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Jagnoo Vs Rameshwar Narain Singh and Others

Court: Madhya Pradesh High Court

Date of Decision: Sept. 29, 1980

Acts Referred: Contract Act, 1872 â€" Section 197

Citation: (1980) JLJ 769

Hon'ble Judges: M.L. Malik, J

Bench: Single Bench

Advocate: K.M. Agrawal, for the Appellant; N.S. Kale for respondent No. 1 and A.G. Dhande, for the Respondent

Judgement

Malik, J.
Eight Second appeals Nos. 417 (Jagnoo v Rameshwar Narayan Singh and three others), 418 (Tikaram and another v.

Rameshwar Narayan Singh and another). 419 (Govind v. Rameshwar Narayan Singh and another), 420 (Motilal and others v. Rameshwar

Narayan Singh and others), 510 (Rameshwar Narayan Singh v. Uraj Singh and others). 511 (Rameshwar Narayan Singh v. Uraj Singh and two

another), and 513 (Rameshwar Narayan Singh v. Uraj Singh and others) all of 1972, (four by the plaintiff and four by the defendants) are being

disposed of by this common judgment.

2. To state the facts briefly, Hirderam had seven sons, five from the first wife and two from the second. In or about 1947, he brought about a

partition. The five sons from the first wife were given a share in one lot proportionate to their interest and Hirderam and his two sons from the

second wife retained another lot proportionate to their share. We are concerned with the lands which had fallen to the share of Hirderam and his

two sons from the second wife. The two sons are Rameshwar Narayan Singh (the plaintiff) and Uraj Singh (the defendant). At the time of partition,

in 1947, both the brothers were minors. The father and the two sons lived together under the same roof. Hirderam, so long he was alive (he died in

the year 1957) managed the lands. After his death, Uraj Singh managed the affairs. Rameshwar Narayan Singh was still a minor. He was born on

1-2-1044 and attained majority on 31-1-1962. Uraj Singh looked after his younger brother got him educated and married. In the partition of the

year 1947 the lands which fell in the lot of Hirderam and his two sons from the second wife, were not divided by metes and bounds. In 1950,

Hirderam transferred his undivided share to the two sons Obviously, the motive was that the sons from the first wife should be excluded from

inheritance.

3. In the year 1958, the two brothers separated. Rameshwar Narayan Singh was not satisfied with the share allotted. He felt that Uraj Singh had

retained for himself better lands. The two brothers then exchanged their lots and Ex. D-3, a registered partition deed dated 17-1-1969, was drawn

up. The two brothers are now in seperate possession of lands as per this document.

4. The plaintiff Rameshwar Narayan Singh then filed the present eight suits in the year 1970 challenging the transfers made by Uraj Singh; four

during his minority and four after he had attained majority (the transfers were made between May, 1959 and April, 1964). According to him, after

the partition of the year 1947, the two brothers held the lands as tenents-in common Uraj Singh was not and could not be the Karta of the family

since the family had already disrupted. At best, he was a de facto guardian. He had no authority whatsoever, to transfer his share in the lands. He

was, therefore, entitled to joint possession to the extent of his half share in the lands transferred, and also to mesne profits.

5. The defence was that the sons of the first wife alone had separated from Hirderam in 1947. That did not bring about partition inter se amongst

Hirderam and his two sons from the second wife. They still, constituted a joint Hindu family. Hirderam was the Karta of the family till his death.

After him, Uraj Singh was the Karta. He made the alienations in his capacity as Karta, for legal necessities and benefit of the estate. That the

alienations were, therefore, binding on Rameshwar Narayan Singh. That Uraj Singh had sold uneconomical lands of mouza Junwani and also of

mauza Doma and from out of the consideration received, he had purchased better lands in village Doma. Originally, the two brothers had 25 acres

in village Doma. At the time of partition in 1968, they had 41 acres. The plaintiff having received his half share in 41 acres, he was estopped from

challenging the alienations. He had by accepting partition ratified the transfers since the benefit of the transfers was also equally divided in the shape

of the lands purchased in village Doma.

6. The two Courts below held that after the partition in 1947, Hirderam and his two sons, though living under the same roof, and though cultivating

the lands jointly, had become tenants-in common. Uraj Singh could not act as Karta of the family. The transfers made by him as a de-facto

guardian of Rameshwar Narayan Singh during his minority were void. Those transfers could not be ratified by Rameshwar Narayan Singh after

attaining majority. The plaintiff''s claim for joint possession and mesne profits was accordingly decreed in four cases where the transfers were made

prior to 31-1-1962. In the other four cases, the plaintiff''s claim was dismissed The Courts held that the plaintiff had impliedly ratified those

transfers by accepting benefits in the partition of the year 1969. He could ratify those transfers since made after he had attained majority-and were

not void ab initio.

7. The eight appeals thus came to be filed, four by losing defendants. and four by the plaintiff.

8. The learned counsel for the transferees argued that the Courts below proceeded on the broad based proposition that once partition was

admitted or proved, there was presumption that all the property was divided and even, if the property was held in cammon, the presumption was

that the coparceners held it as tenants-in cammon and not as joint tenants. The Courts were not inclined, it appears, to believe that there could

possibly be a partition-partial as to the persons separating. They overlooked the recent pronouncements of the Supreme Court in Bhagwati Prasad

Sah and Others Vs. Dulhin Rameshwari Kuer and Another, , reiterated in Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury, S, that

merely because a member of the family severs his relations, there is no presumption that there is severance between the other members"". The

question whether there is severance between other members is one of fact to be determined on a review of ad the attending circumtsunes. t is from

the intention to severe followed by conduct which seeks to effectuate that intention that partition results, mere specification of shares without

intention to severe does not result in partition.

The counsel submitted that it was not an uncommon feature that sons from one wife claimed partition when the father was attached more with his

second wife and children born of her. When sons by one wife separated, there could be no presumption that sons from the other wife also

separated. They could remain joint and enjoy as members of a joint family what remained of the joint family property after separating the share of

the sons from the first wife.

The counsel said that even in a case of partial partition, for determining the shares of seceding coparceners the shares of all the coparceners would-

have to be determined as a preliminary step. That determination by itself would not be decisive that a partition had taken place amongst the rest

who for all intents and purposes wanted to remain united If some coparceners wanted to secede, they could nut compel all the rest to secede.

Partition, the counsel submitted, was really a process by which joint enjoyment was transformed into an enjoyment in severality.

9. In the present case, Herderam and his, sons did never mean to enjoy their respective shares in severality. They lived under the same roof. The

income of the property was not shared. It remained blended as before. There was community of interest and unity of possession between the three

members The whole income from the property was brought to the common chest and dealt with according to the modes of enjoyment by the

members of an undivided family. It was logical to presume, the counsel said, that Hirderam would, not desire his minor sons from the second wife

to separate. If he was required to look after them and their property as a natural guardian, why should he think of disrupting the status of the family

? The natural desire would be that they should remain an undivided Hindu family after the sons of the first wife had seceded.

10. I have perused the record. The way in which the property was dealt with, leaves this Court in no manner of doubt that Hirderam and his two

sons from the second wife had not separated. They did not enjoy the property in severality. They continued to be members of a joint family. The.

sons from the first wife alone had separated.

11. That being so, Hirderam was the Karta of the family till his death. Uraj Singh would be the Karta after him Uraj Singh alienated the lands in his

capacity as Karta of the family. The Hindu Minority and Guardianship Act would not affect his rights. There is concurrent finding of fact that the

alienations were made for the benefit of the estate. The finding is hardly assailable. Uraj Singh, as the evidence goes, is not a man of wasteful or

immoral habits. There is no proof that he squandered the money or appropriated it for self enrichment. He found certain lands inconveniently

situated and unproductive and, therefore, sold them. He purchased from the sale proceeds richer lands in village Doma In the famine year of 1961,

the crops had failed. In some years the bullocks had died. The younger brother had to be educated and married. Uraj Singh, the Courts find,

utilized the sale-proceeds in a prudent way. The alienations were, therefore, binding on the plaintiff. Uraj Singh has added to the family property

seven houses and sixteen acres of land in village Doma. (See paras 9 and 15 of Uraj Singh''s deposition).

12. All the eight suits filed by the plaintiff, therefore, deserved to be dismissed.

13. The learned counsel for the transferees cited para 468 from Mayne on ""Hindu Law and Usage"" XI Edition at page 570, in particular the

following passage :

It would seem from an observation of the Privy Council in Balabux v. Kakhmabai that no agreement for a reunion on behalf of a separated minor

coparcener could be made by his father or mother as his guardian. But it must be remembered that as it is open to the father or mother as his

guardian to effect a separation on behalf of the minor coparcener, it would be equally open to the father or mother as his guardian to agree to a

reunion on behalf of the minor. At any rate so far as the power of the father is concerned, the text of Brihaspati and the passage in the Mitakshara

1, vi, 7 appear to be sufficient warrant.

The counsel argued in the alternative, that where a father had a power to effect separation even of a minor son, the volition being entirely his, he

could at the time of partition claimed by adult members, say that the minor members would continue joint with him. That would not actually mean

reunion but secession of only those who wanted partition, the family otherwise continuing joint.

Such in ah probability was the case. Hirderam had no desire to separate his minor sons The conduct and dealing with the property after the

secession of the sons of the first wife, show that this unit of family continued joint.

14. The transferees should also succeed on their plea of estoppel. The plaintiff, if he were tenant-in-common in the property that was allotted to

this group, could make no further demand of partition but just division of the land as per his share already determined in 1947. He could not claim

a share in the property built after 1947 unless he pleaded and proved that the acquisition of that property was from out of the income earned by

him in severality In the present case, he claimed a partition in 1968. He knew that his elder brother had made alienations and had built houses and

purchased new lands. There could be no doubt that the elder brother had not wasted the money but had utilised it in improving and managing the

lands or in building new property. If he thought, the alienations were detrimental to his interest, he could at the time of partition in 1968-69 elect

between the two alternative courses : (i) Sue the alienees for returning to him his share of the land. In that event, he must forego sharing of the

property built out of the sale-proceeds and (ii) share the newly acquired property and forego his right to challenge the alienations. The general

principle of estoppel is that a party cannot be allowed both to approbate and reprobate. He cannot both challenge the alienations and take

advantage of the consideration received. That is also the principle of ratification u/s 197 of the Contract Act which the Courts applied in respect of

alienations made by Uraj Singh after Rameshwar Narayan Singh had attained majority. The plea of estoppel would apply even in respect of

alienations made during his minority, since on attaining majority, the boy elected to share the new property acquired by the sale proceeds.

15. The learned counsel for the plaintiff argued that before this Court applied the principle of estoppel by election, the Court must be satisfied that

the plaintiff had sufficient information and knowledge of the two rights inconsistent to each other and that he had to choose one of those rights. If

the plaintiff had no such knowledge, the principle of estoppel would not apply.

16 Should this Court believe that the plaintiff had no knowledge of the alienations and no knowledge of fresh acquisitions ? The partition between

the brothers took olace in 1968, six years after the plaintiff attained majority An educated by as he was, he must have collected all information of

alienations made, property built, the sources utilised, the income the lands yielded etc. At the time of partition, in estimating the share of each,

alienations made are taken into account, if a coparcener had made the alienations for his personal purposes or for his personal benefit, the value of

the alienations are usually debited against him. Partition once made is generally irrevocable.

Now if alienations are set aside at the instance of the plaintiff, the purchasers would claim a refund from Uraj Singh, who in turn would ask for

reopening of the partition already made. He would then say that the plaintiff could not claim a share in the newly built property, the houses and land

purchased by him in village Doma

17. This Court has reasons to believe that the plaintiff obtained partition in 1969 with full knowledge of the alienations and the acquisitions. The

plaintiff is estopped from challenging the alienations having elected to take the benefit,

18. In the result, all the eight suits filed by the plaintiff deserved to be dismissed. I accept the four appeals filed by the transferees and set aside the

decrees of joint possession and mesne profits granted in favour of the plaintiff. His suits shall stand dismissed. The appeals filed by the plaintiff fail

and are hereby dismissed.

Costs on the plaintiff throughout. Counsel"s fee as per schedule.