

Chandrabhan Vs. Shyamdhan and Others

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Court : Chhattisgarh

Decided On : Dec-09-2011

Judge : Tp. Sharma

Appeal No. : Second Appeal No 246 of 1992

Appellant : Chandrabhan

Respondent : Shyamdhan and Others

Judgement :

(Second Appeal under Section 100 of CPC)

1. By this second appeal under Section 100 of the Code of Civil Procedure, 1908 (for short `CPC'), the appellant has challenged the legality and propriety of the judgment and decree dated 14.2.1992 passed by the District Judge, Ambikapur, in Civil Appeal No.41A/1991, affirming the judgment and decree of dismissal of suit for partition and possession dated 2.11.85 passed by the Second Civil Judge Class-II, Ambikapur, in Civil Suit No.56A/84.

2. The present second appeal was admitted on 5.9.92 on the following substantial questions of law:-

(1) Whether the Gotiyai land could neither be alienated nor partitioned?

(2) Whether the suit land remained impartible even after the Abolition of Proprietary Rights Act on its settlement in the name of a member of joint Hindu family?

3. As per plaint allegation, present appellant/plaintiff Chandrabhan has filed the suit for partition and possession of the suit property shown in Schedule A situated at village Pathrai, Tahsil Ambikapur. As per undisputed facts of the case one Baijnath was Goutiya. Disputed property was given to Goutiya as manwar land in accordance with Wajib-ul-arz of the State of Surguja. Land allotted to Goutiya was impartible. Partition took place relating to rest property and share holders are enjoying their properties. Father of plaintiff Samunder was Goutiya and the land was finally given to father of the plaintiff. At the time of abolition of proprietary rights in accordance with M.P. Abolition of Proprietary Rights (Estate, Mahals, Alienated Lands) Act, 1951 (for short the Act, 1951'). Respondent No.5 was minor. Father of the appellant succeeded in allotting the land in the name of respondent No.5 as raiyat land. During lifetime of father of the plaintiff the land shown in Schedule A was mutually partitioned between respondent No.5 and plaintiff's father. In the year 1975, respondent No.5 tried to dispossess the plaintiff from the possession over the suit property, especially from the share allotted to him i.e. from 7.50 acres of the land. Proceeding under Section 145 of the Cr.P.C. was initiated and finally present suit was filed by the plaintiff/appellant.

4. By filing written statement/respondent No.5/defendant No.5 has contested the suit and has specifically pleaded that Jagdayal i.e. father of respondent No.5 was Goutiya and at that time respondent No.5 was minor, therefore, father of the plaintiff was acting on behalf of respondent No.5 as Goutiya and last Goutiya was respondent No.5 Sadaram. Property was never partitioned between father of the plaintiff and respondent No.5. Property was Goutiyai property and finally it was allotted to father of respondent No.5. Property was impartible in accordance with the provisions of Wajib-ul-arz of the State of Surguja.

5. After providing opportunity of hearing to the parties, the Second Civil Judge Class-II, Ambikapur has dismissed the suit on the ground that plaintiff or his father was not member of joint Hindu family, therefore, he was not entitled for any share.

Same was challenged before the lower appellate Court and lower appellate Court by dismissing the appeal has held that finally land was settled in the name of respondent No.5 Sadaram, therefore, the appellant was not entitled to claim any relief upon the suit property.

6. I have heard learned counsel for the parties, perused the judgment and decree impugned, judgment and decree of the trial Court and records of the Courts below.

7. Learned counsel for the appellant vehemently argued that land was Goutiyai land and before 1951 when Wajib-ul-arz of Surguja State was enforced it was impartible but after abolition of proprietary rights Act, 1951 it becomes the property of Goutiya family, he was holding land for Goutiya family and not for himself, therefore, the land was partible. Learned counsel further argued that rules and provisions relating to Goutiya in accordance with the provisions of Wajib-ul-arz of State of Surguja is para-materia to the rules and provisions relating to the kadar and the kadari land of Khairagarh State, therefore, after abolition of proprietary rights, property becomes property of undivided Hindu joint family and same become partible.

8. Learned counsel for the appellant placed reliance in the matter of Maniram Maksudan v. Ramdayal Maksusan and another in which the High Court of Madhya Pradesh has held that family holding village in protected the kadari right as recorded protected thekadar but after abolition of Proprietary Rights Act restrictions under section 109 of the M.P.Land Revenue Code, 1917 disappear and land become partible. Learned counsel further placed reliance in the matter of Chandra Bahadur Singh Raj Kumar and another v Kesrichand² in which the High Court of Madhya Pradesh while dealing with Wajib-ul-arz of Khairagarh State has taken same view relating to the kadari rights. Learned counsel also placed reliance in the matter of Laxmi Kumari Devi and others v. Radhakisan Mataram Marwadi and others³ in which the High Court of Madhya Pradesh has held that 'Gaontia' and 'thekadar' are synonymous terms.

9. On the other hand, learned counsel for respondent No.5 opposed the appeal and argued that last Goutiya Jagdayal father of respondent No.5 was holding the land as Goutiya under the provisions of Wajib-ul-arz of the State of Surguja. Land

holding by Goutiya as manwar land was impartiable. After enforcement of the Act, 1951 it was settled in the name of respondent No.5 and respondent No.5 is holding the land as self-acquired property and not joint Hindu family property. Learned counsel placed reliance of the provisions of Chapter 4 in Clause (10) of Wajib-ul-arz of the State of Surguja, 1939.

10. Present land is situated within old State of Surguja where Wajib-ul-arz of the State of Surguja was applicable. As per evidence and submissions of the parties, Jagdayal, father of respondent No.5 was Goutiya. Property in dispute was given to Goutiya. Chapter 4 of clause (6) of Wajib-ul-arz relating to Hakuk Goutiya reads as under:-

"LANGUAGE"

11. Kind of land given to Goutiya has been defined in sub-section (d) of Clause (10) of Chapter 4 of Wajib-ul-zrz of the State of Surguja which reads as under:-

"LANGUAGE"

12. As per the provisions of sub-section (d) of Clause (10) and Clause (6) of Wajib-ul-arz of the State of Surguja, land given to Goutiya was manwar land and same was impartiable, Goutiya was holding the land on account of his post as Goutiya.

13. While dealing with the question of rights of the kadar, in the matter of Chandanlal v. Pushkarrai⁴ High Court of Nagpur has held that it has always been the accepted view that the grant of protected status to a the kadar did not make the exclusive property of the person on whom the protected status is conferred.

14. As held by the High Court of Madhya Pradesh in the matter of Laxmi Kumari Devi (supra), the term 'gaontia' as used in different States is synonymous with the kadars.

15. While dealing with the question of protected status in Letters Patent Appeal No.19 of 1949 (Sheo Prasad Sao and others v. Mst.Sukhambai and another), decided on 30.11.1954 the implications of section 109 (1) (A) of the C.P. Land

Revenue Act, 1917, it was observed that the conferral of protected status does not disturb the rights of the members inter se though they may not be recognized by the State. As between members the rights of any particular member under the arrangement must continue.

16. Considering the such protected status of thekadar in the matter of Maniram Maksudan (supra) the High Court of Madhya Pradesh has held that prior to abolition of the Act, 1951 the person having such protected status was holding protected right over the property, but after abolition of the protected rights, these restrictions disappeared and the normal character of the lands as joint Hindu family lands was restored. They, therefore, became partible between the co-sharers after 1950.

17. In the matter of Chandra Bahadur Singh Raj Kumar (supra) the High Court of Madhya Pradesh has observed in para 12 as under:-

"12. It has then to be seen whether after the vesting the joint family character of the property ceased and the grant of raiyati rights to appellant No.1 changed the property into his self-acquired property as held by the lower appellate Court. I do not agree that the vesting of the property in the State Government and regrant of some of the lands in raiyati rights would have the effect of question changing the character of the property. In Chandanlal v. Pushkarry (1952 NLJ 213), the question was considered in the context of protected thekadar under the Central Provisions Land Revenue Act, 1917, and it was held as follows:

"It has always been the accepted view that the grant of protected status to a thekadar did not make the theka the exclusive property of the person on whom the protected status is conferred."

Further, after referring to the decision of their Lordships of the Privy Council in Thakur Bhagwan Singh v. Darbar Singh [24 NLR 179 (PC)], it was observed:

"Their Lordships observed that the Land Revenue Act, 1917, recognizes that the lease-hold interest, though impartible may nevertheless be the joint property of the thekadar and his family."

The instant case arises from Khairagarh State, but the rights of a thekadar are quite similar to the rights of a protected thekadar under the Central Provisions Land Revenue Act. It is true that clause 7 of the Wajib-ul-arz of the Khairagarh State provides that the rights of a gaontia passes by inheritance to his male heirs and it does not descend to collaterals. However, under the Central Provinces Land Revenue Act also the theka is impartible; and although it passes on succession according to the personal law of the holder, only one person can not the theka at a time. It is pertinent to observe that under clause 10 of the Wajib-ul-arz of the Khairagarh State a gaontia is entitled to allot sir and to the members of his family who are entitled to a share of profits of the village by a private arrangement. This clause clearly envisages the possibility of the members of the family having a right to the share of the profits of the village. I have, therefore, no doubt that in spite of the fact that a theka is impartible, it can be joint family property."

18. In the present case, as per undisputed facts of the case, father of respondent No.5 was last Goutiya of the village and father of respondent No.5 was holding the disputed suit property as Goutiya of the village. After coming into force of the Act, 1951 properties were settled in the name of father of respondent No.5 as raiyati land but raiyati land was the property given to Goutiya in lieu of his duty of Goutiya. Initially he was holding the property in protected status but it was not his self-acquired property and it was joint family property of his joint family, as held by the High Court of Madhya Pradesh in the matters of Maniram and Chndra Bahadur Sigh Raj Kumar (supra), therefore the property settled in the name of father of respondent No.5 was subject for partition and also for alienation and after the Act, 1951 property was not remain imprtible, inter alia, it become joint Hindu family property and was partible.

19. Respondent No.5 was holding the property for the heirs of Mohan Ram, Laxman, Jamadar, Padum Sai and Birbal. Birbal died issueless. Mohan Ram was entitled for, share over the property. Mohan Ram was having two sons, therefore, the present appellant was entitled for half share of, = 1/8 share.

20. Consequently, substantial question of law No.1 and 2 formulated for the decision of this second appeal are decided as negative Respondent No.5 was

holding the property for joint Hindu family. Other properties were partitioned but suit property was in the state of jointness. No ouster or adverse possession has been proved against the appellant. The appellant as a member of joint Hindu family is entitled for partition and separate possession of his share. On the basis of decision on substantial questions of law Nos.1 and 2, the appeal deserves to be allowed and is hereby allowed and judgment and decree passed by both the Courts below are hereby set aside. Suit is decreed on following terms:-

(i) The appellant is entitled for 1/8 share upon the suit property and also entitled for possession.

(ii) Parties shall bear cost.

(iii) Advocate fees as per schedule.

(iv) Decree be drawn accordingly.

A copy of decree be sent to the Collector, Surguja for effecting partition.

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