

Dhani Ram Vs. Karam Chand

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Court : Delhi

Decided On : Jun-16-1969

Reported in : 6(1970)DLT59

Judge : H.R. Khanna, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 100

Appeal No. : Regular Second Appeal No. 249 of 1967

Appellant : Dhani Ram

Respondent : Karam Chand

Advocate for Pet/Ap. : A.C. Hoshiarpuri and; B.B. Vaid, Adv.

Judgement :

H.R. Khanna, J.

(1) This regular second appeal filed by Dhani Ram defendant is directed against the judgment and decree of learned Senior Subordinate Judge, Hoshiarpur, affirming on appeal the decision of the trial Court whereby a decree for possession of and measuring 42 Kanals 18 Marias was granted in favor of Karam Chand plaintiff. A decree for declaration was also granted in favor of the plaintiff that the gift deed dated May 3, 1857 executed by Shrimati Udnai, defendant No. 2, in favor of Dhani Ram defendant No. 1, in respect of land measuring 21 Kanals 10 Marias,

would not affect the reversionary rights of the plaintiff after the death of Udmi.

(2) Following pedigree table would be helpful in appreciating the point of controversy between the parties : Uatar Singh Sbyama Nihala Karam Chand Faqir Chand (plaintiff) (Defendant No.

4) Inder Singh Amar Singh (Widow (Widow Gian Devi Udmi Defendant Defendant No.

3) No.

2) Nihala owned about 85 Kanals 17' Marias of agricultural land. Nihala died on April 8, 1946 and thereupon his land was mutated on June 20, 1947 in favor of his daughters-in-law, Gian Devi and Udmi, in equal shares because their husbands, Inder Singh and Amar Singh, had died during the lifetime of Nihala. Gian Devi executed a deed of surrender in respect of her one-half share in the estate of Nihala in favor of Karam Chand and Faqir Chand. Udmi thereupon filed a suit for preemption on the allegation that the deed of surrender was in fact a deed of sale. In that suit there was a compromise between the parties on November 1, 1952 and a decree for possession of one-half of the land, which was the subject matter of the deed of surrender i. e. about 21 Kanals 10 Marias, was awarded in favor of Udmi. One of the terms of compromise was that Udmi was to remain in possession of the land obtained as a result of compromise for her lifetime and that she would not be entitled to alienate it without legal necessity. On May

3. 1967 Udmi executed a deed of gift in respect of the land in suit measuring 61 Kanals 7 Marias in favor of Dhani Ram defendant No.

1. It is the common case of the parties that 42 Kanals 18 Marias out of the gifted land had been inherited by Udmi on the death of Nihala and the remaining land measuring 21 Kanals 10 Marias was the same which had been obtained by her as a result of compromise in the suit for preemption. On October 11, 1957 Karam Chand brought the present suit for possession of 42 Kanals 18 Marias of land and for a declaration that the gift dated May 3, 1957 made by Udmi defendant No. 2 in favor of Dhani Ram defendant No. 1 in respect of 21 Kanals 10 Marias of land

would not affect the reversionary rights of the plaintiff after the death of defendant No.

2. According to the allegations of the plaintiff, the parties were governed by Hindu Law and the land in suit was Joint Hindu family property of Nihala. Nihala was stated to be the last coparcener and on his death, according to the plaintiff, he and his brother, Faqir Chand defendant No. 4 were entitled to inherit the land in dispute in preference to Nihala's daughters-in-law, Gian Devi and Udmi, it was further pleaded, was not competent to make a gift of the land in dispute in favor of Dhani Ram.

(3) The suit was resisted by Dhani Ram defendant who pleaded that Udmi Udmi was full owner of the land in suit and was competent to make a gift of it. The parties, it was further averred, were governed by Customary Law.

(4) After replication, the following issues were framed in the case : 1. Whether the family of deceased Nihala was governed by custom in matters of succession and alienation If so, what that custom is 2. Whether the property in dispute is Hindi ancestral coparcenary property 3. Whether Nihala was in possession of the property in question as sole surviving coparcener 4. Whether there was any compromise between plaintiff, defendant No. 4 and defendant No. 2 in respect of the part of the land in suit If so, what were its terms 5. Whether plaintiff and defendant No. 4 are preferential heirs of deceased Nihala in respect of the property in suit 6. Whether Mst. Udhami defendant No. 2 was not competent to make the gift of the property in suit in favor of defendant No. 1 7. Whether the plaintiff is estopped from suing by reason of his act and conduct 8. Whether the suit is within time 9. Relief The trial Court held that the parties, who are Rajput by caste, were governed by agricultural custom. Issues 1 to 3 were decided against the plaintiff and in favor of the defendant. On Issue 4 the finding was that Udmi was given the land covered by the issue for life-estate and was prohibited from alienating it without legal necessity. Issue 5 was decided in favor of the plaintiff and it was held that he and Faqir Chand defendant No. 4 were preferential heirs of Nihala as against his daughters-in-law, Gian Devi and Udmi. Issues 6, 7 and 8 were decided in favor of the plaintiff and against the defendants. In the result, the

suit of the plaintiff was decreed. On appeal the decision of the trial Court was affirmed.

(5) In second appeal Mr. Hoshiarpuri on behalf of the appellant has argued that Karam Chand and Faqir Chand are not the preferential heirs of Nihala as against Gian Devi and Udmi, and the finding of the Courts below to the contrary is not correct. In my opinion, there is force in this contention. According to para 9 of Rattigain's Digest of Customary Law, the widow of a sonless son who predeceased his father, is, in some tribes, permitted to succeed to his share, but the right is not universally admitted, and the onus, of proving it lies on the widow who asserts it to exist. Nihala belonged to Una Tehsil. . So far as the agriculturists of this Tahsil are concerned, the Rivaj-i-Ain of Hoshiarpur District, published in 1914, is not of a very great help as this Rivaj-i-Ain relates primarily to Hoshiarpur, Dasuwa and Garh-Shankar Tahsils. Una Tahsil has now been made a part of Kangra District. This was in pursuance of the recommendations contained in the Report of the Punjab Boundary Commission presided over by Shah, J. of the Supreme Court. In Para 72 of the Report it was observed :

'The dress, diet, customs, manners, habits traditions, festivals and rituals disclose a close similarity between the people of Una and the people of Kangra District and this similarity of customs was recognised in a judgment of the Punjab High Court 1916 6 PLR .'

In the case of Gopal Singh and another v Prabh Diyal Singh the learned Judges of the Punjab Chief Court dealt with the question of pagwand of chundawand and observed :

'It is doubtlessly correct to say that in the Punjab plains the custom of chundawand is slowly giving place to pagwand, even where it may have been prevalent at one time We do not think that there is any such certainty as regards the hilly tracts of the province. Mr. Lyall's Settlement Report for Kangra, quoted in Mussammat Kundo v. Shib Dial', where this Court decided a Kangra case in favor of chundawand, is a notable authority to the contrary, and we can see no reason why there should be any broad distinction between the Kangra District and the adjoining Una Tahsil of Hoshiarpur.' It would, therefore, appear that the custom

prevalent in Una Tahsil is similar to that prevalent in Kangra D, of which district Una now forms an integral part. According to Answer to Question 43 of the Rivaj i-Am of Kangra District of 19i9 : 'All are agreed that the widow of a pre-deceased son succeeds in the presence of other sons of the deceased to her deceased husband's share'.

(6) In the fact of the above material, I find considerable force in the contention that Kpram Chand plaintiff and Faquir Chand are nto preferential heirs of Nihala as against his daughters in-law, Gian Devi and Udrni. I am also fortified in this conclusion by the Full Bench decision of the Punjab High Court in the case of Charan Siueh Harnam Singh and another v. Gurdial Singh Hmnam Smgh. It was held by the majority in that case that a widow governed by custom in matters of succession generally possesses a right to succeed collaterally in her husband's family and she exercises this right in no other capacity except as representative of her husband. From the above decision it would follow that Giin Devi and Udrni were entitled to succeed collaterally in the family of their husbands as the widows of Inder Singh and Amar Singh respectively. It would, in my opinion, look anomalous that though Gian Devi and Udrni are entitled to succeed collaterally in the family of their husbands as the representatives of their husbands, they be debarred from succeeding to the estate of their own father-in-law as the representatives of their deceased husbands more so when the father-in law had no other son. Looking to all the facts, I am of the view that the plaintiff has to prove that he and Faquir Chand are preferential heirs of Nihala as against Gian Devi and Udrni

(7) Udrni, who was in possession of the land measuring 42 Kanals 28 Maria? as the widow of Amir Singh, become full owner of that land by operation of section 14 of the Hindu Succession Act. As such, she was competent to make a gift in respect of the aforesaid land.

(8) So far as the land measuring 21 Kanals 10 Marias is concerned, the same was obtained by Udrni as a result of compromise made on November 1, 1952. According to the term of compromise Udrni was only to have a life-interest in the land and was of competent to alienate it without legal necessity. Udrni could not

become a full owner of this land under section 14 of the Hindu Succession Act because sub-section (2) of that section provides : -

'NOTHING contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil Court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.' As, according to the term of compromise, UDMI could not make a gift of the land measuring 21 Kanals 10 Marlas it is manifest that the gift made by UDMI in respect of 21 Kanals 10 Marlas is invalid and not binding upon the plaintiff. The Courts below as such were justified in granting the decree for declaration in respect of 21 Kanals 10 Marlas but not in granting a decree for possession of 42 Kanals 18 Marlas.

(9) I may observe that Mr. Vaid on behalf of the plaintiff-respondent has argued that the appellant did not challenge the finding of the trial Court on issue 5, which relates to the plaintiff and defendant No 4 being preferential heir of Nihala, in the lower appellate Court. It is urged that the appellant having not challenged that finding in the lower appellate Court, cannot assail it in second appeal. In this respect I am of the view that the question as to whether a nephew under the Customary Law is preferential heir as against the daughters in law of the deceased is a question of law and the appellant can agitate it in second appeal even though it was not agitated in the Court of first appeal.

(10) Reference has also been made by Mr. Vaid to the fact that a court-fee of Rs. 25/8 was required for the memorandum of appeal. The appellant initially affixed a court-fee of Rs. 6 on the memorandum of appeal and made up the deficiency subsequently when on objection to that effect was made by the officials of the Court. It appears that the applicant initially paid a court-fee of only Rs. 6.00 because the counsel of the appellant was of the view that the relief for declaration was also covered by the relief for possession of land and that the court-fee of Rs. 6.00 was sufficient. The deficiency was, however, made up and looking to the facts I am of the opinion that the delay in paying the court-fee should be condoned.

(11) I, therefore, partly accept the appeal and dismiss the suit of the plaintiff in so far as it relates to possession of land measuring 42 Kanals 18 Marias. The decree for declaration granted by the Court below in respect of the land measuring 21 Kanals 10 Marias is, however, maintained. In view of the partial success of the parties, I leave them to bear their own costs throughout.

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