

Biro and anr. Vs. Banta Singh

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Court : Punjab and Haryana

Decided On : Sep-17-1979

Reported in : AIR1980P& H164

Judge : G.C. Mital, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 299, 300 and 304; Hindu Succession Act - Sections 25; Evidence Act - Sections 50 and 60

Appeal No. : Second Appeal No. 898 of 1968

Appellant : Biro and anr.

Respondent : Banta Singh

Judgement :

1. The important question of law which arises in this appeal is whether the civil Court is bound by the decision of the criminal Court holding the accused guilty or it has to come to an independent conclusion on the evidence led in the suit. Banta Singh plaintiff was convicted by the criminal Court under S. 304, I.P.C., for causing such bodily injuries to his adoptive father Jaggar Singh, as a result of which he ultimately died and he was deprived of succession in view of S. 25 of the Hindu Succession Act by the Revenue Court as they mutated the land left by Jaggar Singh in favour of his two sisters. The present proceedings arise out of a suit filed by Banta Singh for declaration and possession challenging the adverse mutation.

2 Admittedly, Jaggar Singh was the last male holder who died on 17th of Apr, 1957, as a result of injuries alleged to have been caused to him by his adopted son Banta Singh and the natural father of Banta Singh. At the time of death. Jaggar Singh possessed 195 kanals 19 marlas of agricultural land Banta Singh was adopted by Jaggar Singh in 1947 and a formal deed of adoption was registered on 18th of May, 1955. By gift deed dated 3rd of Aug., 1956 Jaggar Singh had made a deed of 40 bighas of land in favour of his adopted son Banta Singh.

3. The Revenue authorities mutated the land left by Jaggar Singh in favour of Smt. Biru and Smt. Parsini. the alleged sisters of Jaggar Singh, and refused to sanction the mutation in Favour of Banta Singh-as adopted son on account of the fact that by murdering his adoptive father, he was debarred from inheriting his estate under S. 25 of the Hindu Succession Act. By the present suit, Banta Singh challenged the mutation and sought declaration and possession on the ground that he is the next heir of Jaggar Singh and not the two sisters who have been impleaded as defendants. He also pleaded that the defendants are not the sisters of Jaggar Singh.

4. The stand of the defendants was that as sisters they were entitled to succeed as such and as the plaintiff had committed the murder of his father, by virtue of S. 25 of the Hindu Succession, Act. he was not entitled to succeed. The adoption of the plaintiff was also disputed.

5. On evidence, the trial Court found that the plaintiff was proved to be the adopted son and that the defendants were proved to be the sisters of Jaggar Singh. The trial Court, after placing reliance on Exhibit D.1, copy of the judgment of the Sessions Judge, dated 29th of July 1957; the statement of Dr. J. S. Sarkaria D.W.8 and the dying declaration. Exhibit D.W. 9/A, came to the conclusion that the plaintiff had murdered his adoptive father and as such was not entitled to succeed in view of S. 25 the Hindu Succession Act. In the result, the plaintiff's suit was dismissed on 2nd of July, 1966.

6. Aggrieved from the judgment and decree of the trial Court, Banta Singh plaintiff filed a first appeal up for hearing before the Additional Judge, Hissar. who upheld the finding of the trial Court with regard to adoption. However, the finding about the

defendants being the sisters of Jaggar Singh recorded by the trial Court was upset. In para. 10, the lower appellate Court came to the conclusion that the plaintiff could not be stated to have intended to cause the death of Jaggar Singh and as such was not guilty of murder and S. 25 of the Hindu Succession Act was not a bar in his way. It also came to the conclusion that since the conviction of the plaintiff by the criminal Court was under S. 304, Indian Penal Code, he could not be treated a murderer, for he was not convicted for murder but for culpable homicide not amounting to murder. In the result, the appeal was allowed and the suit for declaration and possession filed by the plaintiff was decreed by the lower appellate Court by judgment and decree dated 1st of May, 1968. The defendants have come to this Court in second appeal.

7. The learned counsel for the appellant has strenuously urged that the lower appellate Court was in error in reversing well-considered findings recorded by the trial Court in their favour. After hearing the learned counsel for the parties, I am of the view that there is merit in the contentions of the learned counsel for the appellants and the appeal deserves to succeed.

8. The trial Court correctly considered the evidence on record, keeping in view Ss. 50 and 60 of the Evidence Act whereas the lower appellate Court wrongly understood S. 50 and thereby erred in reversing finding about appellants' relationship with the deceased. From a reading of the statements of two witnesses along with the statements of the defendants, the relationship was clearly proved and the mere fact that Jaggar Singh did not mention in the adoption deed that he had sisters would be no ground to disbelieve their statements. Accordingly, I reverse the decision of the lower appellate Court under issue No. 1 and restore that of the trial Court.

9. The remaining point involved in appeal as noticed in the opening of the judgment is covered by the opinion of the Supreme Court in *Anil Behari Ghosh v. Smt. Latika Bala Dassi*, AIR 1955 SC 566, according to which the judgment of the criminal Court is only tantamount to show that there was a trial resulting in the conviction and sentence of the adopted son to four years' rigorous imprisonment under S. 304, Indian Penal Code but it is not evidence of the fact the plaintiff-respondent was the

murderer. The judgment of the criminal Court is also not binding on the civil Court to find out on evidence whether the case will fall under S. 304 or will squarely fall within the definition of Ss. 299 and 300, Indian Penal Code. Both the aforesaid points are to be determined by the civil Court on evidence adduced before it. Keeping the law laid down by the Supreme Court in view. it has now to be examined whether the learned Additional District Judge was right in coming to the conclusion g that the plaintiff-respondent was not guilty of murder and that since he was convicted by the criminal Court under S. 304 I.P.C, he was guilty of culpable homicide not amounting to murder which did not create a bar to succession under S. 25 of the Hindu Succession Act.

10. On the evidence which has been led in this-case, I find that the plaintiff-respondent caused such body injuries to his adoptive father Jaggar Singh as were sufficient to cause his death. The evidence is the d declaration of Jaggar Singh evidence Exhibit D.W.9/A, in which he has clearly stated that Banta Singh along with his natural father Sher Singh gave beating to him with sticks and thrust a four-feet stick in his anus. After making the dying declaration he died. Dr J.S Sarkana, has been produced as D.W. 8 who has corroborated the aforesaid dying declaration by his medical evidence and has opined that Jaggar Singh died as a result of the injuries caused to his anus which were sufficient to cause his death. Accordingly I reverse the decision of the Court below that it is not proved that Jaggar Singh died as a result of injuries caused to him by the plaintiff-respondent.

11. The next question that arises for consideration is under what section the offence committed by the plaintiff-respondent shall fall. A reading of Ss. 299 and 300, I.P.C., shows that the offence committed by the plaintiff-respondent is clearly of murder and nothing short of it. His case does not fall in any of the exceptions to Section 300, Indian Penal Code Neither there is any plea nor there is any evidence to show that the case of the plaintiff falls in any of the exceptions. Accordingly, I am of the view that the plaintiff-respondent is guilty of murder which clearly attracts S. 25 of the Hindu Succession Act, with the result that he would not be entitled to succeed to the estate left by his adopted father who was murdered by him.

12. Parliament had inserted Section 25 in the Hindu Succession Act as a matter of high public policy based on well-known principles of justice equity and good conscience so that a person may not be able to accelerate the succession by murdering the last owner of the property and if it is done by the next heir he stands excluded from succession, meaning thereby that he would not be allowed to take benefit of succession by his own wrong by committing the murder of the previous owner. This view of mine finds support, not only from the bare reading of the section but by a similar provision under the Hindu Law and from a decision in *Seetharamaiah v. Ramakrishnaiah*, AIR 1970 Andh Pra 407, the relevant portion of which deserves to be reproduced:--

'This court has held that murder was clearly committed within the meaning of S. 300. I.P.C. The fact that he was given the benefit of doubt arising out of the conflicting versions of two witnesses and convicted under S. 324, I.P.C. does not in any way absolve him from the heinous crime to which he had made his own infamy contribution. S. 25 is introduced in the Hindu Succession Act as a matter of high public policy based on principles of justice, equity and good conscience to make it absolutely impossible for a murderer who deserves to be hanged or to be shut behind the prison bars for life, to derive advantage or beneficial interest from the very heinous act committed.

13. For the reasons recorded above, I accept this appeal, set aside the judgment and decree of the lower appellate Court and restore that of the trial Court with costs throughout.

14. Appeal allowed.