

Sheetal Vs. Dault

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Court : Madhya Pradesh

Decided On : Jun-19-2013

Appellant : Sheetal

Respondent : Dault

Judgement :

Second Appeal No.170/2008 Second Appeal No.170/2008 19.6.2013 Shri Z.M.Shah, Advocate for the appellant.

Heard on admission.

The appellant has moved a civil suit No.179-A/ 2004 for claiming his ancestral property, which was dismissed by judgment and decree dated 12.12.2006 passed by the learned Additional Civil Judge, Class I, Bina.

FiRs.Appeal No.3-A/2007 was also dismissed by the learned Additional Judge to FiRs.Additional District Judge, Khurai vide judgment and decree dated 25.10.2007.

Being aggrieved with the aforesaid judgments and decrees, the appellant/ plaintiff has prosecuted the present second appeal.

The plaintiff has prosecuted a civil suit before the trial Court that the land shown in para 1 of the plaint was of one Heera, father of Nathua.

After death of the deceased Heera, the land was mutated in the name of Nathua.

In the year 1996-97, some cheating was done and name of Manbai was also added in the entries of properties alongwith Nathua.

Some land was transferred to Manbai, who was kept of the deceased Nathua.

The plaintiff claimed 1/3rd portion of the land in the land left by the deceased Nathua.

He gave the description as to how the defendants became successor in the property.

Second Appeal No.170/2008 The defendants in their written statements, denied the claim of the plaintiff.

They categorically mentioned that Manbai was the valid wife of Nathua and Nathua gave particular land as Stridhan.

to Manbai and therefore, the plaintiff could not get any portion in that land and therefore, it was submitted that the suit may be dismissed.

The learned Additional Civil Judge, Class I to the FiRs.Civil Judge, Class-I, Sagar at Bina, after framing the issues, recorded the evidence of the parties and thereafter, dismissed the suit.

In appeal, the learned Additional District Judge dismissed the appeal.

The learned counsel for the appellant has submitted that property was of the father of the appellant and therefore, the appellant got the share by birth and therefore, no land could be transferred in the name of Manbai and the appellant was entitled for 1/3rd share in the property.

He did not lose his share in the coparcenary property.

In this connection, if the evidence adduced by the parties is perused and the judgments passed by both the Courts below are considered then, it would be apparent that the plaintiff/appellant was the only son of fiRs.wife of Nathua.

After death of his wife, Nathua entered into second marriage with Second Appeal No.170/2008 Manbai by a customary method and therefore, she was a valid wife of the deceased Nathua.

The respondents No.1 and 2 are sons of the deceased Nathua and Manbai and they are step brothers of the appellant.

Both the Courts below have observed that the appellant prosecuted a civil suit on partition, which was registered at No.65-A/1991 and it was decreed vide judgment and decree dated 29.7.1993 and therefore, by that decree Hindu coparcenary was dissolved.

The appellant took his share through that partition vide judgment and decree dated 29.7.1993.

That judgment and decree is still in force and the appellant must have executed the same.

After passing of the decree when partition took place, the appellant could not get his share as a right in the remaining property because after the partition, the share which was received by Nathua may be counted as his own property and he was entitled to transfer the property by sale, gift or will.

If he transferred the property to Manbai thereafter, then he was competent to do so.

If a person disposes his property according to his wishes then, his legal representatives cannot claim any share in the property of that person unless the property is a Hindu coparcenary property.

When the appellant got a decree of partition in his favour Second Appeal No.170/2008 and got his share from Hindu coparcenary property then, after the partition the share obtained by the deceased Nathua was of his own and if he did not give any share further to the appellant then, there is no illegality done by the deceased Nathua.

The remaining property was to be divided between Nathua, his sons born through his second wife Manbai and Manbai.

If he transferred his share to Manbai then, he left nothing, so that the appellant could claim any share from the property of his father.

Under such circumstances, both the Courts below have rightly dismissed the suit filed by the appellant.

There is no basis by which any interference can be done in the judgments and decrees passed by both the Courts below.

Consequently, there is no law point involved in the matter, so that the second appeal filed by the appellant may be accepted.

Consequently, the present appeal filed by the appellant is hereby dismissed with cost at motion stage.

A copy of this order (judgment) alongwith the appellate decree (if any) may be sent to both the Courts below alongwith their records for information and compliance.

Second Appeal No.170/2008 (N.K.GUPTA) JUDGE Pushpendra

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