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Court : Allahabad

Decided On : Jul-17-1928

Reported in : AIR1928All615

Appellant : Rustam Singh and ors.

Respondent : Bhola Singh

Judgement :

1. This is an appeal from the decree and order of the Subordinate Judge of Budaun giving the plaintiff a decree in the following circumstances: The property in suit consists of certain plots in the village of Dosauli, pargana Bisauli. It used to be part of the property of one Hansraj, who died in 1875. On his death his half-share in the village was inherited by his two nephews, Phul Singh and Bhola Singh. The plots in suit, amounting in area to nearly 70 pakka bighas, were recorded by the revenue Courts as being in the possession of Mt. Subarni 'for maintenance.' It is admitted that this Mt. Subarni was not strictly speaking and according to Hindu law the widow of Hansraj, but had been living with him for a considerable time as a permanent arrangement.

2. In 1881 a partition between Phul Singh and Bhola Singh was carried out by the revenue Courts and two mahals were created, the plots in suit being allotted to the two mahals in equal portions, Phul Singh died about, 1900, leaving two sons, Rustam Singh and Dewan Singh, who are the defendant appellants in the present suit. On the 8th October 1921 Mt. Subarni died. Mutation was made on a joint

application of Bhola Singh on the one hand and Rustam Singh and Dewan Singh on the other, by which the plots of which she had been in possession were taken into the two mahals half and half, as had been the case in the partition of 1881, but in 1925 the present suit was brought by Bhola Singh claiming that he had become the owner of the whole area on the death of Mt. Subarni, and asking for the ejectment of the defendants from the plots of which they had taken possession. Bhola Singh's plaint was based on the statements of fact which are given above. He further said that Hansraj had in his lifetime given about 300 bighas kham of sir land to Mt. Subarni aforesaid, in lieu of her maintenance allowance, and the said Musammat had a life interest therein.' Later on in para. 5 he said:

On the death of the said musammat the plaintiff, the reversionary heir of Hansraj deceased, became the exclusive owner of the miscellaneous property known after the name of Mt. Subarni according to Dharm Shaster.

3. The defence was that succession to the property had opened on the death of Hansraj, and that the plaintiff, the father of the appellants, and the appellants themselves became the owners, and that the life-interest of Mt. Subarni did not affect the succession in any way.

4. The learned Subordinate Judge decreed the plaintiff's suit. He remarked:

In Hindu law we find that if one has a life-interest in the property of another, the immediate heir of the owner does not inherit the property The inheritance devolves upon the person who, if the original owner were alive up to the death of the person holding life interest, would inherit it under the Hindu law.... After the death of Hansraj the plaintiff or Phul had no right in the property.... In the partition the plots were shown in possession of Mt. Subarni as her muafi khairati. So when she has died the person entitled to the land should get it. It is the plaintiff who is entitled as shown above and not the defendants.

5. This would be a fair statement of the law if Mt. Subarni had been a Hindu widow and had succeeded to a widow's interest in the disputed property. It is not, however, even the case set up by the plaintiff that she was a Hindu widow. She only had a life estate in lieu of maintenance It has been argued that the right of a

maintenance holder must necessarily be the right allowed by Hindu law to a Hindu widow. If we were to accede to this argument we should undoubtedly uphold the decision of the Court below. We have been shown, however, no authority that would justify us in holding that in merely granting to Mt. Subrani a life-estate in lieu of maintenance Hansraj was granting her a widow's estate, or that he was divesting himself of all interest in the property granted to her. We have been referred to the case of *Munni Lal v. Mt. Phula* : AIR1927 All679 . A Bench of this Court was there considering the nature of the interest possessed by a mother in a Hindu family in property allotted to her on partition between her sons, and they remarked:

We may, however, mention that the argument of the learned vakil for the appellants that in case she had obtained this property in lieu of maintenance, there would be a limited estate with a vested remainder, cannot be accepted.

6. The Bench was there considering the question of whether the interest possessed by the mother would revert to the joint family estate on her death, but they certainly imply that they could not accept the argument that during her life-time there was a 'vested remainder'. It is sought to extend this proposition to the present case, but we are not prepared without express authority to go so far. The mere fact that a widow or a mother in a Hindu family who secures an interest in the joint family estate either by succeeding to the husband or by partition with her son obtains an interest, that is limited in time by the extent of her life, does not necessarily imply that any other person who obtains a life-interest in such an estate must have all the privileges which have been accorded to a Hindu widow or mother. That is the argument on behalf of the respondents and as we have said we are unable to agree to it' On the contrary we are of opinion that when Hansraj granted a life-interest to Mt. Subarni he did not divest himself of all interest in the property, but that there was a vested remainder in him which on his death became vested in his heirs, that is to say, in his two nephews Paul Singh and Bhola Singh. The defendants-appellants have succeeded to Phul Singh's share and the plaintiff's suit for the whole of the property must therefore fail. We therefore allow the appeal, set aside the decree and order of the lower Court, and direct that the plaintiff's suit be dismissed with costs in both Courts.

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