

Jagat Singh Vs. Karan Singh and ors.

Jagat Singh Vs. Karan Singh and ors.

SooperKanoon Citation : sooperkanoon.com/466208

Court : Allahabad

Decided On : Apr-12-1973

Reported in : AIR1973All572

Judge : S. Malik, J.

Acts : Tehri Garhwal Bhumi Sambandhi Adhikar Niyam - Sections 6

Appeal No. : Second Appeal No. 2866 of 1965

Appellant : Jagat Singh

Respondent : Karan Singh and ors.

Advocate for Def. : S.S. Bhatnagar, Adv.

Advocate for Pet/Ap. : N.P. Pant and ;S.N. Dowal, Adv.

Disposition : Appeal dismissed

Judgement :

S. Malik, J.

1. This is a plaintiff's appeal against the judgment dated 13-5-1965 of the Civil Judge, Tehri-Garhwal, allowing the respondents' appeal and setting aside the judgment of the Trial Court decreeing the plaintiff's suit for a permanent injunction restraining the defendant-respondents from interfering with his possession of the

property in suit.

2. The following pedigree is relevant:--

KEDARU

|

|||

Hira Biju Anand

|| Ram

Darshanu Jeet |

| Ram Indru

----- ||

|||| =Mst.

Sunder Jagdish Sri Chand | Maya

Singh alias Lunga =Rup

Jagat Singh Det

(Plaintiff)

Admittedly, the property in suit which is Khaikari or sub-tenancy land, was part of erstwhile Tehri-Garhwal State situate in Uttar Kashi and, therefore, in view of the provisions of Section 6 of the Tehri-Garhwal Administration Order the laws in force in Tehri-Garhwal State continued to remain in force and were actually in force on the date the suit was filed.

3. Admittedly, the land in suit was the sub-tenancy of Jeet Ram who died issueless. Jagdish alias Jagat Singh plaintiff-appellant was brought up by Jeet Ram and his wife Rup Dei since Jagat Singh was a boy aged about 12 years and Jagat Singh used to live in the house of Jeet Ram as a member of his family and used to look after his cultivation even after his death in the lifetime of Rup Dei and Jagat Singh's name appears to have been mutated in the village papers in place of Jeet Ram. The defendants-respondents admittedly are tenants-in-chief of the land in suit.

4. The only question to be decided in this appeal is whether after the death of the widow of Jeet Ram, Jagat Singh became entitled to inherit the sub-tenancy rights in the land as an heir of Jeet Ram. In order to determine this it is necessary to interpret the provisions of Section 6 (4) of the Tehri Garhwal Bhumi Sambandhi Adhikar Niyam which is as follows:--

'Mrit Khaikar ka Bhai ya Sapinda Warish (Bhai, Bhateja aadi) kewal us dasa men adhikari hoga jab ki wah us mrit khaikar ke saath jeevit samay men abibhakt kul ki reeti se uske shareek raha ho.'

5. As has been found by the court below, the plaintiff is a Sapinda of deceased Jeet Ram and he was living with Jeet Ram till his death as mentioned. According to the learned counsel for the appellant, the facts recorded by the lower Appellate Court already enumerated make the plaintiff entitled to become the Khaikar in place of Jeet Ram of the land in suit. I find myself unable to accept this contention. The words 'Bhai ya Sapinda Warish' naturally mean an agnate relation or a collateral on the male line of descent who the plaintiff is. But the main question is whether by merely messing together with Jeet Ram since a number of years before his death, he could be said to have been living with Jeet Ram as a member 'Abibhakt Kul kee Reeti se uske saath shareek raha ho.' As has been found by the Lower Appellate Court, there was a separation and partition amongst the descendants of Kedar, namely, Darshanu, Jeet Ram and Indru. The question is whether by messing with Jeet Ram and living with him in the same house it could be said that the plaintiff 'Abibhakt kul kee Reeti se uske saath shareek raha ho.' The words indicate that Jeet Ram should have been a member of an undivided

joint family in accordance with the custom of the family (Kul kee Reeti se). In my view, the answer has to be in the negative. As the provisions of Section 6 (4) of the Tehri Garhwal Bhumi Sambandhi Adhikar Niyam are applicable not only to Hindus but also to Muslims and Christians etc., who may be living in Tehri Garhwal, the words 'joint Hindu family' were not used and instead the words 'Abibhakt kul kee Reeti se uske saath shareek raha ho' were used. Those words when applicable to a Hindu must mean a person who was a member of a joint Hindu family of the deceased. Khaikar in this case Jeet Ram.

6. The lower appellate court rightly held that as there was separation since long between Jeet Ram and the plaintiff, merely by living or messing together with Jeet Ram the plaintiff could not be said to have become a member of a joint family with Jeet Ram within the meaning of Section 6 (4) of the Tehri Garhwal Bhumi Sambandhi Adhikar Niyam.

7. I, therefore, see no force in this appeal and dismiss it, keeping in view the facts and the circumstances of the case, I make no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com