

Gitabai Vs. Anusayabai and Another

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Court : Mumbai Aurangabad

Decided On : Apr-09-2015

Judge : Ravindra V. Ghuge

Appeal No. : Second Appeal No. 476 of 2004 with Civil Application Nos. 13208 of 2008 & 3366 of 2004

Appellant : Gitabai

Respondent : Anusayabai and Another

Judgement :

1. This matter was heard on 08.04.2015. After hearing the learned Advocates for quite sometime, this matter was adjourned to 09.04.2015 at the request of the parties. I have heard the learned Advocates for both the sides.

2. The issue is as regards the claim for death compensation under the earthquake and resettlement scheme floated by the State Government vide Circular No.MNN-1193/05550/93 dated 14.12.1993.

3. Smt.Anusayabai Hanumant Bairagi is the Plaintiff in RCS No.387/1997. She is the mother of deceased Shardabai. Shardabai was married to Mahavirdas Narsingdas Bairagi, resident of village Killari. Shardabai and Mahavirdas had three daughters and one son.

4. In the earthquake that occurred on 30.09.1993, Mahavirdas, Shardabai and their four children have died. Gitabai Narsingdas, who is mother of Mahavirdas, mother-in-law of Shardabai and grandmother of the four children, claimed the entire compensation as the legal heir of the son, daughter-in-law and grandchildren. Gitabai is the original Defendant (Appellant herein).

5. This Second Appeal was admitted by this Court (Coram : P.R.Borkar, J.) by passing the following order dated 03.06.2008:

Heard Adv. Shri S.S. Manale for the appellant. AGP Shri D.V. Tele has waived notice for respondent No.2. After massive earthquake on 30.09.1993 at Killari, as a result of which several persons have died, the Government of Maharashtra has extended financial assistance to the surviving members of the families and relatives. The present appellant Gitabai was mother-in-law of deceased Shardabai. Shardabai, her husband and children had died as a result of the earthquake. Respondent No.1 Anusayabai is mother of deceased Shardabai. Appellant Gitabai claimed that as per policy declared by the Government by its circular, she is entitled to get compensation. She also obtained a succession certificate. However, respondent No.1 filed suit for declaration that she is entitled for the compensation. The suit was decreed by the Trial Court as also First Appellate Court. As against same, the Second Appeal is preferred.

2. The Second Appeal is admitted on the following issue.

"Who is entitled to financial aid of Rs.50,000/- from respondent No.2 State Government, whether respondent No.1 Anusayabai or appellant Gitabai?"

3. AGP Shri Tele waives notice after admission for respondent No.2. Issue notice to respondent No.1 returnable after six weeks. Call for record and proceedings. Since in this case no fact is disputed and only question of law arises, print and paper book are dispensed with.

6. Mr.Manale, learned Advocate appearing for the Defendant, submits that the said claim of the Defendant is sustainable under Section 21 of Hindu Succession Act, 1956. However, the suit of the Plaintiff is decreed with costs by the judgment

and decree dated 15.07.1999. Gitabai (present Appellant) preferred RCA No.88/1999 and the same has been dismissed by the first Appeal Court by its judgment and order dated 18.06.2001.

7. The Defendant has relied upon Section 21 of the Hindu Succession Act, 1956. The contention is that in all 06 persons of a single family have passed away. Mahavirdas, his wife Shardabai and their three daughters and one son have all passed away in the earthquake that occurred on 30.09.1993. Shardabai was the daughter-in-law of Gitabai.

8. The issue raised by the Defendant is that the sequence of death of these six persons is uncertain. Whether, the grandchildren of Gitabai have died after the death of Mahavirdas and Shardabai, is also not within anybody's knowledge. The Defendant, therefore, contends that Section 21 of the Hindu Succession Act, 1956 would apply to this case.

9. Section 21 of the Hindu Succession Act, 1956 reads as under:

21. Presumption in cases of simultaneous deaths:- Where two persons have died in circumstances rendering it uncertain whether either of them, and if so which, survived the other then, for all purposes affecting succession to property, it shall be presumed, until the contrary is proved, that the younger survived the elder.

10. The Defendant, therefore, submits that the substantial question of law involved in this Second Appeal is as regards, whether, Defendant/Gitabai, being grandmother of three daughters and one son of Mahavirdas and Shardabai, would have the right of inheritance and whether, the entire compensation is payable to her.

11. Mr.Nagode, learned Advocate appearing for the Respondent No.1-Anusayabai/Original Plaintiff, who is mother of Shardabai, submits that the law of inheritance would not apply in this case. It is not an immovable or movable property inherited by Mahavirdas, that is in question. It is under unfortunate circumstances that Mahavirdas, Shardabai and their four children have passed away in the earthquake.

12. Mr.Nagode submits that the State of Maharashtra has come out with a specific scheme whereby the compensation of an amount of Rs.50,000/- is to be paid to the legal heirs of the deceased. He, therefore, submits that the contention of the Appellant is far fetched as it is an attempt to apply the law of inheritance. Under the specific scheme, which the State of Maharashtra has declared vide Circular No.MNN-1193/05550/93 dated 04.12.1993, an amount of compensation/ financial assistance of Rs.50,000/- per deceased person is payable to the surviving mother or father of the deceased person. He, therefore, submits that the Second Appeal is without any merit.

13. The learned AGP appearing on behalf of the State of Maharashtra has contended that this is not an adversarial litigation for the State. In order to reduce the pain and suffering of having lost the nearest member of the family in the earthquake, that the State of Maharashtra has come out with the said scheme. The terms of the scheme are on record. The amount is payable by way of financial assistance and as such, the law of inheritance would not be applicable.

14. Mr.Manale, learned Advocate appearing for the Appellant, has relied upon the judgment of the Delhi High Court in the case of Smt.GannyKaur v/s The State (NCT) and others reported in **AIR 2007 Delhi 273**. He points out that the manner of apportioning the compensation in case of a riot victim has been considered by the Delhi High Court which, according to Mr.Manale, held that the apportionment of the amount is to be made equally amongst the parties by following Section 15 of the Hindu Succession Act.

15. Having considered the conclusions drawn by the Delhi High Court specifically in paragraphs 15, 16 and 17, I am of the view that the said ratio does not assist the Defendant/Appellant. In the case before the Delhi High Court, the amount of compensation was to be apportioned. The Court has relied upon Section 1A of the Fatal Accidents Act, 1855 r/w Section 357 of the Code of Criminal Procedure, 1973. In fact, the ratio laid down by the Delhi High Court assists the Plaintiff.

16. The observations of the Delhi High Court in paragraph Nos.15, 16, 17 and 18 in the Smt.Ganny Kaur judgment (supra) are as follows:

15. Having considered the submissions made by the counsel for the parties, I am of the view that the compensation awarded in respect of the death of 1984 Riot victims cannot be equated with estate of an intestate which devolves as per the principles of succession and inheritance prescribed under personal laws. The compensation which is in question was never part of the property held by the deceased, therefore, in my view, there can be no question of there being any succession thereto or inheritance in respect thereof. The reference to the Hindu Succession Act, 1956 made by both the parties, therefore, would be irrelevant. The ex gratia compensation that is provided by the State is not under any personal law, but under the secular laws of the State governed by the principles enshrined in the Constitution of India and in particular Article 21 thereof because there has been a loss of life which it was the duty of the State to have protected. When the compensation is provided by the State, the State is blind to the religion of the parties as also to the personal laws that may be followed by them based on their religion. The State has to provide compensation so as to somewhat assuage the hurt, both financial as well as mental which the surviving members of the family feel every day of their lives. There have been a number of cases where compensation has been awarded for custodial deaths, deaths due to negligence of the State or some agency of the State, for crime victims, etc. These decisions are too well-known to be reproduced herein. Compensation in all such cases has been awarded in two parts. The first part being the standard compensation or what is known as 'the conventional amount' which is awarded for the mental pain and agony, loss of consortium, loss of company, etc. The second part is the compensation for pecuniary loss which has relation to dependency.

16. The compensation in question has to be viewed from this perspective, i.e., standard compensation and compensation for pecuniary loss. Insofar as both these elements are concerned, there is no difficulty in straightway coming to the conclusion that the position of the petitioner is no different from that of the respondent No.3. The petitioner lost her daughter and her grand children as also her son-in-law. Kishan Singh (respondent No.3) lost his son, his grand children as also his daughter-in-law. The extent of the pain and hurt that could be suffered by both would not be any different. The agony of the loss of a daughter cannot be less than the agony of loss of a son. Similarly, the agony of the loss of the

daughter's children cannot be any less than the agony of the loss of the son's children. I do not see how it can even be contended that the right of the respondent No.3 to receive compensation is on a higher footing than that of the petitioner. Reliance placed on the personal law of succession is of no consequence in this case. This is a matter of compensation being awarded by the State which does not function under any personal law. It only functions under the Constitution of India which has established it as a secular state. Wherever the relationship between the State and a Citizen is in issue, the personal law of the citizen has little or no relevance. Personal laws operate mostly in the domain of Citizen v Citizen contests.

17. This discussion is sufficient to conclude this case. However, for the sake of completeness, I would also like to refer to some relevant statutory provisions. Section 1 A of the Indian Fatal Accidents Act, 1855 provides that a suit can be brought for compensation by the family of a person for loss occasioned to the family by the death on account of an actionable wrong. The said section provides specifically that every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused. It is further provided in the said Section 1 A that in every such action, the court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought. It is further provided that the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the parties for whose benefit the suit was brought in such shares as the court by its judgment or decree shall direct. By virtue of this provision, the parents of a woman as well as the parents of a man would be entitled to compensation. It is also clear that if there were more than one person entitled to damages, then the same would have to be apportioned by the court as per its judgment or decree. Significantly, it has not been indicated that the personal law would apply. The apportionment has been left to the court which, in any event, when no specific direction is given by a statute, has to decide according to justice, equity and good conscience. The manner of paying the compensation to the persons who are entitled to receive compensation under Section 357 of the Code of Criminal Procedure, 1973 in respect of offences resulting in death is the

same as provided under the Indian Fatal Accidents Act, 1855 [See: Section 357 (1) (c) Cr.P.C.]. The same principles would have to be applied in the present case as compensation is being paid in respect of the deaths of the riot victims which are definitely victim of crime.

18. When this court in exercise of its writ jurisdiction is called upon to determine the apportionment of the compensation between the petitioner on the one hand and Kishan Singh (respondent No.3) on the other, it cannot but act equitably. As already pointed out above, there is no difference whatsoever between the position of the petitioner and that of Kishan Singh insofar as the death of Ishwari Kaur, Laxman Singh, Sajan Singh and Laxmi are concerned. The only manner in which the compensation, to my mind, would serve the ends of justice, would be by directing that the compensation be awarded not according to personal laws, but equitably to the next of kin. The only two claimants are the petitioner and the respondent No.3 and, therefore, I direct that the ex gratia amount of Rs 14 lakhs which is to be awarded now in respect of the deaths of Ishwari Kaur, Laxman Singh, Sajan Singh and Laxmi be paid to the petitioner and Kishan Singh (respondent No.3) in equal measure. A sum of Rs 7 lakhs be paid to the petitioner and a sum of Rs 7 lakhs be paid to the respondent No.3. These directions be complied with by the respondents 1 and 2 within four weeks.

17. The Delhi High Court in paragraph 15 has concluded that the compensation awarded in respect of the death of riot victims cannot be equated with the estate of an intestate which devolves as per the principles of succession and inheritance prescribed under the personal laws. The compensation which is in question was never part of the property held by the deceased. Therefore, in the view of the Delhi High Court, there cannot be any question of succession or inheritance in respect thereof.

18. Similarly, in paragraph 16 of the judgment, the Delhi High Court has held that the matter was of compensation being awarded by the State, which does not function under any personal law. Wherever the relationship between the State and a citizen is in issue, the personal law of the citizen has little or no relevance. Personal laws operate mostly in the domain of citizen versus citizen contests. It

was, therefore, concluded that the manner of paying compensation to the persons who are entitled to receive compensation under Section 357 of the Code of Criminal Procedure, 1973 in respect of offences resulting in death is the same as is provided under the Indian Fatal Accidents Act. In fact, the Delhi High Court, therefore, concluded that when it came to the apportionment of compensation, both the persons who have lost their nearest relative in the riots, would be equally entitled to receive the compensation.

19. In the instant case before this Court, the Government has specifically set out the manner of payment of compensation and has described as to who is to receive the same. The issue was only as regards, whether, Gitabai as mother-in-law of Shardabai, could have claimed or demanded or received Rs.50,000/- which was monetary assistance prescribed under the scheme to be paid to the mother and father of the deceased victim, whoever amongst them is alive.

20. The Government circular at issue has made the mode of payment and the entitlement, clear in the circular itself. If children of Mahavirdas and Shardabai were alive, the compensation of Rs.50,000/- per deceased person would have gone to the children. Since none of them are alive, the scheme indicates that the said amount shall go to the surviving mother or father of the deceased. I, therefore, conclude that the Plaintiff was rightly held entitled to the compensation as being the surviving mother of deceased Shardabai.

21. The conclusions drawn by the Trial Court in paragraph 15 of its judgment dated 15.07.1999 and the conclusions of the first Appeal Court in paragraphs 09 and 10 of its judgment dated 18.06.2001, in my view, do not suffer from any perversity. I, therefore, answer the issue accordingly. The Second Appeal is devoid of merit and is, therefore, dismissed.

22. All the pending Civil Applications, therefore, do not survive and they are also disposed of.

23. No order as to costs.