

Bombay High Court

Dhulabhai Dabhai vs Lala Dhula on 31 March, 1921

Equivalent citations: (1921) 23 BOMLR 777

Author: K Norman Macleod

Bench: N Macleod, Kt., Shah

JUDGMENT Norman Macleod, Kt., C.J.

1. One Gema was the owner of certain property which he had mortgaged to one Babashahi. Gema died leaving three sons, Dabhai, Gokul and Hemta. Dabhai died leaving two sons, Dhula and Desai. One Dhula Rama paid off the two mortgages created by Gema, and in consideration of this Gokul and Hemta sold to him a certain plot of land which in these proceedings is referred to as lot A. That was in 1908. Then in 1914 the sons of Dabhai filed Suit No. 239 of 1914 to recover by partition separate or joint possession of one-third share in that property A. Subsequently Dhula Rama filed Suit No. 383 of 1914 to recover his share of the whole of the family property by partition. It will not be necessary to refer to the course which the trial of these two suits took. But on the 4th August 1919 judgment was passed by the District Judge in two first appeals from the judgments of the lower Court in these two original 'suits. The result of that judgment was- that Suit No. 239 of 1914 was dismissed, and in Suit No. 386 of 1914 partition was decreed, property lot A which was estimated in value at two-thirds of the family property being allotted to the plaintiff in that suit, the remainder of the property being given to Dhula and Dabhai as their one-third share.

2. It has been urged that Dhula Rama as the purchaser of lot A from two of the coparceners had no right to file a suit for partition of the whole property. But that question was decided by two decisions of this Court in Pandurang Anandrav v. Bhaakar Shadashiv (1874) 11 B.H.C.R. 72 and in Udaram Sitaram v. Many, Panduji (1875) 11 B.H.C.R. 76. It appears certain from those two decisions that if an outsider purchases a particular portion of joint family property from one of the coparceners, he is entitled to file a suit against the other members of the family for partition, and, on partition, if possible, the property which he has purchased as belonging to a certain coparcener should be given to him as his share. Therefore it is quite clear that Dhula Rama's suit was a perfectly good suit to partition the family property, while the suit of Dhula and Desai Dabhai to recover by partition from the heirs of Dhula Rama either separate or joint possession of one-third share of lot A was entirely misconceived. Really the only question which arises is whether the partition which was effected by the District Judge was a fair and equitable partition. He ' has valued lot A at two-thirds of the whole of the family property and awarded it to the sons of Dhula Rama.

3. It was contended that there was a well in lot A, and that a well in joint family property was indivisible, therefore in some way the sons of Dabhai should be allowed a share in the well. But whatever the law may be, this question was never taken in the lower Courts. The only ground upon which the sons of Dabhai objected to the valuation and the method of partition was that the land in lot A was not properly valued at Rs. 992. The land of that lot was worth Rs. 2,000 as it was the best land and had a well in the field, and therefore in some way they should be given a share in the well. The result then is, as very often happens, that a question of law is raised in second appeal, although the evidence upon which alone that question of law could be decided has not been led in the lower Courts. We do not know the comparative situations of the various items of the family property, and

it is not possible to say whether it would be any use to give the plaintiffs, the sons of Dabhai, the rights of taking water from the well in lot A; nor can it be said that we have the materials to satisfy us that they should be given one-third of lot A as that would involve partition of each item of the joint family property amongst the claimants. It seems to us really that they are seeking in second appeal to set aside the partition which has been made by the District Judge on a ground which cannot be sustained. The District Judge has partitioned the family property in the only way in which it could be partitioned. He has taken the value of each lot, and he has increased the value of lot A by Rs. 50, the value of the trees, which Dhula Raima had sold, and finds the value of lot A to be Rs. 1,492, which is practically two-thirds of the whole of the family property, and awards the rest of the property to the sons of Dabhai. That seems to be a perfectly fair decision. These appeals are dismissed with costs.