Jagannath Singh And Ors. vs Tirloki Singh And Ors. on 19 July, 1954

Equivalent citations: AIR1954ALL769, AIR 1954 ALLAHABAD 769

JUDGMENT

Randhir Singh, J.

1. This is a plaintiffs' first appeal arising out of a suit for possession of certain properties of which one Gappu Singh was the last holder.

2. It appears that Gappu Singh, who was possessed of considerable property, died on 3-8-1941, leaving five collaterals as his heirs. They are mentioned in the pedigree given in the judgment of the lower Court.

On the death of Gappu Singh there was a dispute amongst his heirs who belonged to three different branches. The sons of Ram Charan and Sheo Nandan claimed a one-third share each as each of them represented a separate branch; while Mahadeo Singh's three sons claimed a one-fifth share each. This dispute was then referred to the arbitration of some persons and ultimately mutation was made in favour of the three branches in respect of one-third share of the property left by Gappu Singh.

The suit which has given rise to this appeal was then instituted by the three sons of Mahadeo Singh for possession of one-fifth share each in the property left by Gappu Singh. The suit was resisted mainly on the ground that there was a custom in the family under which succession was to go 'per stirpes' and not 'per capita'. It was also pleaded that there had been a family settlement on the death of Gappu Singh and the parties had agreed to lake the property of Gappu Singh 'per stirpes' and not 'per capita'.

Lastly a plea of Section 233 (K), Land Revenue Act, was also taken up in respect of 9 out of 75 items in the property which was the subject of the suit on the allegation that there had been a partition in respect of 9 items of the property.

The trial Gourt held the custom not proved, but found that there had been a family settlement and that the property had been divided by an oral agreement according to the family settlement. The plaintiffs' claim was ultimately dismissed. The plaintiffs have now come up in appeal.

3. In this Court the factum of the agreement between the parties after the death of Gappu Singh has not been challenged and learned counsel for the appellants Chaudhry Haider Husain has stated that he would not challenge the agreement set up on behalf of the defendants. The only point pressed

was that the agreement amounted to a variation in the rule of succession under the Hindu law and as such it was open to the plaintiffs to get out of the agreement and claim a one-fifth share each in the property of Gappu Singh. Reliance has been placed on a ruling of this Court reported in --'Ram Gopal v. Tulshi Ram', AIR 1928 All 641 (FB) (A).

A perusal of this ruling, however, shows that the point urged on behalf of the plaintiffs does not find .support in the ruling cited above. If there has been an oral agreement between two contending parties in respect of disputed rights, and such an agreement is subsequently reduced to writing, registration would become necessary. If, however, there has been an oral agreement, but there has been no document in which the agreement has been recorded, the agreement cannot be held to be bad in the absence of a registered document.

In the present case the defendants and the plaintiffs had arrived at an agreement through the intervention of some other persons and then ultimately they signed the reports made by the patwaris for mutation in accordance with the terms of the agreement. This could by no stretch of imagination be called a record of an agreement. It was the duty of the patwaris of the various villages to make a report for mutation on the death of Gappu Singh and they waited till the parties had come to terms. Reports were made by the patwaris after the parties, who claimed to be the heirs of Gappu Singh, had arrived at an agreement.

There was between the parties a bona fide dispute with regard to the existence of the custom. One party alleged a certain custom which was denied by the other and if the parties subsequently came to terms and divided the property by a family arrangement, such an arrangement cannot be said to be in variance with any law nor can it be said to be bad.

The view taken by the lower Court that the agreement had been proved and that it was given effect to by the parties appears therefore to be correct. It is, therefore, not open to the plaintiffs to challenge the division of the property arrived at by an agreement between the parties before mutation was made.

4. No other point has been pressed in arguments on behalf of the appellants.

5. The appeal has no force and is dismissed with costs to the respondents.