
Gauribai Vs Padamnath

C.S.A. No. 480 of 1951

Court: Madhya Pradesh High Court

Date of Decision: Feb. 22, 1957

Acts Referred:

Limitation Act, 1908 " Article 144

Citation: (1957) J LJ 831

Hon'ble Judges: G.P. Bhutt, J

Bench: Single Bench

Advocate: P.R. Padhye, for the Appellant; G.S. Padhye and K.L. Gupta, for the Respondent

Final Decision: Allowed

Judgement

Bhutt, J.

This is plaintiff's appeal from the decree dismissing their suit for possession.

2. The following genealogy would facilitate the understanding of the case;

Kali Prasad

(d. 1910 A.

D.)

Prabhunath Awadhbiharilal Kunjbiharilal

(d. 1938) (d. 21-7- d. 7-1-

1947) 1927)

Tukaram

(deft. 1)

PadumnathBansilalMohanlal Babulal S. 5 S. 6

(deft. 2) (deft. (deft. 4) (deft. 5)(not

3) impleaded)

Gauribai Umabai Annapurnabai

(Plff. 1) (Plff. 2) (deft. 6)

Tukaram, defendant No. 1, is dead and is represented in this appeal by his widow and sons, respondents 1 (a) to 1 (e).

3. It is not disputed that Kall Prasad had built a house in Ramaiyapura Jagdalpur, in the year 1908. It consisted of three blocks, the southern block

being in possession of Kunjbharilal. Plaintiffs alleged that Kali Prasad had divided the house between his sons and accordingly the southern block

was the exclusive property of Kunjbharilal. This plea was accepted by the trial Court but was negated in appeal. The finding of the lower appeal

court whether there was partition of the house between the sons of Kali Prasad is one of fact. It cannot, therefore, be questioned in second appeal.

Plaintiffs' claim to that house, therefore, cannot be entertained.

4. The other house in dispute is situated in Gangamunda, Jagdalpur. Plaintiffs claimed that this house was built by Kunjbharilal with his separate

earnings and accordingly formed his exclusive property. Ex. P. 5 is an extract from Ground-rent Register of the Jagdalpur Town Committee, which

shows that right from the year 1920 to 1927, when Kunjbharilal died, the house was recorded in his name as owner. All the plaintiffs' witnesses

have testified to the fact that this house was built by Kunjbharilal. Even the defendants' witness, Loknath (1-2. D.W. 2) admitted that the house

was constructed by Kunjbharilal after acquiring the plot from the State. The lower appeal Court was, therefore, obviously mistaken in surmising

that Kunjbharilal might have only supervised the construction, Loknath further said that Kunjbharilal had borrowed money from the State for the

construction of this house. The mere fact that he could not give the details of the loan did not justify the lower appeal court to discredit his

evidence. Apart from whether he had raised money for construction of the house, Kunjbharilal obviously was an earning member and was,

therefore, likely to have funds of his own for acquiring the site and constructing the house. It would appear from the evidence of defendant No. 1

Tukaram (P.W. 21) that Awadhbharilal also had built a house in Ramaiyapura in 1931, which was his exclusive property. It thus appears that after

the death of Kali Prasad, although the brothers were joint they were earning separately and acquired separate property as exclusive owners. The

lower appeal Court has not given a clear finding as to who had constructed the house in suit. The trial Court has discussed this question, and also

the source of money, elaborately in its judgment, and its finding is supported by the bulk of evidence and probabilities of the case. Therefore, the

finding of the lower appeal Court, which is perfunctory and conjectural, cannot be accepted.

5. Since the house was recorded in the exclusive name of Kunjbharilal in public records during his lifetime, it ostensibly belonged to him. In

Mahadeo Appa vs. Sadasheo (First appeal No. 73 of 1949, decided on 12-9-1956), it was held by a Division Bench of this Court, to which I

was a party, that a member of a joint family is not burdened with any presumption that the property in his possession is joint family property and it

is for the party, who alleges that it is joint family property, to establish the existence of such ancestral property as may have formed a sufficient

nucleus for the acquisition: See also Shrinivas Krishnarao Kango vs. Narayan Devji Kango (1955) I.S.C.R. 1. Therefore, it was for the defendants

to prove the existence of an ancestral property which could have formed a sufficient nucleus for the acquisition of the house. All that appears on the

record is that Kali Prasad had left only a house in Ramaiyapura. This house, however, could not have yielded any income as it was used by the

family itself for residence in these circumstances, it must be held that the house was the self-acquired property of Kunjbiharilal.

6. This house was sold by defendants Nos. 1 to 5 to defendant No. 7 who is respondent No. 7 in this appeal. He claimed to be a bona fide

purchaser without notice of the plaintiffs' title. This contention was negatived by both the Courts below. It is apparent that bad defendant No. 7

only looked into the previous records of the Town Committee, he would have come to know of Kunjbiharilal's ownership of the house. He must,

therefore, be deemed to have notice of the title of his beaks The finding of the Courts below was accordingly correct and is confirmed.

7. The question then is whether the plaintiff; have title to the house. In this connection their plea was that their mother remarried Shivnath (P.W. 1)

after the death of Kunjbiharilal and had, therefore, lost her right to the house. Defendants Nos. 1 to 6 had, in para 2 of their written statement,

admitted her remarriage. So far as defendant No. 7 is concerned, he had not specifically denied it. Shivnath as also Radhamani (P.W. 17), have

testified to her remarriage. It is no doubt true that Radhamani described herself as his "kept wife". This does not, however, mean that she had not

the status of a legally married wife, "the word kept was evidently intended only to distinguish a remarried widow from one who is married which

varies." In these circumstances", the lower appeal Court was evidently mistaken in holding that her remarriage was not proved. The trial Court has

discussed this question in detail in its judgment and its finding in favour of the remarriage is accordingly restored.

8. The lower appeal Court was again mistaken in questioning the validity of the marriage on the ground that the parties were not members of the

same castes. This question was not raised in the pleadings and could not be taken up for consideration. It is true that Radhamani P.W. 17 said that

Shivnath P.W. 1 was not a Kayastha. This was, however, only a casual statement coming from an ignorant woman and has no value when no

question on the point was put to Shivnath himself while he was in the witness-box. In these circumstances, the trial Court was right in holding that

the title to the house vested in the daughters of Kunjbiharilal after the remarriage of their mother.

9. There is no evidence on record that the title of the plaintiffs was denied by the defendants at any time. On the other hand, it would appear from

the letter of Awadhbiharilal dated 8th May 1944, Ex. P-10, that he had admitted the right of the plaintiffs. Similarly, his son Tukaram, defendant

No. 1 had, in his letter Ex. P-8 dated 25-7-1946, stated that he had no objection to hand-over the house to them. The plaintiff's title to the house

was, therefore, never disputed. The suit is clearly governed by Art. 144, Schedule I of the Indian Limitation Act, and as it was instituted within 12

years from the date when a hostile title was first asserted in 1947, it is within limitation.

10. The house in question is doubtless owned by the plaintiff's (sic) with their sister Annapurnabai, defendant No. 6. As co sharers, however, they

are entitled to eject trespassers from the entire house. The appeal accordingly partly succeeds. The decree of the lower appeal Court is set aside

and it is directed that the defendants do place the plaintiffs in possession of the house situate at Gangamunda, Jagdalpur. Defendants shall suffer

their own costs throughout and pay those of the plaintiffs in all the Courts in proportion to success. Rest of the costs shall be borne by the plaintiffs.