

Radha Lal and ors. Vs. Mulchand and ors.

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Court : Allahabad

Decided On : May-20-1924

Reported in : 80Ind.Cas.933

Judge : Mukerji and ;Dalal, JJ.

Appellant : Radha Lal and ors.

Respondent : Mulchand and ors.

Judgement :

1. The plaintiffs' suit for partition was dismissed by the first Civil Court on the ground that it was barred by the principle of res judicata. It appears that the plaintiffs, excepting one Lallu, subsequently born, had sued on 8th September 1919, for partition. This suit was compromised and both the parties filed a joint petition on 31st August 1920. It was to the effect: 'In the above case the parties entered into a compromise at the remonstrance of a few respectable persons. The parties shall bear their own costs. The plaintiffs withdrew their claim. Hence, the claim should be struck off.' (page 43). This petition of compromise was verified by all the parties (page 47). A decree was passed in accordance with this compromise (page 49). This order was: 'It is ordered and decreed that according to the compromise this case be struck off. The parties to bear their own costs.' The terms of the compromise are not given and the conclusion we draw is that at that particular time the plaintiffs did not desire to press their claim for partition. There was no decision arrived at, that the plaintiffs had no interest in the properties in suit, or that they were not joint holders of the properties with the defendants.

2. The learned Judge of the lower Court has relied on a Division Bench ruling of this Court. Gulkandi Lal v. Mannu Lal 23 A. 219 : A.W.N. (1901) 66 That ruling, however, was not followed in a subsequent case of this Court, T.G. Mukerji v. Afzal Beg 27 Ind. Cas. 694: 37 A 155 : 13 A.L.J. 98. which ruling was based on a ruling of this Court Nasrat Ullah v. Mujib Ullah 13 A. 309 : A.W.N. (1891) 117 : 7 Ind. Dec. N.S.) 195. prior in date to the case reported in Gulkandi Lal v. Mannu Lal 23 A. 219 : A.W.N. (1901) 66 Subsequent to and prior to the 1914 ruling in the case of T. G. Bannerji a Bench of this Court held in Bishesar Das v. Bam Prasad 28 A. 627 : A.W.N. (1906) 142 : 3 A. L. 3. 359 that where a suit for partition was dismissed for default and a fresh suit instituted, there would be no bar under Section 13 of the Civil Procedure Code because the right to enforce partition is a legal incident of a joint tenancy and as long as such tenancy subsists any of the joint tenants may apply to the Court for partition of a joint property. One of the Judges who delivered the judgment in 1906 was one of the two, who delivered judgment in 1901 in the case reported in Gulkandi Lal v. Mannu Lal 23 A. 219 : A.W.N. (1901) 66 In 1906 the Calcutta High Court held in Madan Mohan Mondal v. Baikanta Nath Mondal 10 C.W.N. 839 that a fresh suit for

partition is not barred by Section 13 of the Civil Procedure Code, when a previous suit for partition by the plaintiffs has been compromised. The suit was subsequently dismissed on parties failing to appear during execution proceedings of the preliminary decree passed on compromise. The learned Judge observed at page 840, col. 2 of the Report, following the ruling in *Nasrat Ullah v. Mujib Ullah* 13 A. 309 : A.W.N. (1891) 117 : 7 Ind. Dec. N.S.) 195. that a suit for declaration of right for partition differs from most other suits in this respect that be long as the property is jointly held a right to partition continues. For these reasons we do not think that the lower Court was correct in following the ruling in the case of *Gulkandi Lal*.

3. We set aside the decree of the lower Court and remit the suit to it for trial on the merits. Costs here and here-to fore shall abide the result, including costs here on the higher scale.

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