

Rukmi Sewak And Ors. vs Mt. Munesari on 12 November, 1952

Equivalent citations: AIR1953ALL332, AIR 1953 ALLAHABAD 332

ORDER

Mushtaq Ahmad, J.

1. This is an application in revision by the first three defendants in a suit for partition of a one-third share in a house. There was also a relief in the plaint that the plaintiff might be awarded the entire house on the principle embodied in Section 4, Partition Act, 4 of 1893.

2. The original owner of the house was one Parag who had two sons, Mahabir and Sahdeo. The former left a daughter Mt. Munesari, the plaintiff-opposite party, and the latter two sons, Shyam Narain and Bal Makund, defendants 4 and 5 respectively. On 2-7.1918, Parag made a will of the house, bequeathing a life interest in a one-third share to the plaintiff and an absolute interest in the remaining two-thirds to defendants 4 and 5. Some time later defendants 4 and 5 mortgaged the entire house to defendants 1 to 3, the present applicants. In 1938 the plaintiff sued for redemption of the mortgage and obtained a decree. Pending an appeal filed by defendants 1 to 3 against that decree these defendants purchased the proprietary title in the house from their mortgagors, defendants 4 and 5, and hence the decree passed by the appellate Court in the redemption suit was confined only to the one-third share in which the plaintiff had a life interest. The plaintiff then obtained formal possession over that share. Afterwards she filed the suit giving rise to this application, claiming the reliefs I have already mentioned, offering Rs. 234 as price for the two-thirds share of defendants 1 to 3 (applicants) in case she was allotted the entire house.

3. The defence taken by defendants 1 to 3 was that as a mere life estate holder the plaintiff was not entitled to sue for partition, much less to claim the entire house under Section 4, Partition Act, that the plaintiff was not entitled to the latter relief also because she never dwelled in the house, that the house was not capable of partition, so that no decree for partition could be passed at all and that these defendants having spent Rs. 200 on repairs no decree could be passed in the plaintiff's favour except on condition of payment of that sum.

4. The trial Court decreed the suit for partition of a one-third share without allowing to the plaintiff the benefit of Section 4, Partition Act. There was a finding that these defendants had spent Rs. 50 on repairs and that the plaintiff was liable to pay one-third of this amount which was made a charge on her one-third share.

5. An appeal by the plaintiff and a cross objection by defendants 1 to 3 were filed against this decree. The former was allowed and the latter disallowed, and the case was remanded to the trial Court with the direction that the plaintiff should be given the benefit of Section 4 of the aforesaid Act. The

present application is against that order.

6. Mr. Ambika Prasad, learned counsel for the defendants-applicants, has mainly argued the question of applicability or otherwise of Section 4, Partition Act. According to him this section did not apply, firstly because the plaintiff never resided in the house, secondly because she was a mere life estate holder, in which capacity she could not even claim a decree for partition and thirdly because that section could be invoked only where the transferee of a share was the plaintiff, and not where he was a defendant, in a suit for partition.

7. As regards the first grounds, I am not prepared to hold that there is any substance in them. Section 4 of the Act is worded thus :

"Where a share of a dwelling house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the Court shall, if any member of the family being a share-holder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such share-holder"

8. On the bare language of this section one would find that the fact of residing in the house is not one of the ingredients of the right to invoke the same. All that is necessary is that any member of the family, who is also a shareholder, is prepared to buy the share of the transferee. On the other question of the plaintiff not being entitled either to a decree for partition simpliciter or to invoke the provisions of Section 4 of the Act, there seems to be no reason why the relief should be denied to a lady having a right only to live in the house for her lifetime. If the object underlying a relief for partition or even the allotment of the entire house to a particular co-sharer under Section 4 of the Act is to secure to him the maximum convenience and benefit by not subjecting the house to a partition but by keeping it intact, that object would hold good even where the plaintiff is not the owner of an absolute but of a mere life interest.

9. As regards the third ground urged by the learned counsel for not applying Section 4 of the Act he relies mainly on the language of the section itself. No doubt there are among others the words "and such transferee sues for partition", that is, the section is to apply only where the transferee is the plaintiff. Prima facie one should think that there is no sound basis for making a distinction between a case in which the transferee is the plaintiff and one in which he or she is a defendant, when the object underlying the section is as I have mentioned above. This question appears to have received judicial consideration in a number of cases, in which it was held that in a suit for partition each party, whether plaintiff or defendant, was entitled to have his share divided and that, if he was the defendant, he was to be treated as a plaintiff for purposes of the suit. These are cases in *Sheoahar Prasad v. Kishun Prasad*, A. I. R. 1941 Pat. 4; *Satya Bhama v. Jatindra Mohan*, A. I. R. 1929 Cal. 269 and *Abu Isa Thakur v. Dinabandhu*, A. I. R. 1947 Cal 426. There is no case of this Court against these cases, and I find myself in entire agreement with the view taken in them, though it is not quite justified by the strict phraseology of the section. It is a sound and perfectly understandable view, and I must adopt it without hesitation.

10. Accordingly, I affirm the order of the Court below and dismiss this application with costs.