Dr. Gurmukh Ram Madan vs Bhagwan Das Madan on 31 August, 1998

Equivalent citations: AIR 1998 SUPREME COURT 2776, 1998 ALL. L. J. 2236

Author: S. Rajendra Babu

Bench: S. Rajendra Babu

PETITIONER:
DR. GURMUKH RAM MADAN

Vs.

RESPONDENT:
BHAGWAN DAS MADAN

DATE OF JUDGMENT: 31/08/1998

BENCH:
A.S. ANAND, S. RAJENDRA BABU

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Rajendra Babu, J.

The plaintiff in a suit is in appeal before us. He filed a suit on July 4, 1970 claiming half share in a house of which he is in joint possession and sought for partition. The defendants in the suit resisted the claim and contended that the plaintiff had no right, title or interest in the said house and the same belongs to him exclusively of which he is in possession as owner. The trial court found that the evidence tendered by the appellant is inconsistent, unnatural and does not inspire confidence. The case put forth by him is that the defendant had obtained from the office of the Sub-Registrar the original deed dated 3rd November, 1963. However, execution of the said deed had not been established and it was also no clear from the material on record that the consent of the defendant in respect thereof had been obtained. There was no evidence to show that the appellant had made any contribution either towards the purchase of the said site or in the construction of the house thereof.

The said suit was dismissed. On appeal the High Court examined the question whether the appellant has any interest to the extent of half share or any other share in the property in dispute. The case set up by the appellant in the High Court was that the defendant had made a transfer of half share in the house in favour of the plaintiff as is borne out from a registered instrument Ex. A. 6.

The High Court noticed that the plot in which the house is situated was acquired on 1st November, 1960 measuring about 1650 sq. ft. Having purchased the lease hold rights from Sadhu Ram for a consideration of Rs.4,950/- of which Rs. 200/- was paid as earnest money and the balance was paid at the time of registration, the said deed is said to have been executed on 1st November, 1960. The defendant contended that subsequent to the purchase of the said suit, he put up construction at his expense exclusively. He is in possession of the property and has been paying municipal taxes and realizing amounts from the tenants in occupation over a portion of the house while in the other portion he is in occupation. The courts below were satisfied as to the exact explanation given by the defendant that there were enough resources with him to purchase the property and put up construction thereon. thus burden lay very heavily upon the appellant-plaintiff to prove his case Mela Ram, the father had died in the year 1965. He contended that even during his life time, there was a partition among the six brothers in or about the year 1962 and that the property dispute was also included in the partition and the sale was in writing though unregistered. Subsequently, he put forth a case that no writing had been made in this regard. At another stage, the appellant-plaintiff contended that there was no joint family at all. Yet another kind of case was put forth by the appellant that there was joint purchaser of the land along with the respondent and the contribution had been raised by the respondent as a co-owner. A perusal of the plaint would disclose that there is no reference to the source of acquisition of property in dispute not does it mention about the purchases of the land over which the construction stands and much less the appellant-plaintiff having contributed any amount over towards the purchases of the site or towards raising the construction. Even all notices that had been issued prior to the suit were significantly silent on this aspect of the matter. Thus, the claim made by the appellant was hopelessly lacking in the necessary particulars as to the manner in which he could support the same. The pleadings in this state of affairs and the evidence tendered by him was characterised by the High Court as thoroughly unreliable. He has taken different kinds of stands and has done several somersaults in the course of his deposition by contradictory stands taken by him. In the evidence tendered by him, he has stated that he along with the defendant purchased the land for rupees five thousand and both of them contributed in equal shares and of the construction of the house a sum of Rs. 16,400/- had been spent and that he paid a sum of Rs.8,200/-. That was the evidence tendered by him in the Examination-in-Chief. In cross-examination he stated curiously that the land had been purchased by his father and changed that stance to that his brother may have purchased it or their father may have purchased the land in the name of both. But he was firm on the question that he and his brother respondent had contributed equally towards the construction. He also maintained that his father was also party to the construction and had invested money. Later on, he took the stand that he had given some amount in cash and some amount was remitted by him out of the Savings Bank account. On a totality of the analysis of the evidence, the High Court came to the conclusion that the appellant stood self- condemned. One of the D.Ws Sadanand, appellant's brother who is not concerned with this litigation in the course of his evidence stated that the defendant had exclusively purchased defendant had exclusively purchased out of his own resources and he had constructed the

house of his own expense for which he purchased material from time to time. The defendant produced vouchers in support of having purchased the construction material.

In Ex. 6 dated 3rd November, 1962 it was noticed that it was a certified copy of the registered deed. The trial court did not admit this document in evidence on the ground that absence of the original document had not been duly accounted for and relied upon certain decisions. The appellant contended that original document dated 3rd November, 1962 had been withdrawn by the respondent from the office of the sub-Registrar concerned and evidence on record does not bear it out. In the ordinary course of probabilities, the original document should have been in custody of the appellant in whose favour it had been executed. He did not take it back from the office of the Sub-Registrar and no effort was made to make available the records from the Sub-registrar's office in this regard. A letter is said to have been written by the appellant and in reply thereto he received a communication from the Gyan Chand Mehta stating that the document had been taken away by the respondent on November 19, 1962. It is not clear as to how Gyan Chand Mehta could send a letter of this nature when he was not an employee of the office of the Sub-Registrar and therefore the trial court did not accept this piece of evidence. the appellant, however, admitted that he did not enquire from the office of the Sub-Registrar as to how the respondent was allowed to take away the original even after receiving the letter from the said Gyan Chand Mehta who was only a petition writer.

Strong reliance had been placed in the trial court as well as in the High Court on Section 65(f) of the Evidence Act. Section 65(f) states that secondary evidence is permissible when the original is a document of which a certified copy is permitted by the Evidence Act or by any other law in force in India, to be given in evidence. All that it means is that secondary evidence is admissible notwithstanding the existence of the original when it is a document of which a certified copy is permitted to be produced by the Act or any other law. The document in question is not a public document and the document could not have been let in evidence except after explanation as to the non-availability of the original in an appropriate manner. Therefore, the view taken by the High Court in this regard that section 65(f) was not attracted to the case is justified. The High Court found on an analysis of the material on record that the greater probability is that the said document was taken away from the office of the sub- Registrar by the appellant himself inasmuch as the respondent was not a willing party to it. The respondent had not admitted either in the pleadings or course of evidence of having executed the document dated November 3, 1962. The appellant himself had let in similar evidence in the shape of a letter which he admittedly wrote to Sadanand who was examined as a witness by the respondent mentioning about the transaction in question and that document was produced in original by D.W. Sadanand. When it was confronted to the appellant he admitted that he had written the said letter and that letter was marked as Ex. A. 28. The contents of the letter may be adverted to:-

> " I am to inform that in spite of your advice to dear Bhagwan half of the ownership of Bardwar house has been transferred to me. But I have to advice to you that for God sake do not say any thing to dear Bhagwan because he has not done this of is own accord. but under unknown mysterious circumstances which I shall explain you personally when I meet."

Commenting on this letter, the Court observed that it disclosed that the transaction under Ex. A. 6. had not proceeded from the respondent of his own accord and there were instead certain mysterious circumstances which brought about the same. However, what those mysterious circumstances are has not been explained by the appellant. The matter is thus left in vagueness. The evidence of D.W. Sadanand was critically examined by the High Court. It was noticed that the appellant had admitted to him "abhi Jhagara nahin hai. Unhoney us asal dastawas ko far diya the". D. W. Sadanand does not claim to have seen the document personally or being torn out, but this was the representation made to him by the appellant himself. Sadanand in fact stated that he saw he original in the appellant's custody which was held to be corroborative of what had been pleaded by the respondent in the course of written statement and evidence. The High Court, though the document had not been admitted. examined the same and found that it had recited that the plot of land had been purchased by him along with his brother and the house was raised by them together and at the relevant time he did not execute any deed, but he was doing the same now and acknowledged payment of Rs. 2,500/- having been received earlier. when the evidence on record is overwhelming and ultimately indicated that there was no occasion for the respondent to have stated on 3rd November, 1962 that the appellant had from the inception been co-owner of the property. The recitals therein as to having been paid a sum of Rs. 2,500/- could not be true as the case put forth by the appellant is that he had contributed Rs. 8,200/- earlier and he would not have paid a further sum of Rs. 8,200/- at the time of the execution of the document. Thus, there was intrinsic material to demonstrate that the recitals in the document could not have been true. On that basis, the High Court rejected the case put forth on behalf of the appellant on the basis of this document.

The contentions put forth before us are identical to those which are urged in the trial court and the High Court. There is no material to show that the property was joint or the family possessed joint funds. There was no nucleus to augment or add by way of accretion to the same. There is no material to show that the appellant had contributed any sums of money in the purchase of the house or any contribution thereof. Evidence on record out weight the proof sought to be placed by the appellant in this regard. Firstly, the title deed stood in the name of respondent alone. Respondent placed material before the Court that he had purchased the building material at different stages to raise the construction. He was in possession of the house exclusively right from the date of the construction. The appellant if he had given any money to the respondent could have placed some evidence on record in support of the same. There is nothing forthcoming either in the shape of a documentary evidence or oral evidence except his own self-serving statements which are self-contradictory. Assertions and acclamations will not produce a strong case. The tearful arguments of the appellant had not appealed to us in the absence of even a titer of evidence. The trial court and the High Court have thoroughly examined the pleadings, the evidence-oral and documentary in a critical manner and have adverted to all the circumstance pointed out by the appellant in arriving at their conclusion. The case put forth by the appellant as to whether the property was joint family property or whether he had contributed any funds towards purchase of the plot are principally in the region of appreciation of evidence and do not call for any interference of this Court in exercise of jurisdiction under Article 136 of the Constitution . Even otherwise, the concurrent findings of the trial court and the High Court are unexceptionable.

Hence, this appeal stands dismissed. However, considering the circumstances of the case, there shall be no order as to costs.