Supreme Court of India
Chandramohan Ramchandra Patil & ... vs Bapu Koyappa Patil (Dead) Thr. ... on 19 February, 2003
Author: Dharmadhikari
Bench: Brijesh Kumar, D. M. Dharmadhikari

CASE NO.:
Appeal (civil) 9393 of 1995

PETITIONER:
Chandramohan Ramchandra Patil & Ors.

RESPONDENT:
Bapu Koyappa Patil (dead) Thr. LRs. & Ors.

DATE OF JUDGMENT: 19/02/2003

BENCH:
BRIJESH KUMAR & D. M. DHARMADHIKARI

JUDGMENT:

J U D G M E N T Dharmadhikari J.

The present appellants were defendants before the Trial Court in suit for partition instituted in the Court of Civil Judge, Jr. Division, Kagal, District Kolhapur in the State of Maharashtra. The suit filed by the deceased plaintiff [now represented by his legal representatives impleaded as respondents herein] for partition of the erstwhile Watan or Inam lands of his family was dismissed by the trial court. The First Appellate Court by judgment of reversal decreed the suit of the plaintiff and it has been confirmed by the High Court in second appeal recognising the plaintiff's right of partition of the suit lands to the extent of 1/3 share. The preliminary decree has been framed for passing a final decree and grant of separate possession.

Learned counsel appearing for the defendants, assails the decree of partition granted to the plaintiff/respondent but does not dispute the legal position settled by the two Judges Bench decision of this Court in the case of Kalgonda Babgonda Patil vs. Balgonda Kalgonda Patil etc. etc. [AIR 1989 SC 1042] and three Judges Bench decision of this Court in the case of Annasaheb Bapusaheb Patil vs. Balwant [1995 (2) SCC 543]. In the aforesaid two Judges and three Judges Bench decisions of this Court, it has been held that erstwhile Inam or Watan lands held by the senior most member of the family through lineal descendant on the rule of primogeniture, on abolition of Inamdari or Watandari under the provisions of Bombay Pargana and Kulkarni Watans Abolition Act (60 of 1950) and thereafter by the Bombay Inferior Village Watans Abolition Act, 1958, after re-grant of those categories of land to the Watandar or Inamdar, become partible properties between the members of the family of the Watandar or Inamdar. See the following statement of law in the decision of three Judges Bench in the case of Annasaheb Bapusaheb Patil (Supra) :-

"The lineal primogeniture regulating succession to the estate cannot prevail under Section 4 of 1955 Act, as being nothing more than incidents of the watan which stand abrogated by Section 4 of that Act. It was, therefore, held that watan families if had a hereditary interest in the watan property,

such inheritance enures to the benefit of all the members of the family as the property belongs to the family and all persons belonging to the watan family who had a hereditary interest in such watan property were entitled to be called "watandars of the same watan" within the Watan Act. The members of the joint Hindu family must be regarded as holders of the watan land along with the watandar for the time being and therefore, the re- grant of the lands to the watandar under Section 4 of that Act must enure to the benefit of the entire joint Hindu family. This Court upheld the full Bench judgment of the Bombay High Court reported in Laxmibai Sadashiv Date v. Ganesh Shankar Date and another judgment in Dhondi Vithoba Koli v. Mahadeo Dagdu Koli. The Division Bench judgment in Babgonda case was overruled".

The first ground urged by the learned counsel for the defendants is that the original deceased plaintiff Bapu Koyappa Patil failed to prove his relationship with the main ancestor Suryaji, who was the first Watandar, hence his claim for partition to the extent of 1/3 share was rightly negatived by the trial court.

The question of relationship and the dispute on the correctness of the pedigrees produced by the parties in the case for proof of relationship of the parties with the original ancestor Suryaji, is essentially a question of fact. The trial court in non-suiting the plaintiff has recorded a finding amongst others that in the pedigree Ex.71 the branch of sons of Suryaji, to which the plaintiff claims to be belonging, is not shown and that was produced in proceedings in the year 1945. The First Appellate Court went thoroughly into the dispute of correctness of the rival pedigrees filed by the parties and chose to rely on the oldest pedigree Ex.69 which explains relationship of the members of the family of Suryaji on 05.1.1874. In that pedigree all the branches of sons of Suryaji including the plaintiff's branch was shown. There were, thus, three pedigrees of different periods Ex. 67, 69 and 71 before the court and court came to the conclusion that Ex.71 which is the pedigree produced by the plaintiff has to be accepted as genuine as it gets support from the earliest pedigree of the years 1870 and 1874.

The above discussion of evidence have been duly taken note of by the High Court in second appeal and the decision of the appellate court on that issue has been upheld. For the aforesaid reasons, it is not open to the defendants to raise ground on the correctness of the finding of fact on the issue of relationship. The evidence of pedigree relied by the first appellate court and the High Court is relevant and admissible to prove relationship under Section 30 (5) and Section 50 of the Evidence Act.

Learned counsel appearing for the appellants then urged that the courts below ought to have dismissed the suit for partition on the ground that it was barred by limitation as the predecessors-in-title of the defendants had prescribed his adverse possession on the land. In support of this argument, it is submitted that the most important document was ignored by the courts below being order of the then Regency Court of Kolhapur Estate dated 30th March, 1945 [Ex.68]. The order of the Regency Court of the erstwhile Estate of Kolhapur was passed in appeal in revenue proceedings in which predecessors- in-title of the plaintiff objected to the claim of predecessors-in-title of the defendants to the status of Watandar. The claim of the predecessors-in-title of the defendants to the status of Watandar was on the basis of his adoption by

Hari who was one of the sons of the original Watandar Suryaji.

It is argued that by order dated 30th March, 1945 of the Regency Court, the objection of the predecessors-in-title of the plaintiff was rejected and the predecessors-in-title of the defendants was recognised as Watandar. The erstwhile Watandar, thus, came in possession of the suit lands and there was thus, a clear ouster from the lands of the plaintiff's predecessors-in-title. It is submitted that the possession of the predecessors-in-title of the defendants from the year 1945 was, thus, adverse and had ripened into title by prescription. The trial court, therefore, was right in dismissing the suit for partition on the ground of defendants having prescribed adverse possession.

We find that there is a serious flaw in the legal argument claiming title by adverse possession. The suit lands held by erstwhile Watandar or Inamdar were impartible under the then existing law. The contest inter se for the status of Watandar between members of the family ended by order of Regency Court dated 30th March, 1945 and the only result was that the predecessors-in-title of the defendants was allowed to possess the land as Watandar being the eldest member of the family of original Watandar on the rule primogeniture. After the abolition of Watan or Inam and when a re-grant of the land was made to the Watandar, the properties came back to the whole body of joint family of the erstwhile Watandar and he then possessed the land for and on behalf of the family. Such lands which were re-granted to Watandar became properties returned to the family of the Watandar and became partible. The possession of the predecessors-in-title of the defendants pursuant to the order of Regency Court on 30th March, 1945 as Watandar cannot be held to be adverse to the other members of the family after the abolition of Inams and Watans and regrant of those lands to the Watandar. The Inam and Watan lands thus regranted to the Watandar enured for the benefit of whole family of Watandar and it is only thereafter they became partible. Two courts below have not found any evidence on record to infer adverse possession of the defendants after the lands were returned to the family of Watandar on abolition of Inams and Watans. The right to partition was denied only when the plaintiff demanded partition by a notice. The suit thereafter was filed within the prescribed period of limitation. Similar argument based on adverse possession and limitation has been repelled by three Judges Bench of this Court in the case of of Annasaheb Bapusaheb Patil (Supra) and the following legal position explained therein fully answers the plea against the defendants :-

"The possession of the family property by a member of the family cannot be adverse to the other members but must be held to be on behalf of himself and other members. The possession of one, therefore, is the possession of all. The burden lies heavily on the member setting up adverse possession to prove adverse character of his possession by establishing affirmatively that to the knowledge of other member he asserted his exclusive title and the other members were completely excluded from enjoying the property and that such adverse possession had continued for the statutory period. Mutation in the name of the elder brother of the family for the collection of the rent and revenue does not prove hostile act against the other. The right of the plaintiff to file suit for partition had arisen after the Act has come into force and re-grant was made by the Collector under sub-section (1) of Section 5. The defendant, therefore, must plead and prove that after the re-grant, he asserted his own exclusive right, title and interest to the plaint schedule property to the knowledge of the plaintiff and the latter acquiesced to such a hostile exercise of the right and

allowed the defendant to remain in continuous possession and enjoyment of the property in assertion of that hostile title during the entire statutory period of 12 years without any let and hindrance and the plaintiff stood thereby.

The learned counsel then urged some technical grounds. It is argued that since the High Court did not frame substantial questions of law as required by Section 100 of Code of Civil Procedure, the case should be remanded for fresh decision as is being done by this Court after interpretation of Section 100 of Code of Civil Procedure in the case of Santosh Hazari vs. Purushottam Tiwari (deceased) Thr. LRs. [2001 (3) SCC 179].

From the judgment under appeal, we find that the High Court in its body of judgment has clearly formulated for answer two questions thus :-

"Firstly, whether the plaintiff respondent has established his relationship (as given in the pedigree) and secondly whether the plaintiff is entitled to claim partition?"

In our opinion, these two questions have been lucidly answered by the High Court by considering the arguments advanced before it on relationship and adverse possession. We, therefore, find that there is more than substantial compliance of the provisions of Section 100 of Code of Civil Procedure and a prayer for remand is absolutely without any merit. The suit of the year 1977 under the second appeal in the High Court was decided in the year 1990. We have given full hearing to the parties on all questions of law raised or which would be raised before the High Court. A prayer for remand of the case in such circumstances for fresh decision of second appeal is wholly uncalled for.

Lastly, it is urged that not all the legal representatives of the original plaintiff had preferred appeal against the dismissal of suit by the trial court. In accordance with Order 41 of Rule 4 of Code of Civil Procedure, the appellate court could not have varied the judgment of the trial court against the defendants at the instance of only some of the plaintiffs appealing against the decree.

This argument has no merit. In a suit for partition, plaintiff and defendants are parties of equal status. If the right of partition has been recognised and upheld by the court, merely because only some of the plaintiffs had appealed and not all, the court was not powerless. It could invoke provisions of Order 41 of Rule 4 read with Order 41 of Rule 33 of Code of Civil Procedure. The object of Order 41 of Rule 4 is to enable one of the parties to a suit to obtain relief in appeal when the decree appealed from proceeds on a ground common to him and others. The court in such an appeal may reverse or vary the decree in favour of all the parties who are in the same interest as the appellant. [See Ratanlal vs. Firm Lalman Das (1970) A. SC. 108; and Jiwan Nath vs. State of M.P. (1971) A. SC. 742].

Order 41 Rule 4 of the Code enables reversal of the decree by the court in appeal at the instance of one or some of the plaintiffs appealing and it can do so in favour of even non-appealing plaintiffs. As a necessary consequence such reversal of the decree can be against the interest of the defendants vis--vis non-appealing plaintiffs. Order 41 Rule 4 has to be read with Order 41 Rule 33. Order 41 Rule 33 empowers the appellate court to do complete justice between the parties by passing such

order or decree which ought to have been passed or made although not all the parties affected by the decree had appealed.

In our opinion, therefore, the appellate court by invoking Order 41 Rule 4 read with Order 41 Rule 33 of the Code Could grant relief even to the non-appealing plaintiffs and make an adverse order against all the defendants and in favour of all the plaintiffs. In such a situation, it is not open to urge on behalf of the defendants that the decree of dismissal of suit passed by the trial court had become final inter se between the non-appealing plaintiffs and the defendants.

Consequent upon the aforesaid discussion, this appeal fails and is hereby dismissed with costs.

Counsel's fee be allowed as per rules.