Calcutta High Court

Arun Kumar Sanyal
v/s
Jnanendra Nath Sanyal And Anr.

Citation: **AIR 1975 Cal 232, 79 CWN 305**
15 January, 1975
Bench: M Dutt, N Mukherji
JUDGMENT M.M. Dutt, J.

1. This appeal is at the instance of the plaintiff and it arises out of a suit for declaration of the plaintiffs title to the disputed property and partition of the same by metes and bounds.

2. The appeal involves a point of law of first impression relating to the construction of Section 23 of the Hindu Succession Act, 1956. The point is whether a transferee of the female heirs is entitled to claim partition of the dwelling house when the male heir does not choose to divide his share therein. In other words, whether the restriction imposed by Section 23 on a female heir to claim partition also applies to her transferee. In order to appreciate and consider the point, the facts of the case may be stated in brief.

3. The disputed property which is the dwelling house belonged to the father of the appellant, late Motilal Sanyal. He died intestate on May 30, 1960 leaving behind him his widow Khiroda Sundari Dasi, two sons, namely, the appellant and the respondent No. 1 and three daughters, Atasi, Anima and Anurupa, as his heirs under the Hindu Succession Act, 1956. Each of the said heirs inherited l/6th share in the disputed dwelling house. The appellant transferred his undivided l/6th share which he inherited from his father to his elder brother, the respondent No. 1 by a deed of sale dated July 6, 1962. The appellant's mother made a gift of her undivided l/6th share to the respondent No. 1 by a registered deed of gift dated October 30, 1961. The respondent No. 1 thus acquired a half share in the dwelling house. Atasi and Anima gifted their respective 1/6th shares in the dwelling house to the appellant by two registered deeds of gift both dated February 11, 1964. The appellant, therefore, acquired 1/3rd share in the dwelling house. The third sister Anurupa, however, retained her 1/6th share in the dwelling house. The suit has been filed by the appellant on the ground that joint possession of the dwelling house is inconvenient. He has also prayed for a declaration of his l/3rd share which he acquired by gift from his two sisters.

4. The main defence of the respondents Nos. 1 and 2, namely, the elder brother and the younger sister of the appellant, who contested the suit was that the appellant being the transferee of his sisters Atasi and Anima had no right to claim partition of the dwelling house and as such the suit was not maintainable. The learned Subordinate Judge upheld the said contention and came to the finding that in view of Section 23 of the Hindu Succession Act, the appellant being a

transferee of the female heirs specified in class I of the schedule to the said Act was not entitled to claim partition of the dwelling house. Upon this finding, he held that the suit was not maintainable and dismissed the same. Hence, this appeal.

5. In order to consider the propriety of the said finding of the learned Subordinate Judge and the respective contention of the parties, it is necessary to refer to Section 23 which runs as follows:

"Special provision respecting dwelling-houses -- Where a Hindu intestate has left surviving him or her both male and female heirs specified in class 1 of the Schedule and his or her property includes a dwelling-house wholly occupied by members of his or her family, then, notwithstanding anything contained in this Act, the right of any such female heir to claim partition of the dwelling-house shall not arise until the male heirs choose to divide their respective shares therein; but the female heir shall be entitled to a right of residence therein:

Provided that where such female heir is a daughter, she shall be entitled to a right of residence in the dwelling-house only if she is unmarried or has been deserted by or has separated from her husband or is a widow."

6. Section 23 is a special provision respecting dwelling-houses. It will apply only when a Hindu dies intestate leaving, both male and female heirs specified in class I. There can be no doubt that a female heir specified in class I of the Schedule inherits a share in the dwelling-house absolutely. But the rule laid down in Section 23 postpones the right of such a female heir to claim partition of the dwelling-house until the male heirs choose to divide their respective shares therein. The object behind the rule seems to be to prevem fragmentation or disintegration of a family dwelling house. It is based on the same principle as embodied in Section 44 of the Transfer of Property Act and Section 4(1) of the Partition Act The female heir is debarred from claiming partition of the dwelling-house except on the happening of a contingency, namely, when the male heirs come to a division of the same. So long as that contingency does not happen the female heir is precluded from claiming partition.

7. The difficulty has been created by the words "until the male heirs choose to divide their respective shares therein." There may be a case where a Hindu dies leaving a male heir and a female heir of class I of the Schedule. It is contended on behalf of the appellant that in such a case, the restriction imposed by Section 23 will not apply, for in the absence of 'male heirs' there is no chance of the contingency to happen. On the other hand, it is argued on behalf of the respondents that applying the provision of Section 13(2) of the General Clauses Act, the words 'male heirs' should be read as 'male heir'. Section 13(2) inter alia provides that unless there is anything repugnant in the subject or context words in the singular shall include the plural, and vice versa. Prima facie it does not appear that there is anything repugnant in the subject or context to the applicability of Section 13(2). But a further difficulty has been created by the word 'respective' which apparently stands in the way of the applicability of Section 13(2). Even if the words 'male heirs' also include the singular, that is, 'male heir', no effect can be given to it in the presence of the word 'respective'. It is beyond the purview of the Court to omit the said word from the section for the purpose of giving effect to the provision of Section 13(2).

8. If Section 13(2) could be applied there would not have been any difficulty. But as it is inapplicable it is necessary to ascertain the intention of the legislature. It is clear from the section that the legislature does not approve of division of a dwelling-house at the instance of

a female heir against the will of the male heirs. This restriction which has been imposed by Section 23 prevents fragmentation or disintegration of a family dwelling house at the instance of the female heirs to the hardship and difficulties to which the male heirs may be put. A Hindu may die leaving a son and a number of daughters. If at the instance of any such daughters the dwelling-house is allowed to be partitioned against the wish of the son, he may be put to great hardship. The house may not be capable of partition and in that case it will have to be sold. If, in such a case, it is held that Section 23 is inapplicable because of the absence of male heirs as contended on behalf of the appellant, in our view, it will defeat and frustrate the very purpose for which the section has been enacted. In the first instance, the section imposes a bar when it provides "the right of any such female heir to claim partition of the dwelling-house shall not arise", but the bar is removed only on the happening of the contingency, namely, when the male heirs choose to divide their respective shares therein. It may be that there is one male heir and one female heir and there may not be any chance of that contingency to happen, but that will be no ground to say that the section is inapplicable. The rule which has been laid down by Section 23 clearly indicates the intention of the legislature that female heirs should not be allowed to divide the dwelling-house against the will of the male heirs and, on a proper construction of the section, we are of the view that it is also the intention of the legislature when there is only one male heir. If the male heir chooses to divide the dwelling-house, undoubtedly the female heir or heirs will be entitled to claim partition, but so long as no such choice is actually exercised the female heirs are debarred from claiming partition.

9. It is argued on behalf of the appellant that the bar imposed by Section 23 on a female heir is only a personal bar and is removed when, a female heir looses her share or interest in the dwelling-house for any reason including that when she transfers the same to another. It is said that the appellant being the transferee of his sisters, the bar which was on them will not apply to the appellant, for the bar was only a personal bar. It is said that the contention finds support from the proviso to the section providing for the right of residence of the female heir, when she is a daughter, under certain circumstances. Our attention has also been drawn to Section 22 of the Act which confers a right similar to a right of pre-emption on the heirs specified in class I when one of such heirs proposes to transfer his or her interest in the property or business. The right of pre-emption which is conferred by Section 22 and the right of residence under the proviso to Section 23 are no doubt personal rights, but we fail to see how the same have any bearing with the question whether or not the bar under Section 23 is a personal bar. We are not at all impressed with tie contention that the bar is only a personal bar and it comes to an end when the female heir loses her interest in the dwelling-house by transfer of the same to another. It is contended that inasmuch as a son of a predeceased daughter is an heir under class I and is undoubtedly entitled to claim partition of the family dwelling-house, it should be held that the bar imposed under Section 23 is only a personal bar. A son of a predeceased daughter is a class I heir. He does not inherit as an heir of the daughter, but he has been made an indcpendant heir of the Hindu intestate. The case of a transferee of a female heir is completely different and cannot be equaled with that of the son of a pre-deceased daughter. A transferee claims through the female heir; he steps into the shoes of the female heir and has no right indcpcntlant of the right of the female heir which he has acquired by the transfer. In our view, a transferee of a female heir will be subject to the same restriction and prohibition as imposed by Section 23, namely, that he will be precluded from claiming partition of the dwelling-bouse until the male heirs chose to divide the same.

10. Mr. Bankim Chandra Dutt, learned Advocate appearing on behalf of the appellant has relied on some decisions of this Court laving down the principles of interpretation of statutes, which are summarised as follows:--

No Court is entitled to depart from the intention of the Legislature as may be ascertained from the language of the Act only because it is thought either unreasonable of inconvenient. But where two constructions are open the Court may adopt the more reasonable of the two (Abdoola Haroon & Co. v. Corporation of Calcutta, .

In construing any Act of the Legislature, the verbal construction of the particular section in question, if it be plain and simple, must govern the Court in arriving at its conclusion. If there be any doubt or difficulty in the wording of the particular section in question an enquiry is permissible into the history of the enactment and any supposed defect in the former legislation on the subject which it wanted to cure (Jamuna Prosad v. Motilal Santhana, .

Where the main object and intention of the Act is clear, it should not be reduced to a nullity by inserting words or amending a clause which would be the duty of the Legislature and not of the Court The grammatical construction should be adhered to, unless it is clearly repugnant to the intention of the Act or unless it leads to some manifest absurdity (Provat Kumar Kar v. William Trevelyan Curties Parker, .

The elementary rule of construction a that it is to be assumed that the words and phrases of a technical legislation are used in the ordinary meaning. If there is nothing appearing in the section itself either to modify or to alter or if there be nothing to qualify the language which the statute contains, it is to be construed in the ordinary and natural meaning of the words and sentences. If the language is not only plain, but admits of only one meaning, the task of interpretation can hardly be said to arise. It is not allowable to interpret It has no need of interpretation (Harendra Nath v. Sm. Dakryamoni Dassi, .

A section or enactment must be construed as a whole each portion throwing light if need be on the rest (Sm. Gangamoyee Dey v. Manindra Chandra Nuady, .

If the words of the statute are plain the Court has to accept the plain meaning of the words used by the Legislature (Sm. Nagendra Bala Hore v. Sree Sree Iswar Dakhina Kali-mala Thakur, .

A statute should be read as a whole and that the construction should be made of all the parts together, and not of one part or section only by itself. Each section should be brought into play and that construction should be pot which does not make one section repugnant to another (Jhajharia Brothers Ltd. v. Commissioner of Income-tax, West Bengal,).

11. The principles of law which have been laid down in the aforesaid decisions are quite well settled. The view which we have taken does not militate against any of the principles of interpretation of statutes as laid down in the above decisions. In our view, the construction which has been put by us on Section 23 in the background of the facts and circumstances of the instant case, is in accord with the well-settled rules of construction.

12. It is next contended on behalf of the appellant that after he had sold his undivided l/6th share in the dwelling-house which he inherited from his father, to his elder brother, the respondent No. 1, it tant-amounted to a division of the house or at least an exercise of choice by him and the respondent No. 1 to divide the same. In support of this contention that a transfer by one co-sharer of his share or interest in the property to another effects a division of the property, gjeat reliance has been placed by Mr. Dutt on a Bench decision of this Court in Basunta Kumar Ghosh v. Moti Lal Ghosh, (1911) 15 Cal WN 555. We are afraid, no such

proposition of law has been laid down in that decision. The question which has been considered in that case is the applicability of Section 4 of the Partition Act in a suit for partition. It has been held that whether Section 4 applied to the case or not it is a well-known principle of equity which may not be adopted in all partition cases that when it is inconvenient to divide a property that property must be left in the possession of the person in occupation and the other person who cannot conveniently get actual possession, compensated. The principle of law which has been laid down in that decision has no bearing with the contention made on behalf of the appellant. Indeed, we are not aware of any authority which lays down that when one of the co-sharers transfers his interest in a property to another, there is a division of the property. This contention of the appellant, therefore, fails.

13. In our view, the learned Subordinate Judge was perfectly justified in disallowing the claim of the appellant for partition of the disputed dwelling-house. Before we part with the case, we must dispose of another contention of the appellant. It has been already staled that the appellant has also prayed for a declaration of his l/3rd share in the disputed dwelling-house. Admittedly, the appellant has acquired 1/3rd share from bis two sisters. Mr. Banerjee, learned Advocate appearing on behalf of the respondents has admitted that the appellant has l/3rd share in the disputed dwelling-house. The learned Subordinate Judge was, therefore, not justified in dismissing the entire suit, but should have declared the appellant's title to 1/3rd share in the disputed dwelling-house. Although we hold that the appellant is not entitled to claim partition of the disputed dwelling-house, his prayer for a declaration of his title to l/3rd share of the same should be allowed. In these circumstances, we modify the judgment and decree of the learned Subordinate Judge to this extent that the suit is decreed in part only declaring the title of the appellant to l/3rd share in the disputed dwelling-house. The remaining prayers of the appellant as made in the plaint are disallowed.

14. The appeal is allowed in part only to the extent indicated above. But in view of the facts and circumstances of the case we direct each party to bear his or her costs in this Court as well as in the Court below.

N.C. Mukherji, J.

15. I agree.