AIR 1953 All 331 : (1953) 23 AWR 75

Allahabad High Court

Case No: Second Appeal No. 1311 of 1947

Mt. Ram Kali		APPELLANT
	Vs	
Pahilwan Singh and Others		RESPONDENT

Date of Decision: Nov. 20, 1952

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10

Citation: AIR 1953 All 331 : (1953) 23 AWR 75

Hon'ble Judges: V. Bhargava, J

Bench: Single Bench

Advocate: Bishun Chandra Saxena, for the Appellant; Lachmi Narain Gupta, for the Respondent

Final Decision: Allowed

Judgement

V. Bhargava, J.
This is a Second Appeal arising out of a suit brought by the plaintiff-appellant and the plaintiff-respondent for possession of certain properties against the defendants-respondents.

2. The property in suit admittedly belonged, once upon a time, to one Dharam Singh. The plaintiff-appellant came to the Court with the allegation that, after the death of Dharam Singh, there was a partition between his sons and this property came to the separate share of Indar Singh so that Indar Singh became the sole owner of this property. Indar Singh having died, the plaintiffs claimed that they were entitled to possession of this property as daughters of Indar Singh who died leaving no sons or widow. The defendants respondents are all collaterals of Indar Singh and they, or some of them, would be the reversioners of Indar Singh on the death of the two plaintiffs. Both the lower Courts have held that there had been a partition by virtue of which Indar Singh had become the sole owner of the property in suit. A further objection of the defendants-respondents that there

had been a re-union between Indar Singh and his brothers was also repelled by the Courts below.

3. The trial Court decreed the suit "in toto" but the lower appellate Court modified the decree and granted a decree in respect of only half share in the property on the ground that the plaintiff-respondent, Shrimati Javitri, had made a statement that she did not want any decree in her favour. It is against this part of the decree that the other plaintiff, Shrimati Ram Kali, has filed this appeal claiming that, even if Shrimati Javitri did not ask for decree in respect of her share, a decree for possession in respect of the whole property should have been passed in favour of the plaintiff-appellant, Shrimati Ram Kali.

With this appeal there is a cross objection filed on behalf of the defendant respondent challenging the finding that Indar Singh had become the sole owner of this property under a partition and also challenging the finding that there had been no re-union between Indar Singh and other members of the family. The question whether there was a partition between Indar Singh and the defendants respondents or their predecessors as also the question whether there had been a re-union are both questions of fact and the learned counsel has not been able to show how these questions can be reagitated in this Second Appeal in which the findings of fact by the lower appellate Court have to be accepted and only questions of law can be gone into. The cross-objection, therefore, fails.

4. So far as the appeal is concerned the view taken by the lower appellate Court is that the decree for the whole share of Indar Singh in favour of Shrimati Bam Kali was not justified on the ground that Shrimati Javitri did not claim any share which meant that she had relinquished her share. The learned Judge of the lower Court went on to state that it did not appear from, her (Shrimati Javitri"s) statement in whose favour she had relinquished her share. But, in any case, it was not in favour of Shrimati Ram Kali and consequently the latter could not got a decree in respect of her share. In arriving at this decision, it is clear that the learned Civil Judge did not properly consider the effect of the relinquishment by Shrimati Javitri.

The property was found by the learned Civil Judge himself to be jointly owned by Shrimati Ram Kali and Shrimati Javitri as holders of life-estates. On the death of either of them, the whole of the life-estate was to pass to the other. In such a case, if there is relinquishment by one without specifying in whoso favour the relinquishment takes effect the right to the property would naturally pass to the other joint owner. A trespasser in possession without any right cannot claim that, because one joint owner has relinquished her right, the trespasser is entitled to continue in possession of that share. The defendants-respondents are, no doubt, reversioners but they possess no right at all in the property until the succession opens on the death of the holders of the life-estate.

The reversion in their favour could have been accelerated by the holders of the life-estate by relinquishing their rights in their favour and, in case Shrimati Javitri had really relinquished her share in this property in favour of defendant-respondent, it might have

been open to the defendant-respondent to claim that they must be allowed to remain in possession in respect of the half share to which Shrimati Javitri was entitled. In this case the lower Court has not found that there was any such relinquishment in favour of the defendant-respondent. Consequently, on a relinquishment without specification of the person in whose favour the relinquishment was made, the joint owner would be entitled to all the rights.

5. Learned counsel for the respondents referred me to two decisions of the Madras High Court in Kanni Animal v. Ammakannu Ammal 28 Mad. 504 and Sundarasiva Row v. Viyamma 48 Mad. 933 in which there were two women who were joint owners of a property held as their life-estate. In one case, one of them transferred the property to a third person and in the other case there was a surrender in favour of a third person. In both those cases, the third person claiming the right to continue in possession of the property claimed through one of the holders of the life-estate and, since the two holders of the life-estate did not hold as tenants-in-common but as joint tenants, it was held that the persons in whose favour the transfer or surrender had been made had a good title against the other joint owner. In this case the defendants-respondents are not claiming through Shrimati Javitri and no title has passed to or through her. They are mere trespassers and they cannot, therefore, claim to continue in possession against the other joint owner.

6. The case may be looked at from another point of view. In the statement which Shrimati Javitri gave, she nowhere stated that she relinquished her share. All she said was that she did not want a decree in respect of her share. This statement goes no further than a disclaimer on her part to continue before the Court as a claimant for the decree for possession. The suit should be treated as if she had not appeared as a plaintiff. The suit would then be dealt with as a suit by one of two joint owners for possession against a third person who had no title to the property. The law is well established that one joint owner out of several can always eject a trespasser and obtain a decree for possession against the trespasser. It is only the joint owner or anyone claiming through the joint owner who can come and resist such claims for possession.

Consequently, in this case, on the disclaimer by Shrimati Javitri that she wanted no decree in her favour, Shrimati Ram Kali was entitled to a decree for possession over the whole property. Obviously no decree could be passed in her favour for joint possession with trespassers and she could not seek partition against trespassers. Partition could be sought only against persons jointly holding land under some legal right. The refusal to grant the decree for possession of the whole property was, therefore, not justified.

7. The appeal is consequently allowed and the suit for possession in favour of Shrimati Bam Kali is decreed with costs in all the Courts. Even though Shrimati Javitri has not claimed possession in her own right, the possession of Shrimati Ram Kali will enure to her benefit as a joint owner.