

HIGH COURT OF MADHYA PRADESH; BENCH
INDORE
SINGLE BENCH ; HON'BLE SHRI N.K.MODY,J.

Second Appeal No. 291 / 2000

Shankar S/o Gangaram

Vs.

Ramprasad and another

Appellant by Shri M.L.Agrawal senior advocate with Shri Ravi Shukla,advocate.

Respondents No. 1 by Shri A.S.Garg, senior advocate with Shri Aaditya Garg, Advocate

Respondent No.2/State by Shri SD Bohra, Government Advocate.

J U D G M E N T

(Delivered on 30th day of March, 2012)

Being aggrieved by judgment and decree dated 11/08/2000 passed by 2nd Additional Judge, Dhar, in CRA No.38-A/1999 whereby judgment dated 8/08/1996 passed by Civil Judge, Class 2, Dhar in CS No.105-A/2008 whereby the suit filed by respondent No.1 was dismissed, was decreed, present appeal has been filed.

2. Short facts of the case are that Ramprasad respondent No.1 filed a suit for partition, possession and mesne profits on 18/07/1988 alleging that respondent No.1 and appellant are real brothers and sons of Ramprasad who died before 8 years of filing of the suit, for the land bearing survey Nos. 216/3 area 0.779 hectares and 217/2 area 0.176 hectares situated at village Bagdi belong to Kishan, Mangilal s/o Shobharam, Radheshyam s/o Rampal, Girdhari s/o Heeralal, Gattu s/o Kanhai and Gangaram s/o Ganpat. It was alleged that the land was recorded in the joint names up to year 1977-78. It

was alleged that in collusion, partition took place on 29/09/1979 and the land bearing survey nos. 216/3 area 0.779 hectares and 217/2 area 0.176 hectares got mutated by the appellant in his name on the basis of the alleged collusive partition which took place on 29/09/1979. It was alleged that appellant and respondent No.1 are real brothers and the suit property was ancestral. Therefore, respondent No.1 having equal share in the suit property in which respondent No.1 is having rights by birth. It was alleged that order of mutation dated 29/07/1979 in favour of the appellant is not binding upon the respondent No.1. It was prayed that suit filed by respondent No.1 be allowed and the decree of partition, possession be passed along with mesne profits. Suit was contested on various grounds including on the ground that all the members of the family have not been impleaded as party in the suit. Therefore, suit filed by the appellant be dismissed. Learned counsel submits that apart from this all the members of the Joint Hindu Family are not included in the suit, therefore, suit deserves to be dismissed. It is alleged that suit also suffers from the defect of non joinder of necessary parties. It was also alleged that since the appellant is in occupation of the land, therefore, on the basis of hostile title, the appellant has become Bhumiswami of the land. It was prayed that suit filed by the appellant be dismissed. After hearing learned counsel for the parties, learned trial Court dismissed the suit against which appeal was filed which was allowed and the judgment and decree passed by the trial Court was set aside against which present appeal has been filed. Learned counsel submits that Gangaram was having two wives namely Nathibai and Nabibai. Suit has been filed by respondent No.1 wherein all legal representatives of Nathibai and Nabibai.

Have not been impleaded as party to the suit. It is submitted that apart from this other party was also belonged to undivided joint Hindu Family which has not been included in the partition. Learned counsel further submits that in the facts and circumstances of the case, learned trial Court has rightly dismissed the suit filed by respondent No.1 which has wrongly been dismissed by the appellate Court. It is submitted that appeal filed by the appellant be allowed and the impugned order passed by the appellate Court be set aside.

3. Learned counsel for the respondent No.1 submits that no illegality has been committed by the learned Court below in setting aside the judgment passed by the learned trial court. It is submitted that appeal be dismissed.

4. From perusal of the record it is evident that Gangaram was one of the members of the undivided Joint Hindu Family and alongwith other members. Gangaram was having two wives Nathibai and Nabibai. Appellant and respondent No.1 are sons of Nathibai. In the alleged partition for which allegations are made in the plaint which took place on 29/09/1979 the land was recorded in the name of Shankarlal who is appellant, the total land, which came into the hands of Nathibai mother of appellant and respondent No.1 was 5 Bighas of which the name of appellant Shankarlal was recorded and rest of 5 Bighas of land came into the hands of Nathibai, who is second wife of Gangaram. Since appellant is claiming half share in the property, which is recorded in the name of appellant, therefore, the sons and daughters of Nathibai are not the necessary parties. The defence taken by the appellant is that the land was purchased in the name of son of respondent No.1 Ramkaran but for that there is no document on record. In the facts and

circumstances of the case learned appellate Court was justified in reversing the judgment passed by the learned trial Court, whereby suit was dismissed and the findings recorded by the appellate Court that all co-sharers are not necessary parties in the suit filed by the respondent No.1 is legal and the alleged admission that respondent No.1 became Sanyasi/Sadhu does not affect his rights in any manner. In view of this appeal filed by the appellant has no merits and the same stands dismissed.

(N. K. MODY)
J U D G E

Mohorir/SP