Kamakhya v. Abhiman*, that 'entries in a survey record or khewat raise a presumption of correctness but it may be rebutted.' There is, therefore, no special sanctity attached to the entries in a survey record or khewat. Oral evidence has been led by the plaintiffs to show that Dauda died issueless and Janki, father of Haridas, was a son of Badri. The evidence of three witnesses, namely, Kalidas P.W. 8, Dharam Dass, P.W. 4 and Homi, P.W. 2, is of great weight. They are the members of the family and as such have intimate knowledge of the relationship between the parties. Their evidence is that Janki, father of Haridas, was a son of Badri and that Dauda died issue, less.

15. It is important to remember here that none of the defendants oared to cross-examine' them on this point nor did any of these defendants venture to come into the witness-box in the trial. Under such circumstances, it is impossible to overlook the significance attached to the refusal of the defendants to enter into the witness-box. It raises a presumption against them, which the evidence of Kalidas and Dharam Dass and the rest farther strengthens. It is bounden duty of the persons personally knowing the whole circumstances to give evidence and to submit to

cross-examination.

16. Non-appearance, as a witness, would be the strongest possible circumstance to discredit the truth of his case. *Gurbaksh v. Our dial 0049/1927* . The learned trial Judge admits that Homi, Dharam Dass and Kalidas belonged to the family of the parties and many of the witnesses have seen Dauda but he relied on the pedigree, Exs. P-1 and P-2, the mutation proceedings. The learned trial Judge was wrong to rely on the mutation proceedings. The mutation proceedings are not judicial proceedings, in which the title to and the proprietary rights in immovable property are determined. It has been pointed out by their Lordships of the Privy Council in *Nirman Singh v. Lal Rudra Pratap Narain Singh A.I.R.1926 P.C.100* that these mutation proceedings are in the nature of fiscal inquiries for the purpose of ascertaining which of the several claimants for the occupation of certain denominations of immovable property may be put into occupation of it with the greater confidence that the revenue for it will be paid.

Their Lordships further held that 'these mutation proceedings could not be the foundation of any proprietary right or interest.'

17. In the words of their Lordships of the Privy Council, which I respectfully adopt, the defendants had sole legal possession of the property in suit in the sense that any person, who, on application for mutation of names, is put upon the registry as sole occupier, will have sole legal possession whether he be the head of a joint Hindu family or not. If, however, the learned trial Judge meant by the language he has used that the defendants were in possession as sole legal owners in a proprietary sense, to the exclusion of all claims of the other members of the family, he was entirely mistaken. In their Lordships view, the orders on mutation proceedings were not intended or designed to effect proprio vigore an exclusion of the plaintiffs from all interest in the property of the joint family of which they were members.

18. There is nothing on record to support the learned trial Judge in his conclusion that in the second Settlement in 1916 A.D. the entries of Ex. P-1 remained unquestioned. Further, his conclusion 'the property in dispute which is the share of

Dauda is not therefore the joint property of the parties' has no meaning, in view of his finding on issue No. 3, that 'the witnesses from both the sides deposed that the parties once lived as a joint family. Therefore, it cannot be said that the defendants possessed the land exclusively'. Here, it seems, is a confusion of thought.

19. Once having decided that the property was joint, the next question was to what shares the plaintiffs were entitled. The learned trial Judge left the shares as determined by the Settlement Officers in accordance with the pedigree propounded by Haridas. The learned Judge was wrong in his view of the law. Their Lordships of the Privy Council have held in *Mt. Bhagwani Kunwar Mohan Singh*, and also in *Nageshwar Baksh Singh v. Mt. Ganesha* A.I.R.1920 P.C.46, that in a joint Hindu family, the presumption is, until the contrary is proved, that the family continues joint. A definition of shares in revenue and village papers offers by itself but a very slight indication of an actual separation in a Hindu family. Such a definition of shares standing alone cannot be regarded as sufficient evidence upon which to find, contrary to the presumption in law as to jointure, that the family, to which such definition referred, had separated. Moreover, in a Mitakshara family, it is difficult to predicate beforehand what the shares will be at the time of partition. See *Appovier v. Ramasubba Iyer* 11 M.I.A.75. In my opinion, the shares recorded against the members in the pedigree are of no value. They may be of value for the purpose of collection of revenue.

20. I, therefore, hold that the pedigree table, Ex. P-1, attached to the khewat, was incorrect. I further hold that Janki, father of Haridas, was son of Badri on the ground that the presumption as to the correctness of the revenue record has been rebutted by oral and other evidence.

21. The consequence is that the appeal succeeds and that the appellants (the plaintiffs in the Court below) are entitled to share equally with the respondents (contesting defendants in the Court below) in the property in dispute in this suit, the description of which has been given in the plaint.

22. I shall, therefore, advise the Chief Commissioner to allow the appeal, set aside the judgment and decree of the District Judge, Bushahr State and decree the suit of the plaintiffs, and direct that as there has been no appearance in this Court on

behalf of the defendants, there shall be no order as to the costs of this appeal in this Court but the appellants will be entitled to their costs in the trial Court.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com