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Court : Allahabad

Decided On : Jun-07-1928

Reported in : AIR1929All25

Appellant : Bhola Ram

Respondent : Dhani Ram

Judgement :

1. The circumstances which led to the institution of the suit out of which the present second appeal by the plaintiff has arisen are as follows:

2. Mt. Saro Kunwar who originally owned the property in dispute-shares in two villages in Hamirpur District-made a gift of the same by a deed dated the 12th June 1894, to Mt. Budhia Kuar, then aged 10, about eleven days before the latter's marriage with Baldeo Prasad, a man of fifty and a brother of Mt. Saro Kuar who appears to be a lady possessed of extensive properties. It was due to her position and efforts that an unequal match of that kind was agreed to by the bride's parents who were themselves of limited means. Accordingly the marriage was celebrated and in due course mutation of names was effected in favour of Mt. Budhia Kuar. She died as a childless widow on 16th March 1912, Baldeo having predeceased her. On her death mutation of names was effected in favour of Mt. Saro Kuar, who later on made a gift of it to Dhani Ram, the defendant-respondent by a deed dated 21st August 1913, The plaintiff instituted the present suit on 5th March 1913, claiming the property as the nearest reversioner of her husband Baldeo, and,

therefore, heir to her stridhan as the property in dispute is alleged to be.

3. The defence raised a number of pleas. It was denied that the property in suit was the stridhan of Mt. Budhia Kuar, in which she could have a heritable interest. It was alleged to have been granted to her as maintenance for life, so that on the death of Mt. Budhia Kuar, the grantor Mt. Saro Kuar could take possession as full owner and make a gift of it to the defendant. The plaintiff's relationship with Baldeo was denied. The marriage of Mt. Budhia Kuar with Baldeo was said to have been performed in an unapproved form with the result that her stridhan could not in law devolve on her husband's reversioners. Mt. Budhia Kuar's death was alleged to have occurred on a date more than 12 years before the institution of the suit which was said to be barred by limitation on that account.

4. Both the lower Courts found against the defendant on all the pleas set out above, holding that the plaintiff was the nearest reversioner of Baldeo when Mt. Budhia Kuar died, that the marriage in question was in the approved form, that the property in dispute was the stridhan of Mt. Budhia Kuar and not a mere maintenance grant for life, and that the plaintiff's suit was within limitation. But the lower appellate Court while agreeing with the first Court, which had decreed the claim, on all the questions in controversy dismissed it on a finding that the property granted to Mt. Budhia Kuar was her sulka stridhan, devolving according to a rule of descent peculiar to such property, on her mother Mt. Dulari Kuar who survived her daughter. The plaintiff has preferred this second appeal.

5. Woman's estate technically called stridhan in Hindu Law is of various kinds. The name of each class of stridhan is suggestive of the mode of acquisition or of the motive by which the donor was actuated; one of the classes of stridhan is known as sulka which has been defined to include property given to a woman before or after her marriage by husband's relatives. In his Hindu Law of Marriage and Stridhan, 4th Edition, Sir Guru Das Banerjee quotes the following passage from well-known works:

The trifle which is received by a woman as the price or reward of household labour, of using household utensils, of keeping beasts of burden, of watching milch cattle, of preserving ornaments of dress, or of superintending servants, is called

her perquisite (sulka).' (p. 294).

The term 'gratuity' (sulka) means that for the receipt of which a girl is given in marriage. (p. 299).

The term sulka, or fee, is explained as having two meanings. It either means according to the definition of Katyayana. 'whatever has been received as a price of workmen on houses, furniture and carriages, milk vessels and ornament' or it means, according to the text of Vyasa, 'what is given to bring the bride to her husband's house.' The former of these meanings is thus explained: what is given to a woman by artists constructing a house or executing other work, as a bribe to send her husband or other person (of her family) to labour on such particular work, is her fee. It is the price (of labour) since its purpose is to engage a (labourer) (pp. 309-310).

6. Sir E.J. Trevelyan in his work on Hindu Law (E. 2, p. 436) has the following:

According to the more usual view, this was the gratuity for the receipt of which a girl is given in marriage. It was originally paid to the father as the price of the bride, but when that was forbidden the father received it for the bride, and it became her property as her dowry.

7. The reason why such property follows a peculiar rule of inheritance is thus given by another learned author:

The reason is that originally it belonged to the parents, but later on, it was declared to become the bride's stridhan; and this rule of succession appears to be a compromise between the original and the later view.' (Sarkar on Hindu law p. 734, edn. 6).

8. The learned advocate for the appellant has contended that no immovable property given to a girl can be her sulka which is limited to trifling gifts of cash or ornaments such as may be regarded as her 'perquisite.' It may be that in ancient days when this class of stridhan was first recognised only articles of comparatively small value were the subject of it but, given all other conditions, there appears to be no reason why a woman may not acquire immovable property in the same

manner and subject to the same conditions as would be annexed to moveable property. No authority has been quoted in support of his contention and we are unable to give effect to it. The main argument addressed to us on behalf of the appellant is, however, based on two grounds, (1) that the learned Additional District Judge has made a new and inconsistent case in dismissing the plaintiff's claim on a finding that the property, in dispute was sulka stridhan of Mt. Budhia Kuar and (2) that having regard to the evidence adduced in the case the property in dispute has not been established to be her sulka. We are of opinion that both of these grounds should be upheld for reasons to be presently stated.

9. That it was put forward for the first time in argument before the lower appellate Court can admit of no doubt. That it is quite inconsistent with the defence pleaded in the written statement and maintained in the petition of appeal before the lower appellate Court is equally clear. The plaintiff's allegation in para. 2 of the plaint that the property in dispute was the stridhan of Mt. Budhia Kuar was denied unreservedly in para. 1 of the written statement. Para. 3 of the latter again emphasized that it was by 'no means' stridhan of that lady. If it had been the intention of the defendant to allege it to be sulka, the appropriate reply would have been to admit that it was stridhan with the qualification that it was of the sulka class. On the contrary it was alleged to be held by her as maintenance for life so that it was not heritable at all, either by her husband's collaterals or by her mother. At the trial of the suit a sum of Rs. 2,500 was said to have been paid as price of the bride and, therefore, the marriage was characterized as in the unapproved form. There was; no suggestion that the property in dispute had been given as part of the price so as to make it sulka. In the grounds of appeal before the lower appellate Court all the pleas urged at the trial were embodied, maintaining that neither Mt. Saro Kuar, the donor, nor Mt. Budhia, Kuar, the donee, had more than a life interest. Every question raised in the pleadings was decided by the lower appellate Court in favour of the plaintiff. The learned Additional District Judge thought that

being a point of law, it could be raised in appeal and so I heard the parties on it.

10. It is not a question of law, pure and simple. Unless evidence is led to show the circumstances under which the gift was made and that it was intended to be the price of the bride or given, to the girl for services mentioned in the texts, the property cannot answer the description of sulka. Parties could have adduced oral evidence on the question if it had been raised at a proper stage. The recitals in the deed of gift fall far short of the requirements of the case and on the contrary tend in the opposite direction. We think the appellant's grievance that he has been prejudiced by the introduction of a controversy not warranted by the pleadings is well-founded.

11. Though the learned Additional District Judge professed to treat the question as one of law he proceeded to refer to some circumstances and even to the oral evidence of Mt. Dulari Kuar in proof of the fact that there was an agreement between the parents of Mt.. Budhia Kuar and Mt. Saro Kuar under which the latter was made to part with the property as price of the bride. He thought that the recitals in the deed of the gift afford

a clear indication that the property was to be given to Budhia Kuar in consideration of marriage and as an inducement for it.

12. Ex facie the deed purports to have been executed by Mt. Saro because

Baldeo Prasad is her own brother who had lived with her from his childhood and was then about to be married to Mt. Budhia Kuar... and, therefore, for the maintenance and comforts of the last named who would be the executant's bhawaj (brother's wife)

13. the gift in full ownership was made to enable the donee to remain in possession like the executant (misl mere) with powers of sale, mortgage and gifts, etc.' In the absence of a clear issue raised and tried it is not permissible to impute an intention to the donor by a resort to speculative theories, however plausible. The recitals of the deed above quoted clearly bear out another theory, viz., that out of regard for Baldeo Prasad a provision was made for his family and children, and as it was expected that in the ordinary course of nature Mt. Budhia Kuar would survive her husband for very long and might have young children to bring up, it

was on the whole desirable that deed should be executed in her favour. That Baldeo Prasad would also be supported out of the income of the property must have been present to her mind. It is highly improbable that Mt. Saro Kuar intended the property to be sulka, of which the essential characteristic is that the lady's own children are absolutely excluded by her parents and other maternal relations in the matter of inheritance. Mt. Saro Kuar could not have intended such a result, and could not, therefore, have intended to give the property as sulka. She makes it clear that the donee's estate in the gifted property would be the same as her own. The fact that the gift was made in contemplation of marriage does not necessarily give rise to the inference that it was the price of marriage. To attract the application of special rules of succession to sulka it must be distinctly alleged and proved by cogent evidence that the property given to a Hindu girl was of that character, the gift having been prompted by a desire to confer pecuniary benefit, immediate or ultimate, on the parents who have been thereby induced to give her in marriage. In the present advanced stage of society every ante-nuptial settlement or gift cannot be classed as sulka. The learned Additional District Judge quotes a passage from the evidence of Mt. Dulari, mother of Mt. Budhia Kuar, to support his view that the gift was meant to be in consideration of marriage. It runs thus:

I had taken Rs. 2,500 from Saro Kuar for the marriage of my daughter; and for the maintenance of Budhia I had got Saro Kuar make a gift of two villages to her (daughter) because her (Budhia's) husband (rather would be husband) was an old man.

14. It should be borne in mind that this statement was elicited from her to show that the marriage was in an unapproved form. The Court of first instance disbelieved it and the lower appellate Court did the same, observing it in another place of the judgment:

It was also urged that the marriage was not performed in an approved form in that Mt. Dulari Kuar was paid Rs. 2,500 as consideration of marriage. The lower Court did not believe the evidence on that point and I agree with it.

15. The only manner in which the two findings of the learned Judge can be reconciled is that the first half of the sentence of Mt. Dulari's evidence previously quoted is to be disbelieved and the second half is to be accepted. Even on this assumption the gift unlike the Rs. 2,500 was not stated to be the consideration of marriage. 'We have entered at length on a discussion of the circumstances founded on by the learned Judge to demonstrate the injustice resulting to the plaintiff, who himself could not lead evidence on a question of fact not raised but subsequently sought to be established by evidence of a dubious and inconclusive character.

16. In the view of the case which we have taken the decree of the lower appellate Court cannot be sustained. It is accordingly discharged and that of the Court of first instance is restored. The defendant-respondent shall also pay the costs of the plaintiff-appellant incurred in the lower appellate Court and in this Court.