

Smt. Bhagwati Vs. Smt. Laxmi Devi and Another

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Court : Delhi

Decided On : Nov-26-2013

Judge : Rajiv Sahai Endlaw

Appellant : Smt. Bhagwati

Respondent : Smt. Laxmi Devi and Another

Advocate for Pet/Ap. : Mr. Manish Batra

Judgement :

*IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

26. h November, 2013 % + RFA No.550/2013 SMT. BHAGWATI Appellant
Through: Mr. Manish Batra, Adv. versus SMT. LAXMI DEVI AND ANOTHER
Through: None. Respondents CORAM :HONBLE MR. JUSTICE RAJIV SAHAI
ENDLAW RAJIV SAHAI ENDLAW, J.

1. The appeal impugns the judgment and preliminary decree for partition dated 4th October, 2013 of the Court of Additional District Judge - 09,Central, Tis Hazari Courts, Delhi in Civil Suit No.704/2008 (Unique case I.D. No.02401C0467672003) filed by the two respondents.

2. Though this first appeal is listed today before this Court for the first time and is ordinarily required to be considered after requisitioning the trial court record and issuing notice to the respondents but prima facie not finding any merit in the

appeal and not finding any need to follow the routine procedure merely to pay lip service thereto, the counsel for the appellant has been heard in extenso.

3. The respondent No.1 Smt. Laxmi Devi and one Smt. Somwati (on whose death, Shri Dinesh Chand, present respondent No.2 and being the husband of respondent no.1 Laxmi Devi was impleaded as her legal heir under her Will) on 27th March, 1996 instituted the suit for partition from which this appeal arises, pleadingi. that late Shri Nanwa Singh was the sole and absolute owner of property No.2/39, Roop Nagar, Delhi - 110007; and ii. that the said Shri Nanwa Singh died on 10th March, 1966 leaving a Will dated 8th March, 1966 whereunder he bequeathed 1/3rd share in the said property to his widow Smt. Somwati, 1/3 share in favour of the appellant being his daughter from first marriage and 1/3rd share in favour of the respondent no.1 being also his daughter from his second wife Smt. Somwati.

4. Smt. Somwati died during the pendency of the suit and the respondent no.1/plaintiff claimed that Smt. Somwati had left a registered Will bequeathing her 1/3rd share in the said property in favour of her daughter respondent no.1 and her husband respondent no.2. The respondent no.1 thus claimed to be the owner of one half share in the entire property and her husband respondent no.2 was the owner of 1/6th share in the property and the appellant was the owner of remaining 1/3rd share in the property.

5. The appellant contested the suit denying execution of any Will dated 8th March, 1966 by Shri Nanwa Singh and pleading that Smt. Somwati was not the owner of the property and had no right to make any will with respect thereto and the suit was bad for misjoinder of respondent no.2 who had no connection with the property and further pleading that the appellant and the respondent no.1 were the only two legal heirs of late Shri Nanwa Singh and each had equal rights in the property and were already in possession of half share each of the suit property. The appellant also denied the Will dated 14th March, 1989 by Smt. Somwati.

6. The learned Additional District Judge in the impugned judgment has found/observed/held - a. that the respondents/plaintiffs had not examined any attesting witness of the Will dated 8th March, 1966 of Shri Nanwa Singh which had

thus not been proved; b. that though the appellant in cross examination had put a suggestion to the respondent/plaintiff No.1 that Smt. Somwati was a rakhel of Shri Nanwa Singh and not his wife and the said suggestion was denied but the said plea was not open to the appellant since the appellant in her pleadings had admitted Smt. Somwati to be the second wife of Nanwa Singh; c. though the learned Additional District Judge has not given any finding with respect to the Will of Smt. Somwati but finding the respondent no.1 to be her sole heir, the respondent no.1 has been held to be having 2/3rd share in the property and the appellant/defendant to be having 1/3rd share therein; it has also been observed that the respondent no.2 / plaintiff Shri Dinesh Chand has not been able to establish any right for having any share in the property; d. though it is not so expressly set out in the impugned judgment but it appears that what has prevailed with the learned Additional District Judge is, that on the demise of Shri Nanwa Singh, the property devolved upon his widow (being his second wife) Smt. Somwati, his daughter (from his first wife) i.e. the appellant herein and his second daughter (from his second wife Smt. Somwati) respondent no.1 herein in equal shares and upon the demise of Smt. Somwati, her 1/3rd share in the property devolved upon her daughter respondent no.1, making her the owner of 2/3rd share in the property, with the appellant having the remaining 1/3rd share.

7. The only argument urged by the counsel for the appellant is that under Rule 2 of Section 10 of the Hindu Succession Act, 1956, the appellant and the respondent no.1 being the only children of the deceased Shri Nanwa Singh, get an equal share and thus the decree giving 2/3rd share to the respondent no.1 is bad.

8. However the aforesaid argument loses sight of the fact that succession opens on the date of demise and on the date of demise of Shri Nanwa Singh, he was survived not only by the appellant and the respondent no.1 but also by his widow Smt. Somwati. Rule 2 supra undoubtedly provides for distribution of property equally among the surviving sons, daughters but Rule 1, also provides for one share of the widow of the deceased. Subsequent demise of the said widow would not change the position and would not put her share back in the estate of her deceased husband and the share so inherited by the widow would devolve in accordance with the rules applicable to succession of her estate.

9. The counsel for the appellant has nothing further to add.

10. The only other question which needs to be considered is, whether the said 1/3rd share of Smt. Somwati would be inherited by the respondent no.1 only.

11. The counsel for the appellant agrees that the appellant is the step daughter of the said Smt. Somwati.

12. Under Section 15 of the Hindu Succession Act, the property of a female Hindu dying intestate devolves firstly upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband. I have inquired from the counsel for the appellant, whether the expression son or daughter in Section 15(1)(a) of the Hindu Succession Act would include step son or step daughter.

13. The counsel for the appellant has no answer.

14. However the question is no longer res integra. The Supreme Court in Lachman Singh Vs. Kirpa Singh (1987) 2 SCC547 has held that the word sons and daughters in Section 15(1)(a) of the Hindu Succession Act does not include step sons and step daughters. This Court recently in judgment dated 3rd June, 2011 in RSA.No.164/2005 titled Raj Rani Vs. Bimla Rani has again considered the question with reference to a large number of judgments and in the light thereof, need is not felt to revisit the question. The conclusion is inescapable that the 1/3rd share of Smt. Somwati in the property, would be inherited, in the event of her intestacy, only by her daughter i.e. the respondent no.1 and not by the appellant, who is the step daughter of Smt. Somwati.

15. There is thus no error in the impugned judgment and decree. There is no merit in the appeal; the same is dismissed. No costs. Decree sheet be prepared. RAJIV SAHAI ENDLAW, J.

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