

Smt. Bhangdi Vs. Smt. Ditli

Smt. Bhangdi Vs. Smt. Ditli

SooperKanoon Citation : sooperkanoon.com/510083

Court : Madhya Pradesh

Decided On : Jul-08-2003

Reported in : 2004(2)MPHT8

Judge : A.M. Sapre, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100; [Hindu Succession Act, 1956](#) - Sections 8

Appeal No. : Second Appeal No. 248/2003

Appellant : Smt. Bhangdi

Respondent : Smt. Ditli

Advocate for Pet/Ap. : T.N. Singh, Adv.

Disposition : Appeal dismissed

Judgement :

A.M. Sapre, J.

1. It is a second appeal filed by the defendant under Section 100 of CPC against the judgment/decreed, dated 12-3-2003, passed by learned Additional District Judge, Jobat, District Jhabua in C.A, No. 2-A of 2002, which in turn arises out of Civil Suit No. 30-A of 2000, decided by Civil Judge, Class I, Jobat, District Jhabua,

on 4-1-2002. The question that arises for consideration in this second appeal is, whether appeal involves any substantial question of law within the meaning of Section 100 ibid It is the case of appellant (defendant) that the appeal does involve substantial of law.

2. Heard Shri T.N. Singh, learned Counsel for the appellant on the question of admission.

3. Having heard learned Counsel for the appellant and having perused record of the case, I find no merit in the appeal. In other words, the appeal does not involve any substantial question of law and hence, the appeal must merit dismissal in limine.

4. The dispute in substance, relates to status of plaintiff and the defendant. Both these ladies claimed to be the widow of one late Inder Singh after his death because he left one house, i.e., suit house. Both claimed that she is the only surviving widow after the death of Inder Singh and hence, on his death, one has succeeded the house in its entirety. According to plaintiff, she is the real widow whereas the defendant was only his keep. The defendant, alleged that she is the widow. It is this issue which was gone into on facts by the two Courts below and recorded against the defendant in part by holding that both plaintiff as also the defendant are the widow and hence, has half share in the suit house. Accordingly, the suit was partly decreed in plaintiffs favour holding her to be the owner of half in the suit house as against the defendant who too was held to be the widow of late Inder Singh.

5. The aforementioned finding is based on appreciation of evidence and hence, it does not call for any interference in the second appeal. It does not in real sense involve any substantial question of law as such so to attract the rigour of Section 100 ibid. This Court can not again go into the field of evidence to decide the status of plaintiff and/or defendant as to whether their status was properly determined on facts, or not It is not a case where no evidence was led, nor it is a case where inadmissible evidence was relied on. It is a case where the oral evidence was led by the parties and the same was appreciated for recording the aforementioned finding. It is conclusive and binding on me in second appeal because it is

concurrent in nature. Learned Counsel for the appellant though argued the appeal with vehemence but in my view, it did not make out any real substantial question of law. The entire thrust of the submission was on facts than on law. One has to make a distinction between the submission based on facts and on law because in former case, it is good for first appeal but in later category of cases, it is good for second appeal. Present one is a case of first category in submission and hence, it being a second appeal, the same is of no consequence.

6. The appeal, thus, fails and is dismissed in limine.

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