Prem Chand And Anr. vs Mst. Bittan Devi on 18 August, 1953

Equivalent citations: AIR1954ALL143, AIR 1954 ALLAHABAD 143

JUDGMENT

Randhir Singh, J.

1. This is a defendant's second appeal against the judgment and decree of the District Judge of Gonda modifying the judgment and decree passed by the Civil Judge, Bahraich.

2. One Barati Lal had two sons, Brahma Prasad and Jot Prasad. Brahma Prasad had a son Bhagawti Prasad who had two sons, Prem Chand and Gyan Chand. Jot Prasad, the second son of Barati Lal, died issueless leaving a widow Bittan Devi. Barati Lal was possessed of two plots Nos. 5277 and 5298 which had groves standing on them along with considerable other property with which I am not concerned in the present appeal. Barati Lal died in 1932 when his two sons, Brahrna Prasad and Jot Prasad, were alive. Jot Prasad died in 1936. His widow Smt. Bittan Devi instituted a suit for the possession of a half share in the grove standing in the two plots mentioned above on the allegations that a half share in each of these two groves belonged to her husband Jot Prasad and that she succeeded to the property of her husband on his death in 1936.

The cairn was resisted on behalf of the defendants who were the representatives of Brahma Prasad on two points, firstly it was alleged that plot No. 5277 had been made the subject of a waqf by Barati Lal in 1908 and was under the management of the waqf with which the parties had no concern. Secondly it was urged that Jot Prasad died as a member of joint Hindu family and grove No. 5298 was a part of the joint family property and as such the plaintiff Bittan Devi had no right or interest in that property which passed to the survivors of the joint family.

3. The lower Court came to the conclusion that the property was the joint ancestral property of Barati Lal and as such Jot Prasad had no separate interest in it. It also held that Jot Prasad died as a member of a joint Hindu family and the property passed to the survivors. With regard to plot No, 5277 the trial court held that there had been a valid waqf in respect of this property and as such the plaintiff acquired no title in this property. The plaintiff then went in appeal to the District Judge who modified the decree of the trial Court. The District Judge held the waqf to be valid but found that grove No. 5298 was the self-acquired property of Barati Lal and passed to Jot Prasad under a will dated, 12-10-1927, vide Ex. I and as such Jot Prasad was the separate owner of a half grove. He decreed the claim of the plaintiff in respect of this half share and maintained the judgment of the trial court in respect of the other plot No. 5277.

The defendants have now come up in second appeal. They have submitted to the decree of the two Courts below in respect of plot No. 5277 and no appeal has been instituted challenging the propriety of the order of the Courts below in respect of that grove. They have come up in appeal only in respect

of the decree of the District Judge regarding grove No. 5298.

4. The first point which arises for determination in this appeal is whether grove No. 5298 was the self-acquired property of Barati Lal or whether the grove constituted the joint family or ancestral property of Barati Lal. In second appeal points of facts are concluded by the findings of the Courts below. The District Judge has held the grove to be the separate property of Barati Lal and it is not open to the appellants to challenge that finding in this Court. It was, however, argued on behalf of the appellants that the lower appellate Court came to a wrong conclusion inasmuch as there was a nucleus of ancestral property in the hands of Barati Lal and as such the burden of proving that any acquisition made by Barati Lal subsequently did not constitute joint family property lay on him. I have, therefore, allowed the learned Counsel for the appellants to challenge the finding on this point.

He has cited -- 'Gulab Chand v. Manni Lal', AIR 1941 Oudh 230 (A) in support of the contention that whenever it is admitted that there was nucleus of property the onus would be on the party pleading that the acquisition was not joint property. A perusal of this reported case, however, shows that in this case the property which constituted the nucleus of the ancestral property was profit yielding property. The only point which was considered was if the quantum of profits could affect the burden of proof. The point as to whether there was or there was not sufficient income from the joint ancestral property would not be taken into consideration in deciding the burden of proof. There have been two later decisions of this Court in which this point came up for consideration more or less directly, vide, -- 'Darshan Singh v. Parbhu Singh', AIR 1946 All 67 (B) and -- 'Suraj Kurnar v. Jagannath', AIR 1935 All 67 (C). In both these cases it was held that the mere existence of nucleus of ancestral property will not by itself raise a presumption that the subsequently acquired properties were joint family properties and will not shift the burden of proving that the properties are separate properties on the person alleging them to be so. To shift this burden on him, it must be proved that the nucleus was of such a character, as, taking into consideration the surrounding circumstances, could have led to the subsequent acquisitions with its help.

The ratio of these two rulings, therefore, is that in order to shift the burden of proving as to whether or not the Subsequent acquisition was joint family property it ought to be established that there was nucleus of profit yielding property and not only nucleus of any kind of joint property. In the present case Barati Lal had only inherited a residential house from his father which too was subsequently rebuilt by him. There is no evidence on the record to prove that this residential house yielded any profit to Barati Lal with the aid of which he could have acquired any property.

5. The land on which the grove was planted was admittedly given as rent free grant to Barati Lal by the Nanpara estate and the grove was then planted by Barati Lal. No funds derived from the ancestral property were utilised or were available to Barati Lal for the acquisition and plantation of this grove. In view of those circumstances the finding arrived at by the Courts below that the property was the self-acquired property of Barati Lal cannot be successfully assailed.

6. The next point which has been urged on behalf of the appellants is that Jot Prasad inherited rights in the grove in dispute in the capacity of a member of a joint Hindu family and as such no property

of Jot Prasad could pass to his widow. The plaintiff has filed a will alleged to have been executed by Barati Lal on 12-10-1927 Ex. 1. A perusal of this will shows that Barati Lal gave away half of this grove to each of his two sons in his life time. This document has been described as a will but on a proper construction it amounts either to a family arrangement or to a family partition. In any case the right granted by Barati Lal to Jot Prasad in this property would be his self-acquired property and even if he had been a member of a joint Hindu family at the time of his death, so far as this grove is concerned, his rights would be those available in property which is self-acquired. Jot Prasad died in 1936 before the Hindu Women's Rights to Property Act, 1937, came into force. Bittan Devi, plaintiff, however, even under the law as it stood in 1937, succeeded to the rights of her husband as a Hindu widow in his self-acquired property. The grove in dispute being the self-acquired property in the hands of Jot Prasad passed to the widow on the death of Jet Prasad in 1936 and the finding arrived at by the lower appellate Court is perfectly correct.

7. No other point has been pressed in arguments.

8. As a result the appeal is dismissed with costs to the respondent. The stay order is vacated.