
(1870) 03 CAL CK 0003

Calcutta High Court

Case No: Special Appeal No. 2376 of 1869

Teja Gorain and Others

APPELLANT

Vs

Raol Gorain and
Another

RESPONDENT

Date of Decision: March 23, 1870

Judgement

Mitter, J.

We are of opinion that the plaintiff's suit ought to be dismissed. The plaintiff asks for a declaration of his future right to a one-sixth share in certain villages specified in the plaint by setting aside an alienation made by his father so far back as the year 1849. It is quite clear that if the plaintiff has any right to any ancestral property which his father has improperly alienated, that right is a vested right existing during the lifetime of his father, and not a mere contingent right which is to accrue on the death of his father. If this is so, there can be no doubt that the plaintiff's claim for the declaration of a future right cannot be entertained. But, be this as it may, it appears from the plaintiff's own admission that he is not entitled to a declaration of right for the one sixth share in suit. It is admitted that there has been no partition of the estate belonging to the joint undivided family of which the plaintiff is only one of the members, and that the plaintiff's father is still alive. It is clear, therefore, that the plaintiff is not entitled to say that he has a right to a one-sixth or to any other specific share of the family property so long as the family is joint. It is contrary to the fundamental theory of a joint undivided Hindu family under the Mitakshara law to allow one member of such a family to say, that he is entitled to a specific share of the family estate; and even if we were to treat this suit as a suit for partition which it is not, it is impossible for us to make out how the plaintiff can lay claim to a one-sixth of the property sold to the defendants when his father is still alive. It is said that this objection was not taken in the Court below; but it is an objection on the face of the plaint, and it goes to the root of the title upon which the plaintiff's suit is based. It has been said that even if we reject the plaintiff's prayer for declaration of title, we may still make a declaration to the effect that the deeds of sale under which the defendants hold the property in dispute are void on the ground of no legal necessity for the alienation having

been proved. But we do not see any reason whatever why we should proceed to make such a declaration in the plaintiff's favour. He has not offered to give back to the appellants the consideration-money which his father had taken from them; and when we find that he is entitled to sue at once for possession notwithstanding that his father is still alive, we do not see any reason why we should go out of our way, and make a declaration in his favour when he could have, if he liked, sued for the possession of the property at once. The plaintiff laid claim to a one-sixth share of the property in dispute. If that claim is good in law, the plaintiff's father has no share whatever in the property, but doubtless by the Mitakshara law the father ordinarily would have his share. For these reasons, and without entering into the question as to whether the alienations upon which the defendants' title is based were made for valid necessity or not, we are of opinion that the judgment of the lower appellate Court must be reversed, and the plaintiff's suit dismissed.

2. As the objection was not taken in the Courts below, we simply reverse the lower appellate Court's judgment without costs. Each party is to bear his own costs in all the Courts.