Privy Council Appeal No. 25 of 1944

Ram Rattan - - - - - - - - - *Appellant*

v.

Parma Nand - - - - - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 17TH DECEMBER, 1945

Present at the Hearing:
LORD THANKERTON
LORD GODDARD
SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

This is an appeal from the judgment and decree of the High Court of Judicature at Lahore, dated the 15th July, 1942, which allowed in part an appeal from, and modified the judgment and decree of the Senior Subordinate Judge of Gurdaspur, dated 3rd March, 1941.

It is common ground that prior to 1934 the appellant and respondent, who are full brothers, their father Bhodu Shah, and their step brother Wadhawa Mal had formed a joint Hindu family, and that in 1932 Wadhawa Mal instituted a suit for partition. On 27th December, 1934, Bhodu Shah having died during the pendency of the suit, Wadhawa Mal on the one hand and the appellant and respondent on the other hand entered into a compromise whereby one-third of the family property was assigned to Wadhawa Mal and two-thirds to the appellant and respondent.

The suit in which this appeal arises was instituted by the appellant on 21st December, 1939. In his plaint he alleged that after the partition of 1934 he and the respondent remained members of a joint Hindu family, the respondent as the elder brother being the Karta. The appellant claimed partition of the joint family property, possession of his share, and the rendering of accounts by the respondent. The respondent in his written statement alleged that partition was effected in 1934 between all the members of the family and that thereafter he and the appellant were divided in status, but remained joint owners of their share of the family property until 21st February, 1939; that on that date the bulk of the property was physically divided between the two brothers, though part still remained in joint ownership, and that two memoranda were prepared in duplicate showing the division arrived at and what property continued joint, one memorandum being retained by each brother.

The learned trial judge framed issues of which the first two were:—

1. Did the parties of this suit constitute a joint Hindu family even after the separation of their eldest brother Wadhawa Mal?

2. Did the parties of this suit separate in 1939 and therefore the suit in the present form does not lie?

The learned judge answered the first issue in the affirmative and the finding that the appellant and respondent remained joint after 1934 has not been challenged before the Board. The second issue, which the learned judge answered in the negative, is the material one on this appeal.

The learned judge held in the first place that the memoranda referred to in the written statement, which for purposes of identification were marked " C " and " D " constituted an instrument for partition and could not be given in evidence since they were neither stamped nor registered. He gave the respondent the opportunity of paying the necessary stamp duty and penalty, but the respondent declined to make the payment. The alleged fact that the documents have been stamped since judgment is immaterial.

Section 35 of the Indian Stamp Act 1899 provides:—" No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped." The provisos do not apply in this case.

Section 49 of the Indian Registration Act provides that no document required to be registered under Section 17 shall affect any immovable property comprised therein or be received in evidence of any transaction affecting such property. It is unnecessary to consider the effect of this section because the documents in question not being stamped, the wider prohibition contained in the Stamp Act applies, and the learned judge rightly excluded the documents. In the absence of written evidence of partition the learned judge considered that the oral evidence called by the respondent to support a partition in February 1939 was unsatisfactory, and accordingly he held the parties to have been joint at the date of suit and gave the appellant a decree.

In appeal the High Court of Lahore considered only issue 2. They held that the oral evidence proved that partition between the appellant and the respondent took place on or prior to 21st February, 1939, and they expressed the opinion that the documents marked " C " and " D ", even if they required to be stamped and registered, could be used to corroborate the oral evidence for the purpose of determining the *factum* of partition as distinct from its terms.

With this latter opinion their Lordships are not in agreement. As already noted, Section 35 of the Indian Stamp Act enacts that no instrument chargeable with duty shall be admitted in evidence for any purpose. Mr. Rewcastle as part of his argument for the respondent adopted the note on the words " for any purpose " in Section 35 contained in the 4th edition of Sir Dinshah Mulla's book on the Indian Stamp Act 1899. He pointed out that the words " for any purpose " first appeared in India in the Stamp Act of 1879, and in England in the Stamp Act of 1891, and that under the earlier Acts there were decisions in both countries that an unstamped document might be admitted in evidence for a collateral purpose, that is, to prove some matter other than the transaction recorded in the instrument, and he submitted that these cases applied even under the later Acts. Their Lordships do not take this view. A document admitted in proof of some collateral matter is admitted in evidence for that purpose, and the statute enacts that it shall not be admitted in evidence for any purpose. Their Lordships see no reason why the words " for any purpose " in the Indian Act of 1879 should not be given their natural meaning and effect. Such words may well have been inserted by the Legislature in order to get rid of the difficulties surrounding the question of what amounted to a collateral purpose.

Their Lordships therefore pay no regard to the documents marked " C " and " D ", but they are in agreement with the High Court in thinking that the oral evidence proved partition in February, 1939. The respondent no doubt failed to prove the partition in 1934 which was alleged in his written statement, but the important question is whether partition had been affected before the institution of the suit in December, 1939, Two witnesses,

Das Mal and Sain Das, gave evidence of a partition of the joint property in February, 1939, at which the witnesses were present, and of the parties taking possession of the property allotted to them. This evidence was supported by evidence that soon after February, 1939, some land revenue was paid separately by respondent, though previously it had been paid by both parties jointly; by evidence of two witnesses who stated that they had cultivated land belonging jointly to the parties, but that since April, 1939, they had paid the produce separately to each; and by the evidence of the respondent that for 1939-40 and 1940-41 he had submitted separate returns for Income Tax. Their Lordships think it unnecessary to discuss the evidence in further detail since this was done in both the lower courts. In their Lordships' view the evidence establishes a physical division of much of the joint property in February, 1939, and this is only consistent with a severance in the status of the parties having taken place.

On that view of the matter, the appellant can get no more than the High Court gave him, namely a declaration that he is entitled to a half share in the agricultural lands which the respondent admitted to be joint, and a preliminary decree for partition of the properties mentioned in the documents marked " C " and " D " and admitted by the respondent in such documents to be joint. It has been argued for the appellant that the decree of the High Court erred in referring to the documents marked " C " and " D " which were not admissible in evidence. But the documents were not used as evidence; they were employed merely as a convenient means of identifying the properties admitted by the respondent to be joint, thereby avoiding setting out the properties in a schedule to the order, which would have been the more regular course.

For these reasons their Lordships will humbly advise His Majesty that this appeal be dismissed. The appellant must pay the respondent's costs of the appeal.

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In the Privy Council

RAM RATTAN

v.

PARMA NAND

DELIVERED BY SIR JOHN BEAUMONT

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