Raj Kumar Raghubanchmani Prasad Narain ... vs Ambica Prasad Singh (Dead) By Lawyers ... on 18 December, 1970

Equivalent citations: AIR1971SC776, (1970)3SCC350, 1971(III)UJ132(SC), AIR 1971 SUPREME COURT 776

Author: J.C. Shah

Bench: J.C. Shah, A.N. Grover

JUDGMENT

J.C. Shah, C.J.

1. Raja Bahadur Harihar Prasad Narain Singh hereinafter called 'the Raja' settled in 1936 an area of 15 bighas of land in village Nanour Tauzi Nos. 11021 and 11163 out of his joint family estate upon Ambica Prasad and Harihar Prasad--hereinafter called "respondents 1 and 2". The Annual Jama of the land was Rs. 15/-. The appellant who is the son of the Raja filed in 1942 a suit for partition of the joint family estate. The suit was compromised. The appellant claims that the land settled upon respondents 1 and 2 were allotted to his share by that compromise. In 1946 the appellant dispossessed respondents 1 and 2 from the land settled upon them. Respondents 1 and 2 commenced an action in the Court of the Subordinate Judge, Patna, against the appellant and his brother for a decree for possession of the land and for mesne profits. The appellant by his written statement denied the settlement and set up the plea by respondents 1 and 2, that he and the members of his family were at all relevant times in possession of the land and that he had not dispossessed respondents 1 and 2 as alleged.

2. The Trial Court decreed the suit holding that the land in "dispute was" settled upon the respondents 1 and 2 by the Raja and that the Respondents 1 and 2 were in possession of the land since that date and that they were wrongfully dispossessed by the appellant The High Court in appeal confirmed the findings of the Trial Court and dismissed the appeal field by the appellant. With certificate granted by the High Court under Article 135 of the Constitution, this appeal has been preferred.

3. The decision of the Trial Court which was confirmed by the High Court proceeded upon appreciation of evidence on question of fact. Both the Courts have held that there was a settlement in favour of respondents 1 and 2 by the Raja, that Respondents 1 and 2 were in possession of the land since that date and that they had been forcibly dispossessed of the land by the appellant This Court normally does not interfere with con-current findings on questions of fact and does not enter upon a re-appraisal of the evidence.

4. It was urged that even on the findings recorded no decree could be passed in favour of respondents 1 and 2 because they had failed to establish that the lands were settled for legal necessity or for benefit to the estate of the joint family, and since respondents 1 and 2 had failed to make out any such case, the suit filed by respondents 1 and 2 must fail. In the written statement as originally filed, no plea was raised that the settlement amounted to an alienation not binding upon the other members. There was no issue on that question and obviously the Trial Court did not decide that question. The High Court was of the view that the settlement was beneficial to the estate as an act of prudent management by the Raia. The High Court relied upon several circumstances: the fact that respondents 1 and 2 were the gotias of the family of the appellant, that in respect of certain lands taken away from them no consideration had been paid, that all along respondents 1 and 2 helped the zamindar in a previous litigation and certain promises were made to them as reward for services rendered which till then were not rewarded and that respondents 1 and 2 used to perform the ceremony of Ghiudhari in the family. The High Court further held that the estate was a large one and was utilized for supporting those families which were loyal to the estate, and when lands were settled with such families "the Jama charges were practically nominal". In view of these circumstances the High Court held that the settlement made by the Raja was proved to be an act done for the benefit of the estate. We see no reason to disagree with that finding of the High Court.

5. In any event an alienation by the Manager of the joint Hindu family even without legal necessity is voidable and not void. On the findings of the Trial Court, respondent 1 and 2 were in possession of the land, since the year 1936. The appellant forcibly deprived respondent 1 and 2 of possession of the land. In the circumstances respondent 1 and 2 were entitled to be restored to possession of the land, unless the appellant in an action for partition of the joint family established his claim to the land in dispute. No such attempt was made by the appellant.

6. The appeal must therefore fail and is dismissed with costs.

7. It is necessary to invite the attention of the High Court that the certificate pursuant to which the appeal has been filed under Article 135 of the Constitution is plainly defective. The High Court merely recorded that "the value and nature of the case fulfilled the requirements of Article 135 of the Constitution and the case was a fit one for appeal to the Supreme Court under Article 133(1)(a) or Article 133(1)(c) of the Constitution". This Court has often pointed out that a certificate which does not set out the grounds in support of the order granting certificate is defective. Article 135 of the Constitution only invests the Supreme Court with jurisdiction in respect of any matter to which the provisions of Article 133 or Article 134 do not apply if jurisdiction and powers in relation to that matter were exercisable by the Federal Court immediately before the commencement of the Constitution under any existing law. Under Sections 109 and 110 of the CPC an appeal did lie to the Federal Court If the] conditions prescribed thereunder were fulfilled. But prima facie, the conditions of Sections 109 and 110 of the CPC were not fulfilled. The value of the subject matter in the Court of First Instance was Rs. 5,250/-, and the judgment of the High Court was one of affirmance. The case raised no substantial question of law. In our judgment, the High Court committed a serious error in granting a certificate under Clauses (1)(a) and (1)(c) of Article 133 in this case.