Laxmidhar Patnaik and ors. Vs. Rangabati Bewa and ors.

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Court : Orissa

Decided On : Nov-23-1966

Reported in : AIR1967Ori90; 33(1967)CLT779

Judge : R.K. Das and ;G.K. Misra, JJ.

Acts : Hindu Law

Appeal No. : First Appeal No. 105 of 1963

Appellant : Laxmidhar Patnaik and ors.

Respondent : Rangabati Bewa and ors.

Advocate for Def. : R. Mohapatra, ;S. Misra and ;P.C. Misra, Advs.

Advocate for Pet/Ap. : D. Mohanty and ;R. Mohanty, Advs.

Disposition : Appeal partly allowed

Judgement :

Misra, J.

1. Deceased Ramchandra Patnalk had three sons, Dharanidhar, Shreedhar and Laxmidhar (defendant-1). Dharani died in 1959 leaving behind a son Radhamohan (defendant 5) and a daughter Padmabati (defendant-6). Shreedhar died in 1955 leaving behind his widow Rangabati (plaintiff). Ratnamani (defendant-4) is the wife and Gurucharan (defendant-2) and Datta (defendant-3) are the sons of defendant-1. Plaintiff's suit is for self and as marfatdar of the family deity Shree Paramchandanath Mahadeb. Defendants were sued for themselves and as marfatdars of the same deity. The suit is for partition and for allotment of one-third share in Schedule B and C properties of the plaint. Schedule B properties are immovable properties recorded in the name of the deity. Plaintiff's assertion was that these properties were nominal private debuttor and were partible. The moveable properties mentioned in Schedule C were claimed as joint family properties.

Defendants 1 to 4 contested the suit. Their case is that Schedule B properties are absolute debuttor and not partible and that the suit is liable to be dismissed as the deity is not a party. Schedule C properties were claimed as exclusively belonging to defendant-1. Defendant-2 was said to be the adopted son of Shreedhar.

Schedule C properties were described in four lots. Lot. No. 1 consisted of cows and calves, Lot No. 2 utensils, Lot No. 3 furniture and Lot No. 4 bank deposits.

2. The learned trial court recorded the following findings:

(i) Defendant 2's adoption by Shreedhar had not been established.

(ii) Bank deposits in the name of defendant No. 1 belong to him and are not partible.

(iii) Rest of the properties in Schedule C belonged to the joint family and the plaintiff was entitled to one-third share therein,

(iv) (a) Schedule B properties were absolute debuttor.

(b) Even though the properties are absolute debuttor, the marfatdari rights therein are liable to be partitioned. But the marfatdars would take the properties with the obligation that they would spend the entire income in the interest of the deity. Schedule B properties excepting the temple where the deity has been installed were directed to be partitioned into three equal shares.

(c) The deity is not a necessary party to the suit.

3. Plaintiff did not file any appeal against the finding that the bank deposits in the name of defendant-1 belonged to him. The finding is final was not rightly assailed by Mr. Mohapatra. The finding on adoption is not challenged by Mr. Mohanty. The trial court's finding that defendant-2 is not the adopted son of Shreedhar is accordingly confirmed. The finding that Schedule B properties are absolute debuttor is not assailed by Mr. Mohapatra and is accordingly confirmed.

4. The utensils mentioned in Lot. No. 2 and the furniture in Lot No. 3 were found by the Commissioner, who made an inventory, to be in the residential house of the parties, Mr. Mohanty contended that the moveables, which were in the rooms in occupation of the plaintiff, were not inventoried. Such an objection was not taken before the trial court. There are no materials on record that only the moveables in the rooms of defendant-1 were made inventory of and those of the rooms of the plaintiff were excluded. After having heard the learned advocates carefully we find no sufficient reason to reverse the finding. We accordingly hold that the moveables mentioned in Lot. nos. 2 and 3 of Schedule C of the plaint belonged to the joint family and are partible.

5. The moveable described in Lot. No. 1 of Schedule C are cows and calves. Plaintiff's case is that the family had a business in milk from the time of Ramachandra Patnaik. Her statement was to the effect-

'We have our domestic milk business. This business continues since the time of my father-in-law. The cows and calves in the custody of defendant-1 belong to us all.'

She, however, stated in cross-examination-

'During my father-in-law's time he had 10 to 12 cows and 5 to 6 calves. Now there is 13 heads of cows, 6 heifers and 9 calves. I used to sell milk three years back for a period of 5 to 6 years. Defendant-1 was realising money. I cannot give the name of any one of the customers to whom I sold milk. I cannotgive the price of the cattle in the possession defendant-1.

P. W. 4 is the only witness on plaintiffs side on whose evidence Mr. Mohapatra placed reliance to corroborate plaintiff's assertion of the existence of the milk business from the time of her father-in-law. Though P.W. 4 claimsto be the sister's son of defendant-1, he cannot give the year and the month of sepa ration in his maternal uncle's family. He cannot also say the month and the year when Dharanidhar died. In the circumstances, it is difficult to place reliance on his evidence only on the point that the family had an ancestral business in dairy farming. The evidence of P. W. 5 is not of much worth as he could not say as to how many cattle the family of the Patnaik possessed. He answered that it might be 10 to 30. Defendant-1 (D W 2) claimed the cows and the calves as belonging to him. Mr. Mahapatra placed some reliance on the evidence of Sri Dayanidhi Misra, and advocate of this court (D. W. 7). In his examination-in chief, this witness did not speak of the family having any ancestral business in milk. In cross-examination he, however, stated- 'Shreedhar and Laxmidhar were supplying milk at the time when Dharanidhar was serving in my Sherista.'

This statement is too vague. On the aforesaid evidence it is difficult to hold that there was an ancestral family business in milk and the cows and calves, as mentioned in Lot. No. 1 of Schedule C of the plaint, belonged to the joint family. The admitted case of the parties is that the family had no other properties excepting those mentioned in the plaint. Lot. No. 1 of Schedule C is not claimed to be partitioned on the basis of existence of joint family nucleus. Plaintiff's claim on this count must be rejected. The finding of the trial court regarding Lot. No. 1 is reversed. Lot. No. 1 of Schedule C of the plaint is to be excluded from partition.

6. On the position accepted by the learned advocates for the parties that Schedule B properties are absolute debuttor the deity is not a necessary or proper party. If anything had been decided adversely to the interest of the deity, it would be a necessary or proper party. The finding that Schedule B properties are absolute debuttor properties recognises the right, title and interest of the deity and is not adverse to it. If the finding in this suit would have been that Schedule B properties were private nominal debuttor, then the deity must have at least been a proper party. AIR 1960 SC 100, Narayan Bhagwantrao v. Gopal Vinayak relied upon by Mr. Mohanty, does not affect the frame of the suit in view of the finding that Schedule B properties are absolute debuttor properties.

7. The last question for consideration is whether Schedule B property is partible. Its area is 349 acre. The residential houses of the three branches and the temple of the deity stand on this property. Portions of the land have been leased out permanently to Dr. Hari-bandhu Mohanty and to Dr. Rajikishore Nand who have constructed their houses thereon and pay rent. Some other houses also exist on it and are being rented out to tenants. It is the common case of the parties that the rents derived are utilised for the seba-pujaof the deity and the sebaits have no pecuniary or personalinterests therein. For the site on which the residential houses of the parties stand, no rent is paid by them. The question for consideration is whether Schedule B property, which is admittedly absolute debuttor and used in the aforesaid manner, can be divided amongst the parties.

There is no dispute that the temple and its site cannot be partitioned. The learned trial court dismissed partition of the temple and the parties do not challenge the finding in appeal.

Mr. Mohanty contends that the rest of the property is also not partible and the decree

or the trial court allowing partition must be vacated. The law on the point has been fully discussed and summarised in Mukherjea's Hindu Law of Religious and Charitable Trust (Second Edition) at pp. 222 to 224 (hereinafter referred to as Mukherjea's). Law is well settled that when the management can, without detriment to the trust, be held by turns, it is open to the sebatts to agree to do so in such order as they think proper. If in order to avoid confusion, or any unseemly scramble, the parties interested arrange themselves for the due discharge of the functions belonging to the office, in turn or in some other settled order of sequence, there is no breach of trust in such an arrangement nor any improper delegation of the duties of a trustee (See (1906) 33 Ind App 189 (PC) Ramanathan v. Murugappa).

The question for consideration, however, is whether any one or more of them can, in the absence of an agreement, come to the court and pray for a partition of the sebaiti right. Mr. Mohapatra placed strong reliance on Maha-maya v. Haridas, AIR 1015 Cal 161 & Alasinga v. Venkatasudarsana, AIR 1986 Mad 294 in support of the theory of partition The conflicting views were noticed and discussed in Mukherjea's and we deem it unnecessary to traverse the same ground. It was held in Puranmal v. Briflal. AIR 1917 All 123 that if the managers have any personal interest in the management of the temple, and there is a question of share in the emoluments, it might be said that there is a dispute as regards property and the civil court would be competent to direct division in such ways as it thinks proper. But where the trustees have no pecuniary interest in the subject-matter of the trust, none of them can approach the Court and ask for a mere partition of their duties; they must discharge their duties jointly as directed by the founder. With respect, we endorse the aforesaid view which seems to have been approved in Mukherjea's

Mr. Mohapatra relied upon Panchanan v. Lakshmidhar. ILR (1957) Cut 712: (AIR 1958 Orissa 65) in support of the conclusion that shebaiti right is partible in all circumstances irrespective of the question whether the sebaits have any personal interest in the management of the temple. There is no discussion of law in this decision and no reference has been made to any authorities. In paragraph 19 their Lordships merely expressed their views thus:

There still remains the question whether the marfatdari right is particular. There is nodoubt that it is so. The marfatdar takes the property with the charge, and takes upon himself the obligation to apply the income for the religious purpose for which the property was originally dedicated.'

The bald and absolute conclusion made therein must be confined to the facts and circumstances of that case. It cannot override the well established proposition already discussed based on a series of decisions of other High Courts and of the Privy Council.

8. Applying the aforesaid tests, it would be clear that the temple and its site is not partible. So also are the houses or rooms which are rented out to tenants and the land permanently leased out to Dr. H.B. Mohanty and to Dr. R.K. Nanda. In the rents so obtained the sebaits have no personal interest and they have no shares towards their emoluments. The income derived from this property is spent towards the sebapuja of the deity. This property must, therefore, be excluded from partition.

That portion of B Schedule land on which the residential houses of the parties stand is, however, partible. It is the common case of the parties that from the time of their

ancestors they have been living in the houses standing on that portion. Doubtless the property continues to be absolute debuttor of the deity. But the enjoyment of the land is of the parties without any payment of rent towards occupation. The parties have personal interest in the enjoyment of this portion of the land towards their emoluments in the management of the temple. This portion of the land is to be partitioned amongst them for mutual convenience without detriment to the title of the deity.

9. To sum up, a decree for partition is to be passed allotting one-third share of the plaintiff in respect of a portion of B Schedule land on which the residential houses of the parties stand. Possession of the parties is to be respected as far as practicable. Plaintiff is entitled to one-third interest in Lots. 2 and 3 of Schedule 0 of the plaint. Plaintiffs claim in Lots 1 and 4 of Schedule C of the plaint is dismissed. Rest of the land in Schedule B property is not partible.

10. In the result, the appeal is allowed in part and a preliminary decree for partition is passed as indicated above. In the circumstances, parties to bear their own costs throughout.

Das, J.

11. I agree.