

Devi Ram Vs. Shanti Devi

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Court : Punjab and Haryana

Decided On : Jan-12-2003

Reported in : (2004)137PLR552

Judge : Kiran Anand Lall, J.

Acts : [Hindu Succession Act, 1956](#) - Sections 15(2) and 16

Appeal No. : Regular Second Appeal No. 4 of 1986

Appellant : Devi Ram

Respondent : Shanti Devi

Advocate for Def. : C.B. Goel and; R.C. Chauhan, Advs.

Advocate for Pet/Ap. : U.D. Gaur, Adv.

Disposition : Appeal dismissed

Judgement :

Kiran Anand Lall, J.

1. By this judgment, I will disposing of a Regular Second Appeal of Devi Ram plaintiff-appellant and the cross objections of Shanti Devi defendant-respondent. Learned first appellate court had accepted appeal of Shanti Devi defendant against the decretal of suit by trial court and dismissed the suit but while doing so,

it also recorded a finding that the defendant-respondent was also not entitled to inherit any share in the property left by Smt. Badami.

2. In the suit plaintiff had claimed a declaration to the effect that he is owner in possession of the land in dispute, due to being legal heir of Smt. Badami and also on the basis of a Will made by her in his favour on 7.5.1946 'in a partition File No. 20 decided on 7.5.1946'. He had also claimed consequential relief of permanent injunction restraining the defendant from interfering in his possession over the land. Pedigree-table of the plaintiff, as given in the plaint, was as under :-

Chet Ram

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Chiranji Lal Kallu Radhhey Lal

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Badami Devi Ram Shiv Charan

widow (plaintiff)

|

Ved Ram

3. It was pleaded in the plaint that defendant was not related to Badami, in any way, and therefore, she had no concern with her inheritance. But she had fraudulently got sanctioned mutation (bearing No. 1252) of Smt. Badami's inheritance in her favour, to the extent of 1/4th share, on or about 16.10.1962. This mutation came to the notice of the plaintiff just before the filing of suit. It was, therefore, pleaded that on the basis of such illegal mutation, defendant had no right to dispute plaintiffs title in the land in dispute.

4. Suit was contested by the defendant denying all the averments made in the plaint. According to her, the mutation was validly sanctioned. In the alternative, she claimed that she had become owner of the suit land by adverse possession.

5. Trial Court decreed the suit, but the first appellate court set aside the decree and dismissed the suit, holding that neither the defendant nor the plaintiff was entitled to succeed to the estate of Badami. The first appellate court further held that the latter having inherited the estate from her husband, it was to devolve on the heirs of her husband in the order of succession given in Rule 3 of Section 16 of the [Hindu Succession Act, 1956](#) (to be referred as 'the Act'). And, as such, Radhey Lal alone, who was her husband's brother, was to inherit it.

6. After having heard arguments addressed by learned counsel for both side and having gone through the records of the case, I find no fault in the judgment of the first appellate court.

7. At the outset it may be stated that in so far as the finding of trial court that Badami did not execute any Will in favour of the plaintiff is concerned, the same had become final as plaintiff did not challenge it any further by way of filing any cross-objections in the (first) appeal filed by the defendant against the decretal of suit. Besides, the plaintiff's claim of ownership on the basis of natural inheritance, is also without any merit. Because, it is common case of the parties that Badami, who died issueless, inherited the land from her husband Chiranji Lal, who had pre-deceased her, after the coming into force of the Act. Therefore, according to Section 15(2)(b) of the Act, this land was to be inherited by her husband's heirs. Undisputedly, no Class-I heir of her husband was alive when she died. His all the three heirs. Radhey Lal, Devi Ram plaintiff and Smt. Santi Devi defendant belonged to the category of Class-II heirs. And, out of them, only Radhey Lal, being brother, belonged to the second entry in the heirs of Class-II category, whereas the other two heirs viz. Devi Lal plaintiff and Shanti Devi defendant did not belong to this entry i.e. second entry in the heirs of class-II category. Section 9 of the Act lays down that among the heirs specified in the Schedule, those in class-I shall take simultaneously and to the exclusion of all other heirs. But those in the first entry in class-II shall be preferred to those in the second entry, those in

the second entry shall be preferred to those in the third entry, and so on. That being the legal position, Radhey Lal was the only heir entitled to succeed to the property of Chiranji Lal. Devi Ram plaintiff, who is brother's son of Chiranji Lal, had no right to succeed to Chairanji Lal's property, in the presence of Radhey Lal, and court had rightly non-suited Devi Ram plaintiff on the ground of not being natural legal heir even (in the presence of Radhey Lal).

8. Before parting with this judgment, reference may also be made to the State of West Bengal v. The Dalhousie Institute Society;' 1970(3) S.C.C. 802, relied upon by learned counsel for the appellant-plaintiff in support of contention that in any case, the appellant had become owner of the property by way of adverse possession as he had entered into its possession on the basis of mutation No. 1252 (supra) which was illegally sanctioned in his favour and that of Shanti Devi defendant to the extent of 1/4th share each, though the whole estate left by Badami was to have legally gone to Radhey Lal. In this connection, it need only be mentioned that the plea of adverse possession cannot be permitted to be raised in second appeal, as no such plea was taken up in the plaint.

9. There is thus, no merit in the appeal and also in the cross objections. Resultantly, the appeal as well as the cross-objections shall stand dismissed leaving parties to bear their own costs.