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Madan Mohan Vs Balkishan Das

Regular First Appeal No. 423 of 1958

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 27, 1964

Citation: (1965) 1 ILR (P&H) 367

Hon'ble Judges: P.C. Pandit, J; Dulat, J

Bench: Division Bench

Advocate: S.K. Jain and D.C. Gupta, for the Appellant; K.C. Nayar and Tirath Singh Munjral, for the Respondent

Final Decision: Dismissed

Judgement

Dulat, J.
This appeal arises out of a suit by a father against his son concerning certain items of joint family property of which of course the

father is the karta. The relations between the father and the son got strained largely because the father, Shri Bal Kishan Das, had after the death of

his first wife, who was the mother of the defendant Madan Mohan, remarried and has had children from the second wife. The father, being the

plaintiff, alleged that an area of agricultural land belonging to the joint family was handed over by him in 1954 to the defendant Madan Mohan for

managing it as he himself was not too well just then, but that the defendant Madan Mohan had subsequently refused to render accounts of the

income derived from the agricultural land. The plaintiff, therefore, claimed a decree for accounts. Further, the plaintiff alleged that the defendant

was trying to interfere with another joint family property, being a business called the East Punjab Book Depot. The plaintiff also alleged that there

was another property belonging to the Joint family at Rai Bahadur Kalyan Singh Road in Amritsar with which the defendant was unlawfully

interfering. The plaintiff, therefore, prayed that apart from a decree for accounts, an injunction should be issued against the defendant restraining

him from interfering with the two properties.

2. The defendant Madan Mohan, admitted that the agricultural land in question was joint family property but he claimed that the property had been

given to him by his father not for merely managing it for the time being but for his, that is, the defendant''s maintenance. His case was that because

of strained relations between the parties the father had thought it fit to make over the agricultural land to the defendant in lieu of maintenance and

the claim for accounts, therefore, was ill founded.

3. Regarding the bookseller''s business called the ''East Punjab Book Deyot'', the defendant claimed that it was his exclusive property and did not

belong to the joint family and he alone was, therefore, entitled to run it. Regarding the property at Rai Bhadur Kalyan Singh Road, the defendant

alleged that he was in actual possession of two rooms in which he was residing and that as a member of the joint family he was entitled to do so

and could not be dispossessed.

4. The trial Court found on the evidence that the East Punjab Book Depot was the exclusive property of the defendant and the plaintiff''s claim in

respect of it was unsustainable. Regarding Kalyan Singh Road Property the Court found that the defendant was in occupation of only two rooms

and that, as he was entitled to remain in occupation, he could not be dispossessed There remained the question of agricultural land 276 Kanals 7

Marias in area in Rakh Shikargah. The Court found on the evidence that property belonged to the joint family, as was of course admitted, and

further that it was made over to the defendant by his father merely for management and the defendant''s story, that it had been given to him in lieu

of his maintenance, was not true. The Court, therefore, held that the defendant was liable to render accounts concerning the income of that

property to his father who was the Karta of the family. In the result, the trial Court granted the plaintiff a preliminary decree for accounts

concerning the income from the agricultural land aid also granted a permanent injunction to the plaintiff restraining the defendant from interfering in

the management or possession of the remaining joint family properties, the injunction being in terms ""a permanent injunction restraining the

defendant from interfering in the possession and management of the joint Hindu family properties, namely, the land and the property situated at

Kalyan Singh Road, Amritsar."" The suit regarding the East Punjab Book Depot at Amritsar and certain other movable properties was dismissed

and the parties were left to their own costs. Against that decree the defendant has filed the present appeal (Regular First Appeal 423 of 1938) and

although at one stage cross-objections were filed on behalf of the plaintiff concerning the part of the claim which was dismissed by the trial Court,

those cross-objections appear to have been later withdrawn and we are no longer concerned with them.

5. Mr. Jain for the defendant-appellant first points out that there is some vagueness about the decree in connection with the property at Kalyan

Singh Road in Amritsar. The Court has found that the defendant is lawfully in possession of two rooms and he is entitled to retain those rooms for

his residence while the decree seems to restrain the defendant from interfering with the possession of the property in question and this may be

taken to mean that the defendant is to be dispossessed of the rooms in his possession. Mr. Nayyar for the plaintiff respondent admits that that is

not the intention of the decree and the defendant appellant is not to be dispossessed of these two rooms in pursuance of the decree With this

clarification of the meaning of the decree, Mr Jain is satisfied.

Regarding the East Punjab Book Depot, there is now no dispute before us.

6. There remains the question of the agricultural land. Mr. Jain contends that the conclusion of fact reached by the trial Court, that this land was

given to the defendant-appellant for managing it for some time, is not correct. He has taken us through the entire evidence. It appears, as the trial

Court has observed, that only two witnesses, have given clear evidence about the arrangement alleged by the defendant-appellant that this land

was given to him, for his maintenance. These witnesses are Baij Nath (D.W. 13) and Partap Chand (D.W 14). A number of other witnesses also

stated vaguely that the land was given to the defendant for his maintenance but they do not appear to have known this fact directly and their

evidence has, therefore, not been relied upon. The trial Court was not impressed by the evidence of Baij Nath or Partap Chand and for good

reasons. Shri Baij Nath admitted that he had been accused of embezzling money belonging to a co-operative society and there had been a case

against him. He also admitted that he was suspended from his office of Sarpanch in connection with that matter. He is not closely related to the

parties and no reason appears why any arrangement about joint family property should have been made in his presence. The second witness

Partap Chand (P.W. 14) is interested. The defendant, he admitted, was his old class fellow. He is not a neighbour nor any close relative of the

parties. It appeared to the trial Court that if there had been any settlement between the parties concerning the defendant''s maintenance and the

land had been given to him on that account, there would have been some writing made, and that seems probable. The evidence of the two

witnesses, Baij Nath and Partap Chand. does not strike me as particularly reliable. There are two other circumstances which make the defendant''s

story improbable. The first is that when the plaintiff gave evidence, he clearly stated that the land in dispute was given to the defendant for

management only and no suggestion was made to the plaintiff under cross-examination that this was not so, nor was it specifically put to him that

there had been any settlement about the defendant''s maintenance. The defendant gave evidence subsequently. He stated that there had been such

a settlement in the presence of three other witnesses, Shri Amir Chand Gupta, Shri Devki Nandan and Pt. Hans Raj. Shri Amir Chand Gupta,

admitted as D.W. 15 that the arrangement was not made in his presence, Shri Devki Nandan (D.W. 9) did not say that any such arrangement was

made in his presence and on the other hand alleged that he had heard of it from the plaintiff. Curiously enough, the admission of the plaintiff was

never put to him when he gave evidence, The third witness, Shri Hans Raj (D. W. 4), did not support the defendant that any such arrangement was

made in his presence. It is clear, therefore, that the arrangement alleged by the defendant was not supported by the witnesses in whose presence it

was said to have been made I am not surprised in the circumstances that the trial Court believed the plaintiff"s story that the land in question was

given to the defendant merely for managing it for the time being and not in lieu of maintenance, and 1 can find no justification for disturbing the trial

Court"s conclusion or that matter.

7. Mr. Jain then raises another point which was not specifically raised in the trial Court but as it is a point of law, we have heard him fully in support

of it. His contention is that if the agricultural land was given to the defendant-appellant for being managed by him, the defendant appellant became

qua that land the managing member of the joint family and since no suit for accounts lies against the managing member of a joint family property in

the absence of a claim for actual partition of the property, no decree for accounts can in the present case be made against the defendant appellant

in respect of the agricultural land. There is no substance in this contention. It is true that while family property remains joint, the managing member,

that is, the Karta is not as such accountable to the other members and a mere suit for accounts does not lie against him It is also true that in certain

circumstances the father of the senior most member of the family need not be the Karta or the managing member and a junior member of the family

can be appointed or accepted as the Karta. From these two propositions, however, it does not follow that if the Karta of the family asks another

member of the family to look after certain property for the time being, that other member becomes the Karta of the family for the purposes of that

property. He remains on the other hand merely a member of the family to whom a task has been assigned by the Karta and he is for that particular

purpose the agent of the Karta and nothing more. If Mr. Jain"s submission were to be accepted, it would come to this that every time the managing

member of a joint family asks another member to do something in respect of any item of joint family property, that other member would for the

purposes of that property be the Karta and not at all answerable for accounts of the other members of the family or the Karta, a position which is

hardly tolerable, What has happened in the present case is perfectly clear and it is that the Karta. being ill for the time being, asked his son to look

after the agricultural land but that assignment did not and could not in law make the defendant appellant the Karta of the family for the purpose of

that property. He was and remained an agent of his father and consequently liable to render accounts of the income he received from the

agricultural land. That seems to me the only reasonable conclusion on the facts and on that conclusion it is impossible to agree that the father was

not entitled to demand accounts of the income from the son. In my opinion, therefore, the preliminary decree for accounts has been properly made.

8. The result is that apart from the clarification the decree which I have mentioned, there is no ground for any interference with the decree granted

by the trial Court and I would, therefore, dismiss the appeal but direct that, as in the trial Court, the parties will in this Court, also bear their own

costs.

P.C. Pandit, J.

9. I agree.

10. Appeal dismissed.