

Khemchand Shankar Choudharyand ... vs Vishnu Hari Patil And Others on 3 December, 1982

Equivalent citations: 1983 AIR 124, 1983 SCR (1) 898, AIR 1983 SUPREME COURT 124, (1983) 1 APLJ 17.2, 1983 BBCJ 17, (1983) KER LJ 10, 1983 UJ (SC) 20, 1983 (1) SCC 18, (1983) 1 SCR 898 (SC), (1983) 1 LANDLR 311, (1983) 1 CIVLJ 139, (1983) 2 BOM CR 294, 1983 BOM LR 85 264

Author: E.S. Venkataramiah

Bench: E.S. Venkataramiah, Syed Murtaza Fazalali

PETITIONER:

KHEMCHAND SHANKAR CHOUDHARYAND ANOTHER

Vs.

RESPONDENT:

VISHNU HARI PATIL AND OTHERS

DATE OF JUDGMENT03/12/1982

BENCH:

VENKATARAMIAH, E.S. (J)

BENCH:

VENKATARAMIAH, E.S. (J)

FAZALALI, SYED MURTAZA

CITATION:

1983 AIR 124

1983 SCR (1) 898

1983 SCC (1) 18

1982 SCALE (2)1120

ACT:

Code of Civil Procedure, Section 54, Scope of- In accordance with the law (if any) for the time being in force relating to the partition or the separate possession of shares", meaning of-Whether the transferees "pendente lite" for partition of parts of an estate assessed to payment of land revenue to the Government have a locus standi to appear before the Revenue authorities - Transfer of Property Act, Section 52 read with Rule 10 of order XXII Civil Procedure Code.

HEADNOTE:

One Natu, m his suit filed in 1940 against his nephew Laxman for partition of the joint family property and for

separate possession of his half share obtained a decree in his favour. The total area of the lands to be divided is 108 acres. Natu and his four sons assigned on August 22, 1945, 318th share in decree obtained by them in favour of Prem Chand Patil. Prem Chand filed a Special Civil Suit No 67 of 1950, for partition of his assigned share in the decree. In that suit, a compromise decree was passed providing that if the sons of Natu paid Rs. 30,000 on or before March 1, 1958, then the decree-holder would not be entitled to claim any partition and in default he should get possession of the share claimed by him. The sons of Natu committed default and Prem Chand Patil became entitled to partition of 318th share of 108 acres of land. Prem Chand Patil, however assigned his decree in favour of Vishnu Hari Patil, respondent No. 1, who started the execution proceedings, under section 54 of the Code of Civil Procedure under which the lands in respect of which assessment was payable to the Government had to be divided by the Collector and the parties had to be put in possession of their respective shares. During the pendency of these proceedings, the appellants purchased from the sons of Natu who were parties to the suit five fields out of these 108 acres-four through private sales and one by court auction-and were in possession of the said fields, having acquired title thereto. These fields were allotted by the Collector in favour of Respondent No. 1 as part of his 3/8th share without giving any consideration to the claims of the appellants for equitable partition. The appellants challenged the validity of the partition proceedings before the Commissioner, Bombay Division. The appeal was dismissed on the ground that the appellants had no locus standi to ask for an equitable allotment under section 54 Code of Civil Procedure, as their names did not figure in the decree even though the sales in their favour were not in dispute. The further appeals before the State Government as well as the Writ Petitions filed before the Bombay High Court also failed. Hence the appeals by special leave.

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Allowing the appeals, the Court.

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HELD : 1.1. Section 52 of the Transfer of Property Act, no doubt, lays down that a transferee, pendente lite of an interest in an immovable property which is the subject-matter of a suit from any of the parties to the suit will be bound in so far as that interest is concerned by the proceedings in the suit. Such a transferee is a representative-in-interest of the party from whom he has acquired that interest. [902 E-F]

1:2. A transferee from party of a property which is the subject matter of partition can exercise all the rights of a transferor. When a party can ask for an equitable partition, a transferee from him, therefore, can also do so.

[903 D-E]

2:1. Rule 10 of order XXII of the Code of Civil

Procedure clearly recognises the right of a transferee to be impleaded as a party to the proceedings and to be heard before any order is made. It may be That if he does not apply to be impleaded, he may suffer by default on account of any order passed in the proceedings. But if he applies to be impleaded and heard he can also prefer an appeal against an order made in the said proceedings but with the leave of the appellate court, where he is not already brought on record. [902 FG-]

2:2. The position of a person on whom any interest has devolved on account of a transfer during the pendency of any suit or proceeding is some what similar to the position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding, or an official receiver who takes over the assets of such a party on his insolvency. An heir or a legatee or an official receiver or a transferee can participate in the execution proceedings even though their names may not have been shown in the decree, preliminary, or final. If they apply to the court to be impleaded as parties, they cannot be turned out.

[902 G-H; 903 A-B]

3. The Collector, who has to effect partition of an estate under section 54 of the Code of Civil Procedure has, no doubt, to divide it, in accordance with the decree sent to him. But if a party to such a decree dies leaving some heirs about whose interest there is no dispute, he need not fold up his hands and return the papers to a civil court. He may proceed to allot the share of the deceased party to his heirs. Similarly, he may, when there is no dispute, allot the share of a deceased party in favour of his legatees. In the case of insolvency of a party, the official Receiver may be allotted the share of the insolvent. In the case of transferees, pendente lite also, if there is no dispute, the Collector may proceed to make allotment of properties in an equitable manner instead of rejecting their claim for such equitable partition on the ground that they have no locus standi. Such a construction of section 54 of the Code of Civil Procedure advances the cause of justice. Otherwise, in every case where a party dies or where he transfers some interest in the suit property pendente lite the matter has got to be referred back to the Civil Court, even though there may be no dispute about the succession, devolution or transfer of interest. In any such case, where there is no dispute if the Collector makes an equitable partition taking into consideration the interests of all concerned including those on whom any interest in the subject matter has devolved, he would

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neither be violating the decree nor transgressing any law. His action would not be ultra vires. On the other hand, it would be in conformity with the intention of the Legislature which has placed the work of partition of lands subject to payment of assessment to the Government in his hands to be

carried out "in accordance with the law (if any) for the time being in force relating to the partition or the separate possession of shares". [903 B-C; F-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 3759- 3761 of 1982.

From the judgment and order dated the 26th June, 1980 of the High Court of Bombay in S.C. Application No. 752/75, 951 and 953 of 1975.

P.H. Parekh, M.A. Ram and Hemant Sharma for the Petitioners V.N. Ganpule for the Respondents.

The Judgment of the Court was delivered by VENEATARAMIAH, J. The Short question involved in these appeals by special leave is whether the transferees during the pendency of a suit for partition of parts of an estate assessed to payment of land revenue to the Government which is the subject matter of the suit have locus standi to appear before the Revenue authorities in proceedings under section 54 of the Code of Civil Procedure and ask for an equitable partition of the lands even though they had not been impleaded as parties to the suit in the civil court.

Natu had filed a suit in the year 1940 against his nephew Laxman for partition of their joint family property and for separate possession of his half share in it and had obtained a decree for it. Natu and his four sons Shrawan, Nago, Digambar and Vithal assigned on August 22, 1945 3/8th share in the decree obtained by them in favour of Prem Chand Patil. Prem Chand Patil filed Special Civil Suit No. 67 of 1950 on the file of the Civil Judge, Senior Division, Jalgaon for partition of his 3/8th share in the decree. In that suit, a decree was passed on compromise. The said decree provided that if the sons of Natu paid Rs. 30,000 on or before March 1, 1958 then the decree holder would not be entitled to claim any partition and in default he should get possession of the share claimed by him. The sons of Natu failed to pay the amount of Rs. 30,000 as per decree and the result was that Prem Chand Patil became entitled to partition and separate possession of his share, Prem Chand Patil, however, assigned his rights under the decree in favour of Vishnu Hari Patil, respondent No. 1 herein who started execution proceedings. Though the said proceedings were styled as execution proceedings, they were strictly final decree proceedings under section 54 of the Code of Civil Procedure under which the lands in respect of which assessment was payable to the Government had to be divided by the Collector and the parties had to be put in possession of their respective shares. The total area of the lands to be divided was in the order of 108 acres in which Vishnu Hari Patil had 3/8th share and the remaining land had to be allotted to the share of the sons of Natu.

It should be stated here that five fields out of the lands which were to be divided by the Collector had been sold to the appellants during the pendency of the partition suit. Four of the said fields had been sold under private sales and one field in a court auction and they were in possession of the respective purchasers during the partition proceedings under section 54 of the Code of Civil Procedure. The appellants had acquired title to the said fields from the sons of Natu who were

parties to the suit. The said fields were allotted by the Collector in favour of Vishnu Hari Patil as part of his 3/8th share without giving any consideration to the claims of the appellants for an equitable partition. The remaining 5/8th share was allotted in favour of the sons of Natu who had no objection to the partition effected by the Collector. The appellants challenged the validity of the partition proceedings in appeal before the Commissioner, Bombay. The appeals were dismissed on the ground that the appellants had no locus standi to ask for an equitable allotment under section 54 of the Code of Civil Procedure as their names did not figure in the decree. The appeals filed by the appellants before the State Government against the orders of the Commissioner were also dismissed. The appellants, thereafter filed petitions before the High Court of Bombay under Article 226 of the Constitution questioning the correctness of the partition. Those petitions were also dismissed. These appeals are filed against the judgment of the High Court.

There is no dispute that each of the appellants had acquired certain rights under the sale deeds and the court auction referred to above and were in possession of certain parts of the estate which was to be partitioned under section 54 of the Code of Civil Procedure. It is also true that their names had not been mentioned in the decree which was sent for execution to the Collector. The appellants do not also dispute that they being purchasers pendente lite are bound by the proceedings in the suit by virtue of the provisions of section 52 of the Transfer of Property Act. The only prayer made by them is that since the sales in their favour were not in dispute and as they had acquired title under the parties to the suit and were also in possession of the fields in question the Collector should have considered their prayer for an equitable partition of the estate and, if possible, to allot the fields in question to the share of the sons of Natu so that they could continue to remain in possession of the lands purchased by them. The appellants allege that the sons of Natu, their transferors, had colluded with Vishnu Hari Patil, respondent No. 1 and had accepted the partition made by the Collector in order to cause prejudice to them. The sons of Natu got their 5/8th share of the property in addition to the price paid by the appellants for the five fields purchased by them. The appellants were not allotted any lands at the partition.

The question for consideration is whether the High Court, the Government and the Revenue authorities were right in the circumstances of the case in holding that the appellants had no locus standi to ask for an equitable partition particularly when the sales in favour of the appellants were not in dispute.

Section 52 of the Transfer of Property Act no doubt lays down that a transferee pendente lite of an interest in an immovable property which is the subject matter of a suit from any of the parties to the suit will be bound in so far as that interest is concerned by the proceedings in the suit. Such a transferee is a representative in interest of the party from whom he has acquired that interest. Rule 10 of Order 22 of the Code of Civil Procedure clearly recognises the right of a transferee to be impleaded as a party to the proceedings and to be heard before any order is made. It may be that if he does not apply to be impleaded, he may suffer by default on account of any order passed in the proceedings. But if he applies to be impleaded as a party and to be heard, he has got to be so impleaded and heard. He can also prefer an appeal against an order made in the said proceedings but with the leave of the appellate court where he is not already brought on record. The position of a person on whom any interest has devolved on account of a transfer during the pendency of any suit

or a proceeding is somewhat similar to the position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding, or an official receiver who takes over the assets of such a party on his insolvency. An heir or a legatee or an official receiver or a transferee can participate in the execution proceedings even though their names may not have been shown in the decree, preliminary or final. If they apply to the court to be impleaded as parties they cannot be turned out. The Collector who has to effect partition of an estate under section 54 of the Code of Civil Procedure has no doubt to divide it in accordance with the decree sent to him. But if a party to such a decree dies leaving some heirs about whose interest there is no dispute should he fold up his hands and return the papers to the civil court ? He need not do so. He may proceed to allot the share of the deceased party to his heirs. Similarly he may, when there is no dispute, allot the shares of a deceased party in favour of his legatees. In the case of insolvency of a party, the official receiver may be allotted the share of the insolvent. In the case of transferees pendente lite also, if there is no dispute, the Collector may proceed to make allotment of properties in an equitable manner instead of rejecting their claim for such equitable partition on the ground that they have no locus standi. A transferee from a party of a property which is the subject matter of partition can exercise all the rights of the transferor. There is no dispute that a party can ask for an equitable partition. A transferee from him, therefore, can also do so. Such a construction of section 54 of the Code of Civil Procedure advances the cause of justice. Otherwise in every case where a party dies, or where a party is adjudicated as an insolvent or where he transfers some interest in the suit property pendente lite the matter has got to be referred back to the civil court even though there may be no dispute about the succession, devolution or transfer of interest. In any such case where there is no dispute if the Collector makes an equitable partition taking into consideration the interests of all concerned including those on whom any interest in the subject matter has devolved, he would neither be violating the decree nor transgressing any law. His action would not be ultra vires. On the other hand, it would be in conformity with the intention of the Legislature which has placed the work of partition of lands subject to payment of assessment to the Government in his hands to be carried out 'in accordance with the law (if any) for the time being in force relating to the partition or the separate possession of shares'.

In view of the foregoing, the orders of the High Court, the State Government and the Commissioner holding that the appellants had no locus standi to ask the Collector to effect an equitable partition have got to be set aside and they are accordingly set aside. The partition effected by the Collector is also set aside.

The appeals are accordingly allowed and the case is remanded to the Collector to make a fresh partition on an equitable basis in accordance with the decree and the undisputed rights of the appellants referred to above. The Collector while effecting partition may consider whether the fields in possession of the appellants may be allotted to the share of the sons of Natu so that the appellants may continue to remain in possession of their respective fields. Since the suit is a very old one, the Collector may expeditiously complete the work of partition preferably within six months from the date of receipt of a copy of this order. No costs.

S.R.

Appeal allowed.

