

MANU/BH/0046/1980

Equivalent Citation: AIR1980Pat201, 1980()PLJR259

**IN THE HIGH COURT OF PATNA
FULL BENCH**

Civil Revn. No. 1 of 1976

Decided On: 18.09.1979

Appellants:**Indradeo Prasad Singh and Ors.**

Vs.

Respondent:**Sheonath Prasad Singh and Ors.**

Hon'ble Judges/Coram:

B.P. Jha, N.P. Singh and B.P. Sinha, JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: Prem Lal, Sheekumar Singh and Kamla Prasad Roy, Adv.

For Respondents/Defendant: Ramjee Sharan, K.K. Sharan, Nagendra Rai and Rameshwar Prasad, Adv.

JUDGMENT

B.P. Jha, J.

1. The Civil Revision Petition has been referred by a Division Bench to the Full Bench for settling the correctness of the two inconsistent Bench decisions of the Patna High Court in Ram Narain Prasad Sah v. Ramji Prasad Sah (MANU/BH/0061/1956 : AIR 1956 Pat 244) and in Ajodhya Missir v. Nageshwar Prasad (1963 BLJR 297).

2. The short point of law for consideration in this revision petition is :

Whether an application by the plaintiff in the course of the preparation of the final decree for an enquiry into the profits of the properties realised by the defendants during the pendency of the suit and before the preparation of the final decree is maintainable or not?

3. The answer must be given in the affirmative. To start with, in the earliest decision of the Privy Council, Pirthipal v. Jowahir Singh, (ILR 1887 Cal 493, their Lordships of the Privy Council held :

(i) The claim for an account in a partition suit is not a claim for mesne profits. The provisions for mesne profits are applicable to suits for land in which the plaintiff has a specific interest and not a suit for partition where a member of the joint family has no specific interest until the decree.

(ii) A member of the joint Hindu family can claim for an account from other members only after the passing of the preliminary decree and not before that. After the passing of the preliminary decree, the share of a member of the joint Hindu family is specifically ascertained, and, as such, a member can claim for account about the profits realised by the defendants only after the

preliminary decree is passed. This Privy Council decision was followed by a Bench decision of the Madras High Court in Ramaswami Aiyar v. Subramania Aiyar, (43 MLJ 406 : AIR 1923 Mad 147). Later on, the Privy Council decision was also followed in a Full Bench decision of the Madras High Court in Bassavayya v. Guravayya, (MANU/TN/0312/1951 : AIR 1951 Mad 938). The Full Bench decision of the Madras High Court was followed by a large number of decisions in Ghanshyam Martha v. Brundaban Pra-dhan, (MANU/OR/0048/1977), Satyanara-yan Sastrulu v. Mallikarjuna Sastrulu (MANU/AP/0096/1960), Saraswati Debi v. Satya Narayan Gupta (MANU/WB/0025/1977 : AIR 1977 Cal 99), and Ram Narain Prasad San v. Ramji Prasad Sah, (MANU/BH/0061/1956 : AIR 1956 Pat 244). This Full Bench decision of the Madras High Court was not brought to the notice of the Division Bench of the Patna High Court in Ajodheya Missir v. Nageshwar Prasad, (1963 BL JR 297).

4. The facts of the Full Bench decision of the Madras High Court (supra) were that the plaintiff did not pray in the plaint for rendition of accounts by the defendants, nor a decree was passed to that effect. In the course of the Proceeding of the final decree, the plaintiff applied for an enquiry into the profits of the properties realised by the defendants during the pendency of the suit. On these facts, the trial Judge allowed the prayer of the plaintiff and the same was upheld by the Full Bench of the Madras High Court, In the Full Bench decision, it has been held that a plaintiff is entitled to apply for an enquiry into the profits of the properties realised by the defendants during the pendency of the suit and before the preparation of the final decree for the reason that every suit of partition is substantially a suit for account of joint family properties on the date of the suit. Further, even if no such prayer is made by the plaintiff in the plaint, nor the preliminary decree mentions about the rendition of the account by the defendants, the plaintiff is entitled to apply for rendition of accounts in the course of the preparation of the final decree for the period between the date of the institution of the suit and the preparation of the final decree. Such an application for enquiry into the profits is covered by Order 20, Rule 18 (2) of the Code of Civil Procedure (hereinafter referred to as 'the Code') and not by Order 20, Rule 12 of the Code.

5. In the present case, the plaintiff applied for an enquiry into the profits realised by the defendants during the pendency of the suit at the stage of preparation of final decree. The court below rejected the prayer for rendition of account by the defendants on the ground that plaintiff had not pleaded in the plaint that he was excluded from the share in the profits. In other words, the court below followed the decision of this Court in Ajodheya Missir v. Nageghwar Prasad, (1963 BLJ 297), I, approve of the Madras Full Bench decision in Basavayya's case, (MANU/TN/0312/1951 : AIR 1951 Mad 938), as a correct decision. In my opinion, even if the plaintiff has not pleaded in the plaint that he has been excluded from the share of profits, he is entitled as a member of the Hindu joint family to apply for an enquiry in respect of the profits realised by the defendants at the stage of the preparation of final decree because every suit for partition is a suit for account on the date of the institution of the suit. Such an application is required to be filed after the ascertainment of share in the preliminary decree.

6. For example, a preliminary decree has been passed in respect of 1/4th sharii in the joint family property in favour of the plaintiff. The plaintiff will be entitled to 1/4th share of the profits which accrued to the plaintiff during the pendency of the suit and the adjustment shall be made accordingly. The object of rendition of account is that a

party may not devour the whole income of the joint family property and the other is deprived of the same. Such an enquiry is necessary to adjust the equities arising between the parties. It is relevant to quote the observations of their Lordships of the Madras High Court in the Full Bench decision (supra) which run as follows :

"In our opinion, this rule does not mean that all directions which may be necessary or proper to be given in a partition suit before a final decree is passed should be given at the stage of the preliminary decree itself. It may be necessary in a partition suit not merely to divide the properties but also to realise outstandings, discharge common liabilities, sell properties not capable of easy division, direct different sharers to account for different periods of time in respect of profits of different properties, adjust equities between the parties and give directions from time to time to the Commissioners appointed to divide the properties or take accounts. It is not reasonable to suppose that the power of the Court to give directions in respect of all or any of these matters must be exercised only at the time of passing the preliminary decree and is exhausted with the passing of that decree".

Relying on the observations of the Full Bench of the Madras High Court, I hold that it is necessary that in the interest of justice such a prayer for an enquiry into the profits realised by the defendants is maintainable in the course of the proceeding for a final decree, though such prayer has not been made in the plaint, nor a preliminary decree has been passed in this connection. The stage for applying for account arises only after the preliminary decree is passed when the share of the plaintiff is specified therein. I, therefore, hold that the application for account is maintainable in the course of the proceedings of the preparation of the final decree.

7. The Division Bench in Ajodheya Missir's case, (1963 BLJR 297), had relied on a Division Bench decision of the Patna High Court in Dipnarain Mahton v. Bihari Mahton (MANU/BH/0046/1951 : AIR 1951 Pat 481). The fact of the Division Bench decision in Dipnarain's case was that the plaintiffs filed a suit for recovery of compensation in respect of the undivided interest in certain properties held by the defendants. The trial court passed the decree for compensation. On appeal, the appellate court held that the defendants were in joint possession of the lands along with the plaintiff. In those circumstances, the appellate court did not pass any decree for compensation. In my opinion, the decision in Dipnarain's case (supra) does not apply to the present case. The facts of the present case are different from the case of Dipnarain Mahton. Therefore, it is not necessary to overrule this decision. In the present case, by virtue of the trial court's decree, the shares of the parties have been specified in the joint family properties, and as such, the plaintiff is entitled for filing an application for rendition of accounts by the defendants.

8. There may be two types of cases one in which the plaintiff files a suit for partition as well as for rendition of accounts pendente lite. The other type of the case is where the plaintiff makes no prayer for rendition of accounts by the defendants, nor such a direction has been given in the preliminary decree. In the other type of the case also, the plaintiff can apply for an enquiry into the profits realised by the defendants, at the stage of the preparation of final decree. I, therefore, hold that the court below acted without jurisdiction in holding that such petition filed by the plaintiff is not maintainable in law. The plaintiff applied for an enquiry into the profits realised by the defendants in respect of villages Barheya, Khajuria, Nawada and Champaran. On appeal arising out of the partition suit, the High Court held that the lands in villages Barheya, Khajuria, Nawada and Champaran are joint family lands. If it is so, the

application of the plaintiff for rendition of accounts by the defendants, in my opinion, is maintainable at the stage of the preparation of the final decree. In this circumstance, I overrule the decision in Ajodheya Mis-sir's case 1963 BLJR 297, and remand the case to the court below for fresh decision in accordance with law. In my opinion, the decisions in Ram Narain Prasad Sari v. Ramji Prasad Sah, (MANU/BH/0061/1956 : AIR 1956 Pat 244) and in Basavayya v Guravayya, (MANU/TN/0312/1951 : AIR 1951 Mad 938) (FB) are correct decisions.

9. A prayer for rendition of accounts can be allowed under Order 20, Rule 18 (2) of the Code, There is a difference between the mesne profits under Order 20, Rule 12 of the Code and Order 20, Rule 18 of the Civil P. C. Order 20, Rule 12 of the Code deals with mesne profits. In a case of mesne profits, the plaintiff is entitled to future mesne profits provided he has prayed for past mesne profits in the suit. The court will pass the future mesne profits though there is no specific prayer for the mesne profits, in the plaint. (See Gopalkrishna Pillai v. Mennakshi Ayal (MANU/SC/0268/1966 : AIR 1967 SC 155)). Similarly, the Court may allow a prayer for accounts pendente lite in a suit for partition, though there is no specific prayer for the same in the plaint. The only difference between a suit for recovery of possession of the land along with mesne profits and a suit for partition is that in the former, the plaintiff has to pray for past mesne profits (see Order 20, Rule 12 (1) (b) of the Code); and, in the latter, the plaintiff is not required to pray for past profits. Order 20, Rule 12 of the Code applies to a case where the defendant is in wrongful possession of a suit property. In a suit for partition of the joint family properties, nobody is in wrongful possession of the properties. Every co-sharer holds the joint family property on behalf of others. As such as the partition suit is filed, there is a severance of status. On the date of partition, a member of the joint family has no specific share in the suit properties, and, such share is ascertained only by passing a preliminary decree. Now, it is a settled law that there can be more than one preliminary decree and similarly there can be more than one final decree See Bassavayya v. Guravayya (MANU/TN/0312/1951 : AIR 1951 Mad 938 (FB)).

10. The law raised in this case is summarised thus :

A member of the joint Hindu family can file a suit for partition as well as for rendition of accounts. A preliminary decree can also be passed for partition and for rendition of accounts. A plaintiff can pray for an enquiry into the profits realised by the defendants at the stage of the preparation of the final decree though such prayer had not been made in the plaint, nor such direction has been given in the preliminary decree. It is necessary to demand such an enquiry in order to adjust equities arising between the parties. It will be within the discretion of the Court, to allow such prayer on the facts and circumstances of each case. Suppose a defendant is in possession of the suit properties and he has realised the income from the properties. If the plaintiff is not given share out of the profits realised by the defendant, a great injustice will be done to the plaintiff and the plaintiff will be deprived of his due share during the pendency of the suit. Further, the reason for maintainability of such an application at the stage of the preparation of the final decree is that the shares as ascertained in a preliminary decree, and, therefore, the occasion for rendition of accounts arises only after the passing of the preliminary decree. Every suit for partition is a suit for accounts, and, as such, even though no specific prayer has been made in the plaint, nor any direction has been given in the preliminary decree, the plaintiff is entitled to apply for an enquiry into the profits realised by the defendants at the time of

the preparation of the final decree.

11. In the result, the petition is allowed and the case is remitted back to the trial Judge for fresh consideration of the application filed by the petitioner in accordance with law and in the light of the observations made above. The parties shall bear their own costs.

N.P. Singh, J.

12. I agree.

B.P. Sinha, J.

13. I agree.

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