Nichhalbhai Vallabhai And Ors. vs Jaswantlal Zinabhai And Ors. on 23 August, 1965

Equivalent citations: AIR1966SC997

Author: V. Ramaswami

Bench: A.K. Sarkar, Raghubar Dayal, V. Ramaswami

JUDGMENT

V. Ramaswami, J.

1. This appeal is brought on behalf of Defendants 1 to 6 and 24 to 39 against judgment of the High Court of Gujarat dated April 17, 1963 in First Appeal No. 215 of 1961 allowing an application for amendment of the plaint and remanding the suit for retrial before the Civil Judge (S. D.) at Surat.

2. The first respondent filed the suit "for partition of the Joint family properties" in the Court of the Civil Judge (S. D.) at Surat, being Special Suit No. 5 of 1957, against his grandfather, his father, his uncles and others. The plaintiff is the son of Defendant No. 14. Defendant No. 1 is the grandfather of the plaintiff and Defendants Nos. 2 and 3 are the brothers of defendant No. 1. Defendants Nos. 7, 18, 24 and 26 arc the uncles of the plaintiff. The contesting defendants alleged that the plaintiff was not entitled to maintain the suit for partition of the joint family properties because he had not obtained the previous consent of his father--Defendant No. 14 who was joint with his own father--Defendant No. 1 and his brothers--Defendants Nos. 7, 18, 24 and 26. The contention of the defendants was based upon the decision of the Full Bench of the Bombay High Court in Apaji v. Ramachandra, (1892) ILR 16 Bom 29 (FB) in which it was held that according to the Mayukha law as applicable in Gujarat the plaintiff cannot maintain a suit for partition against the defendants in the absence of assent of his father. On July 28, 1959 the plaintiff made an application to the Trial Court for amending paragraph 3 of the plaint. It was alleged by the plaintiff that in paragraph 2 of the plaint, the words " vus Ns ('and have')" and in paragraph 3 of the plaint the words " ves Nhvs (i.e. 'and are')" had crept in through inadvertence and mistake and the words should, therefore, be allowed to be deleted. The plaintiff further stated that his claim in the suit was that there had already been a severance of status between the members of the joint family and the suit was merely for partition of the joint family properties by metes and bounds. The plaint is in Gujarati language and the official translation of paragraph 3 of the plaint is as follows:

> "The pedigree that is a genealogical tree of our family showing relationship between the parties is as shown in Schedule B annexed hereto we were "and are" members of a joint and undivided family. And the goods and properties and businesses of our joint family are kept in different names of the different members of our family according to

convenience and it appears that changes are made in it. But no partition of the large and valuable goods and properties of our joint family is made at all legally and mutually between each branch and the members of the branches. But the different properties and businesses and cash and their income have continued to be in the management of different members on behalf of all. Although the separation of the three original branches and between the members of the branch of Nichhalbhai out of the original three branches is made by the ancestors but the partition of goods and properties is not made separately and mutually between each branch or between the members of branches according to the shares. But different persons of the family keep different properties and businesses of the family in their own possession and management and manage the same. And the income of the property and the businesses which are in their respective possession and management has remained with them. It is proper to take account of the same from them and to determine the total properties fit for partition and to partition the same according to law and to give me my share according to law from the property which the parties may be found entitled to possess. And the rights and liabilities of all the members of the family may be determined and it is just to make partition of all the goods and properties of the joint family separately according to law. This suit is filed for the said purpose and for getting my share which according to law comes to 1/3 X 1/7 X 1/5--1/105 separated by doing so and for getting the same from those defendants who may have the immovable and movable properties and cash etc.; and from those who may be found to have the same on taking the accounts."

The trial Court, however, rejected the application for amendment of the plaint and thereafter dismissed the suit in view of the decision of the Full Bench in (1892) ILR 16 Bom 29 (FB). The plaintiff preferred an appeal before the High Court of Gujarat, being First Appeal No. 215 of 1961. The appeal was allowed by the High Court by its judgment dated April 17, 1983. The High Court set aside the decree of the trial Court and ordered that the application for amendment of the plaint should be allowed and the suit should be remanded for being retried in accordance with law.

3. The first question arising in this case is whether the High Court was right in taking the view that the suit brought by the plaintiff was merely a suit for partition by metes and bounds and not a suit for severance of the Joint family status. On behalf of the appellants Mr. Purshotam Trikumdas submitted that the High Court had not correctly interpreted the plaint. The learned Counsel referred to the sentence "We were and are members of the Joint and undivided family" of paragraph 3 of the plaint and said that this was a clear statement that the plaintiff had not effected severance of his status from the joint and undivided family. We do not think there is any justification for this argument. On the question of interpretation of the plaint it is important to consider all the averments made by the plaintiff in paragraph 3 together and the other connected paragraphs and it is not possible to draw an inference from any isolated sentence in the 3rd paragraph without regard to its context. In the same paragraph there is a clear allegation by the plaintiff that there was separation "of the three original branches and between the members of the branch of Nichhalbhai out of the original three branches". It is further alleged that "partition of goods and properties is not made separately and mutually between each branch or between the members of the branches

according to the shares". It is evident from this sentence that the plaintiff himself has made a distinction between "separation of the three original branches and between members of the branch of Nichhalbhai" on the one hand and the "partition of goods and properties" on the other. This constitutes, therefore, a clear allegation of severance of status not only of the three benches but also of the members of the branch of the first defendent--Nichhalbhai. In the same paragraph the plaintiff goes on to say that the properties of the family should be separately distributed and that his share--1/105--of movable and immovable properties should be separated and delivered to him. It is also important to notice that in paragraph 6 of the plaint the plaintiff has stated that the properties "were and are held in common" and in paragraphs 8, 9, 10 and 12 of the plaint the word "distribution" is deliberately used. It is a well-known canon of interpretation that it is the duty of the Court not to confine itself to the force of a particular expression but to collect the intention from the whole instrument taken together. Having, therefore, regard to the statement of the plaintiff in all the paragraphs of the plaint and interpreting the plaint as a whole we are satisfied that the High Court was right in holding that the suit was not a suit brought for severance of joint family status but was a suit merely for partition by metes and bounds.

4. We shall then proceed to consider the next question whether the High Court was right in allowing the application of the plaintiff for amending the plaint by deleting the words " vus Ns (and have)" in " ves Nhvs (i.e. paragraph 2 and the words 'and are')'" in paragraph 3 of the plaint. It was contended by Mr. Purshotam Trikumdas on behalf of the appellants that by allowing the amendment the High Court had permitted the plaintiff to convert the suit into another of a different and inconsistent character. It was submitted by Counsel that if the suit was one for severance of joint family status the plaintiff was bound to fail in limine it) view of the decision of the Bombay High Court in (1892) ILR 16 Bom 29 (FB). ft was contended that the plaintiff cannot be allowed to escape this consequence by amending a suit as one for partition by metes and bounds. We do not think that there is any warrant for this argument. We consider that the High Court was right m taking the view that the words " vus Ns (and have)" and the words " ves Nhvs (i.e. 'and are')" were put in paragraphs 2 and 3 of the plaint by mistake and inadvertence and t was, therefore, a proper case in which the court should exercise its discretion under Order 6, Rule 17, Civil Procedure Code by allowing the amendment to be made. It was contended by Mr. Purshotam Trikumdas that the plaintiff was introducing a new case by making the amendment. We do not accept this argument as correct. We have already given reasons for holding that even apart from the amendment the plaint should be properly construed as asking for relief for partition by metes and bounds and not for severance of joint family status. We are of opinion that the words " vus Ns (and have)" "ves Nhvs in paragraph 2 and the words (i.e. 'and are')" in paragraph 3 of the plaint have been inserted on account of some mistake or misapprehension on the part of the plaintiff and it was, therefore a proper case in which the Court allowed the plaint to be amended. The reason is that if the amendment is refused the plaintiff may have to bring another suit and the object of the rule for allowing amendments to the plaint is to avoid multiplicity of suits. The present case falls within the principle laid down by this Court in L. J. Leach and Co. Ltd. v. Jardine Skinner and Co.,). In that case the appellants had filed a suit for damages for conversion against the respondents on the allegations that the respondents were the agents of the appellants, that the appellants had placed orders for certain goods with the respondents, and that the respondents had actually imported the goods but refused to deliver them to the appellants. The suit was dismissed on the findings that the parties stood in the relationship of

seller and purchaser, and not agent and principal and that the title in the goods could only pass to the appellants when the respondents appropriated them to the appellants' contracts. In appeal before the Supreme Court, the appellants applied for amendment of the plaint by raising, in the alternative, a claim for damages for breach of contract for nondelivery of the goods. The application was allowed by this Court on the ground that it was a fit case in which the amendment should be allowed and the fact that a fresh suit on the amended claim was barred by limitation is only a factor to be taken into consideration in the exercise of the discretion as to whether the amendment should be ordered or not, and does not affect the power of the court to order it, if that is required in the interests of justice. The case of the plaintiff for amendment in the present case stands on a stronger footing because there is no question of limitation involved and we are of the opinion that the High Court was right in permitting the amendment to be made and remanding the suit to the trial Court for a fresh hearing in accordance with law.

5. It should be added that Mr. Purshotam Trikumdas submitted that he is not challenging the correctness of the decision of the Full Bench in Apaji's case, (1892) ILR 16 Bom 29 (FB) though before the High Court the correctness of that decision was questioned. We should like to make it clear that we are not expressing any opinion with regard to the correctness of that decision or its applicability to this case.

6. For the reasons already expressed we hold there is no merit in this appeal which is accordingly dismissed with costs.