

Nekram Singh Vs. Srinivas

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Court : Allahabad

Decided On : May-11-1926

Reported in : AIR1926All586

Appellant : Nekram Singh

Respondent : Srinivas

Judgement :

Daniels, J.

1. In this case the plaintiff claimed as next reversioner certain properties alienated by Mt. Gango, the widow of one Sripal. The deceased Sripal is found to have belonged to the sect of Jains known as Saraogi Agarwalas and the plea taken by the defendant was that Mt. Gango had an absolute estate in the properties in dispute. Both the Courts below have held that the properties in dispute in this appeal were the joint family property of Sripal and his brother and that the plaintiff cannot rely on the Privy Council decision in Sheo Singh Rai v. Dakho (1876) 1 All 688 which only held that a Jain widow of this particular sect has an absolute estate in her husband's self-acquired property. The only point urged in this appeal is that the Court below should have gone further and held that she had an absolute estate in all non-ancestral or separate property whether self-acquired or not.

2. In support of this decision the appellant relies on two rulings. The first is that of Shimbhu Nath v. Gayan Chand (1894) 16 All 379. This was a case in which

evidence as to the custom was recorded. Referring to the Privy Council decision in Sheo Singh Rai's case the learned Judges say that it was held on the evidence in that case that there was a custom according to which a widow of this sect has full power to alienate the self-acquired property of her husband. They go on to say that the non-ancestral property with which they were dealing in the case before them must be regarded as covered by the same custom. This decision therefore does not appear to advance the appellant's case beyond the principle laid down by their Lordships of the Privy Council. The other is a Calcutta case, Harnath Pershad v. Mandil Dass (1900) 27 Cal 379 In that case the Judges held on the evidence before them that a childless Jain widow acquired an absolute right in her husband's separate property. They seem to have been prepared to hold, had it been necessary to do so, that she acquired a similar right in the ancestral property also; for they say that on the facts no distinction can be drawn between the two. In the case of Shimbhu Nath v. Gayan Chand (1894) 16 All 379, on the contrary, it was distinctly held that she acquired no such right in the ancestral property. All these cases were cases in which the custom was established by the evidence. In the case before us, as the Courts below have been careful to point out, not only was no evidence adduced, but the custom was not even pleaded in the written statement. The only plea taken was the bare plea that Mt. Gango was an absolute owner of the properties in question, and the issue framed was to the same effect. It has been held by their Lordships of the Privy Council in Chotay Lal v. Chunnoo Lall (1882) 4 Cal 744, that the ordinary Hindu Law applies to Jains in the absence of proof of special custom varying it. Here there is no such proof and the rule laid down by the Privy Council in the case of Sheo Singh Rai v. Dakho (1876) 1 All 688 is confined to self-acquired property. Agreeing with the Courts below we hold therefore that the appellant has failed to establish that his transferor, Mt. Gango, had an absolute right in the properties in dispute.

3. We accordingly dismiss the appeal with costs.