

Before Mahesh Grover, J.

INDER SAIN AND ANOTHER,—Appellants/Plaintiffs

versus

TIKA RAM AND OTHERS,—Respondents/Defendants

RSA No. 2394 of 1983

1st April, 2010

Code of Civil Procedure, 1908—Joint Hindu family—Sons seeking partition & rendition of accounts of joint firm—Whether a person can seek partition of joint Hindu family property during life time of his father—Death of father during pendency of suit—Because of changed circumstances when father died and plaintiff No. 3 also expired, his legal representatives held entitled to seek partition of joint property, being successors-in-interest of deceased-plaintiff No. 3.

Held, that there was no writing to show that plaintiff No. 3—Sat Narain had separated from the joint family. The defendants had also failed to prove that the property in question was purchased from the individual funds to Tika Ram or Ram Kishan. The findings of the first appellate Court on this aspect of the matter are, therefore, correct and deserves to be upheld. In such an eventuality, when the claim of plaintiff No. 3 was negatived only on the ground that the father was alive, I am of the opinion that because of the changed circumstances when Tika Ram has concededly died and even plaintiff has since expired, his legal representatives are, therefore, entitled to seek partition of the joint property, being the successors-in-interest of deceased-plaintiff No. 3-Sat Narain.

(Para 14 & 16)

Further held, that the findings of the first appellate Court regarding the shop in question being joint property of plaintiff-Sat Narain and the defendants are upheld and it is further held that the legal representatives of plaintiff-Sat Narain are entitled to seek partition thereof as well as the rendition of the accounts of the firm being run therefrom.

(Para 18)

Nemo, for the appellants.

Vijay Pal Singh, Advocate, for the L. Rs of respondent No. 3, Sat Narain.

None for other respondents.

(2) R.S.A. No. 2436 of 1983

Nemo for the appellants.

Vijay Pal Singh, Advocate, for the L. Rs of respondent No. 1, Sat Narain.

None for other respondents.

(3) R.S.A. No. 542 of 1984

Vijay Pal Singh, Advocate, for L. Rs of appellant.

None for other respondents.

MAHESH GROVER, J :

(1) This common judgment will dispose of the above mentioned three appeals which have been preferred against judgment and decree dated 19th September, 1983 passed by the Additional District Judge, Jind (hereinafter described as 'the first appellate Court').

(2) Inder Sain, Sadhu Ram and Sat Narain, plaintiffs, had filed a suit for declaration against their father-Tika Ram and brother-Ram Kishan to the effect that the shop which was described in paragraph 2(a) of the plaint was owned by Joint Hindu family consisting of themselves and the defendants. They further sought a decree of partition of the aforesaid shop and other properties including joint Hindu family trading firm, M/s Tika Ram Nand Kishore, which was previously known as M/s Sadhu Ram Nand Kishore. A decree of rendition of accounts of the said firm was also prayed for. The properties owned by the joint Hindu family were also detailed in the plaint. The firm was stated to be engaged in the business of selling cloth in the shop in question and the business was in existence since 1966. Tika Ram was pleaded to be Karta of the family, but because of his old age, Ram Kishan-defendant No. 1 was stated to be functioning as Karta. The shop in question was alleged to have been purchased by the joint family funds from other business interests and even though, it ought to have been purchased in the name of Tika Ram, but was not done so and was purchased in the name of Ram Kishan, who was working as Karta of the family. It

was alleged that this fact was concealed from the plaintiffs for a number of years and since, Ram Kishan was in exclusive possession of the shop in dispute, they prayed for partition thereof along with other properties of the joint Hindu family along with rendition of accounts of the firm—M/s Tika Ram Nand Kishore.

(3) The defendants, in their written statement, did not deny the relationship of the parties, but pleaded that the partition had already taken place between them and the plaintiffs had no surviving interest in the shop in dispute which also stood partitioned along with other assets of the family. A relinquishment deed was set up by them in their favour supposedly executed by the plaintiffs. The ancestral nature of the properties was also admitted.

(4) A number of issues were framed and the parties led their respective evidence.

(5) The Senior Sub-Judge, Jind (hereinafter described as 'the trial Court') concluded that the shop in question continued to be joint *inter se* between the parties and that there was no partition qua the same. The trial Court, therefore, decreed the suit as prayed for,—*vide* judgment and decree dated 30th November, 1981. A preliminary decree was, therefore, passed in favour of the plaintiffs and either of the parties was given liberty to move an application for appointment of a Local Commissioner for effecting the partition as well as the rendition of accounts.

(6) The defendants, feeling aggrieved, preferred an appeal which was accepted by the first appellate Court and the judgment & decree passed by the trial Court were set aside. The suit of the plaintiffs for partition and rendition of accounts of the Joint Hindu Family firm Sadhu Ram, Nand Kishore was dismissed. However, the suit of plaintiff Nos. 1 and 2 to the effect that they constituted Joint Hindu Family with their father was also dismissed. The suit of plaintiff No. 3, Sat Narain to the effect that he was joint with his father—defendant No. 1 was decreed. The shop detailed in para 2(a) of the plaint was also declared to be part of Joint Hindu Family which plaintiff No. 3 was constituting with the defendants. A decree for partition of immovable property detailed in paragraphs 2(b), (c) and (d) of the plaint was also passed in favour of plaintiff Nos. 1 and 2 and their share was determined as 1/5th each in the same. The trial Court was also directed to appoint a Local Commissioner to suggest the mode of partition.

(7) For denying the claim of the plaintiff—Sat Narain for partition, reliance was placed by the first appellate Court on a judgment of the Full Bench reported as **Hari Kishan versus Chandu Lal, (1)**, in which it was held that under Hindu Law as applicable in Punjab, a son has no right to claim partition or to demand accounts from his father.

(8) Dis-satisfied with the judgment of the first appellate Court, plaintiff Nos. 1 and 2, i.e. Inder Sain and Sadhu Ram, filed R.S.A. No. 2394 of 1983, the defendants, Tika Ram and Ram Kishan preferred R.S.A. No. 2436 of 1983, whereas plaintiff No. 3, Sat Narain filed R.S.A. No. 542 of 1984.

(9) During the pendency of the appeals, defendant No. 1, Tika Ram, father of the plaintiffs and defendant No. 2, died on 17th February, 1982.

(10) Plaintiff No. 1, Inder Sain and plaintiff No. 3, Sat Narain also died and their legal representatives were brought on record.

(11) At the hearing, Shri Vijay Pal Singh, Advocate appeared for the legal representatives of plaintiff No. 3, Sat Narain. No one had put in appearance on behalf of other parties.

(12) I have heard Shri Singh and have gone through the whole record. It was contended by him that the property in question is joint and the only impediment in the way of plaintiff, Sat Narain to seek partition thereof was that the father was alive during whose life time the partition and accounts could not be claimed as per the Hindu Law applicable to Khatri in the State of Punjab. He, thus contended that the first appellate Court has merely upset the finding of the trial Court by considering this limited aspect by placing reliance on the judgment of the Full Bench in **Hari Kishan versus Chandu Lal (supra)**. It was submitted that since father has died, plaintiff, Sat Narain and now his legal representatives are entitled to seek partition as well as rendition of accounts of the firm.

(13) The contentions/submission of the learned counsel for legal representatives of plaintiff, Sat Narain are seemingly attractive and merit acceptance. The dispute revolves around the shop which is in question. The

other properties have been held to have been partitioned as per the shares of the parties which are detailed above.

(14) The finding of the first appellate Court regarding the suit property being joint of plaintiff-Sat Narain and the defendants has been correctly recorded as it has been found and established on record that plaintiff Nos. 1 and 2 had separated from the joint business in the year 1952 and 1964 respectively. The writings to that effect were proved on record. Even Ram Kishan, defendant No. 2 has categorically stated while appearing as DW1 to the aforesaid effect. He had stated that previously the shop in question was joint amongst all the four brothers being run by their father Tika Ram, the Karta of the family. Admittedly, there was no writing to show that plaintiff No. 3, Sat Narain had separated from the joint family. The defendants had also failed to prove that the property in question was purchased from the individual funds of Tika Ram or Ram Kishan. The findings of the first appellate Court on this aspect of the matter are, therefore, correct and deserve to be upheld.

(15) In such an eventuality, when the claim of plaintiff, Sat Narain was negated only on the ground that the father was alive, I am of the opinion that because of the changed circumstances when Tika Ram has concededly died and even plaintiff, Sat Narain has since expired, his legal representatives are, therefore, entitled to seek partition of the joint property, being the successors-in-interest of deceased, Sat Narain.

(16) The question of law, therefore, that arises for determination by this Court is as to 'whether a person can seek partition of the Joint Hindu family property during the life time of his father?'

(17) The Full Bench in **Hari Kishan versus Chandu Lal** (*supra*) has held that even though under Mitaksara system of Hindu Law, a son can seek partition of property during the life time of his father, but in Punjab, this rule of strict Hindu law is not in force and the onus probandi that among Khatri of Punjab, they cannot ask for partition of the joint family property during the life time of father. The strict interpretation is that according to Mitaksara system of Hindu Law, a son can enforce partition of the joint Hindu family property, but, this question of law need not be answered in view of the changed circumstances arising from the death of defendant No. 1, Tika Ram. Hence, no further discussion is required to be made on this aspect.

(18) On the basis of what has been stated above, the findings of the first appellate Court regarding the shop in question being joint property of plaintiff, Sat Narain and the defendants are upheld and it is further held that the legal representatives of plaintiff, Sat Narain are entitled to seek partition thereof as well as the rendition of the accounts of the firm being run therefrom.

(19) The appeal of plaintiff, Sat Narain is, accordingly, accepted, whereas the appeals of plaintiff Nos. 1 & 2—Inder Sain (since deceased) and Sadhu Ram as well as that of the defendants are dismissed.

R.N.R.