

Amar Nath Vs. Munnu and ors.

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Court : Delhi

Decided On : Jun-16-1969

Reported in : 6(1970)DLT73

Judge : I.D. Dua, C.J.

Acts : Hindu Adoption and Maintenance Act, 1956 - Sections 42(2)

Appeal No. : Regular Second Appeal No. 178 of 1967

Appellant : Amar Nath

Respondent : Munnu and ors.

Advocate for Pet/Ap. : A.C. Hoshiarpuri,; A.C. Sud and; K.D. Sood, Advs.

Judgement :

I.D. Dna, C.J.

(1) This is a plaintiffs' regular second appeal from the judgment and decree of the learned Senior Subordinate Judge (with enhanced Appellate Powers), Kangra District at Dharamsala, partly accepting the defendants' appeal and modifying the decree made by the trial Court which had decreed the suit instituted by the present plaintiff along with Shrimati Indri as his co-plaintiff for possession of the suit land. The suit was decreed by the trial Court only in favor of the appellant Amar Nath against defendants 1 to 6, but costs of the suit were directed to be borne only by

defendants 1 to 3. The suit of Smt. Indri, plaintiff No 2, was dismissed. Now Smt. Indri has been impleaded as a Respondent 1 in this Court.

(2) The facts giving rise to the controversy may now be stated. Gopala deceased, an agriculturist, alleged to be governed by customary law prevailing in Tehsil Hamirpur and by the general agricultural custom in matters of succession and alienation, was pleaded in the plaint to have adopted plaintiff No. 1 Amar Nath, appellant, as his adopted son by means of a document dated 8.2.1944. Amar Nath claims to be Gopala's nephew. He was also thereby nominated as Gopala's heir and it is pleaded that the deed of adoption also amounts to a will. Gopala died on 11.5.1954. The revenue authorities mutated three-fourth share of suit land in favor of defendants 1 to 5 in May 1955. It is in these circumstances that the plaintiff instituted the suit out of which the present appeal has arisen. It may be pointed out that Gopala had two wives, Shrimati Indri and Shrimati Ghalo. It is the plaintiff's case that Smt. Ghalo had died leaving behind, her daughter's daughter Smt. Vidya, who was during the course of the trial impleaded as defendant No. 6.

(3) The suit was contested by defendants 2 and 3. Gopala's ownership of the land in suit was admitted by them as also his date of death, but adoption of Amar Nath plaintiff by Gopala was denied. In regard to Smt. Indri it was pleaded that she had become immoral and unchaste and had deserted Gopala's house and as such had forfeited all her rights in the land in suit. Because of Smt. Indri's immorality, Smt. Ghalo was pleaded to be the owner in possession of the suit land who became full owner under Act 30 of 1956, with the result that her daughter's daughter (Smt. Vidya) and Vidya's son became the sole owner of the land in suit. It was further pleaded that even if Amar Nath were to be held as the adopted son of Smt. Ghalo, in accordance with the Customary law of the parties, they were governed by the rule of Chundawand and Smt. Ghalo was entitled to half share in the land in suit.

(4) It was admitted in the trial Court that the parties were governed by custom according to which, an immoral wife forfeits her husband's estate. The pleadings of the parties gave rise to several issues. The trial Court held the property in suit to be ancestral with the defendants and as observed earlier decreed the suit in favor of Amar Nath plaintiff-appellant.

(5) An appeal was taken to the Court of the learned Senior Subordinate Judge by the defendants and in that Court only issues 5, 7 and 8 were argued. These issues read as under :- (5) whether Gopala deceased and the parties were governed by custom at the time of Gopala's death in matters of adoption and succession If so, what was that custom (7) What is the effect of the presence of defendant No. 6 on the rights of the plaintiffs (8) What is the effect of Act No. 30 of 1956 on this suit

(6) Issue No. 2 having not been challenged in the lower appellate Court, the appellant was held to be the adopted son of Gopala. The dispute therefore centered round the question whether after Gopala's death Amar Nath plaintiff would exclude from inheritance of Gopala's estate both the widows of the deceased or any one of them. It was not disputed in the lower appellate Court that Gopala deceased had left two widows, viz. Smt. Indri and Smt. Ghalo since dead. Appellant No. 1 in the lower appellate Court, Munnu, was the daughter's daughter's son of Smt. Ghalo. It was also not disputed in the lower appellate Court that Amar Nath had been adopted by Gopala deceased in conjunction with plaintiff No. 2 Smt. Indri and this fact was held by the lower appellate Court to be quite clear from the plaintiff's evidence. Amar Nath's case in the lower appellate Court was that he would exclude his adopted mother Smt. Indri as also Smt. Ghalo. According to the defendant-appellants' case the parties were governed by the rule of Chundawand according to which Amar Nath would exclude only his adoptee Smt. Indri whereas Smt. Ghalo would get half share in the inheritance of her deceased husband Gopala. Though the parties are Brahman by caste, it was not disputed that parties are governed by custom. They are, it is agreed, residents of Tehsil Hamirpur. By virtue of question and answer No. 35 of the Customary Law of Kangra District compiled by L. Middleton, Esq. during the settlement of 1914-15, the parties to the present dispute were held by the lower appellate Court to follow Chundawand rule of succession. This was also held to be supported by the statements of the witnesses for the plaintiffs. Question and Answer No. 78 of the said Customary Law, according to the Court below, show that in Dehra and Hamirpur tribes Chundawand rule is followed in fixing the share of the adopted son and the adopted son, according to this rule, ranks as a natural son of his adopted father. He is entitled to get the share only according to Chundawand rule of succession. The trial Court, on a consideration of the provisions of this compilation

of Customary law of Kangra District, came to the conclusion that Smt. Ghalo as the step-mother of Amar Nath plaintiff would get half the share and Amar Nath plaintiff could not deprive Smt. Ghalo of her moiety in the estate of her deceased husband Gopala.

(7) The lower appellate Court has also observed that as Smt. Ghalo died after the enforcement of the Hindu Succession Act (she died on 26th March 1957) she had become absolute owner of the half share inherited by her from her husband and succession to her share would be governed by section 15 of the aforesaid Act. According to this provision, after Smt. Ghalo her daughter's daughter Smt. Vidya and after her, Munnu appellant would succeed to Smt. Ghalo's share.

(8) The submission that the adoption deed amounted to a will in favor of Amar Nath was not accepted. In the final result the defendant's appeal was partly accepted and the trial Court's decree was modified to the extent that a decree for possession of half share of the suit land was passed in favor of Amar Nath plaintiff. Of course, the dismissal of the suit of Smt. Indri was affirmed.

(9) On second appeal in this Court, Amar Nath plaintiff-appellant's counsel Shri A. C. Hoshiarpuri has very strongly argued that when the plaintiff was adopted by Gopala he must be deemed to be the son of both the wives of Gopala who were alive at that time. He has read out the relevant portion of the adoption deed dated 8. 2. 1944 and according to him, this adoption deed does not negative the counsel's submission that Amar Nath must be deemed to be the son of both Smt. Indri and Smt. Ghalo. On this fiction, Shri Hoshiarpuri submits that Amar Nath must be held to be entitled to claim the entire estate of Gopala by excluding both of his wives.

(10) This submission is difficult to accept on the conclusion of the lower appellate Court that Amar Nath had been adopted by Gopala deceased in conjunction with Smt. Indri. This fact was also not only not disputed in that Court but was also held to be clear from the plaintiff's evidence in this case. The learned counsel for the respondents has taken me through the statement of Public Witness -2 Shri Sunder according to whom the plaintiff was eleven days old when he was adopted and at that time Smt. Indri was sitting by the side of Gopala and indeed she became

Amar Nath's. mother after adoption. Smt. Ghalo had earlier a daughter from the loins of Gopala by name Biahmi who had given birth to a daughter by name Vidya. Public Witness -3 has also stated in cross examination that at the time of Rawn ceremony, Gopala and Smt Indri were both sitting together when Munshi placed Amar Nath in Gopala's lap. According to Public Witness -4 as well, at the time of Havan, Smt. Indri was sitting beside Gopala and she became Amar Nath's mother. Smt. Indri has appeared as Public Witness -8 and according to her, Amar Nath was eleven days' old when he was adopted. At that time, her husband's brother Munshi Ram placed Amar Nath in the lap of Gopala, who in turn placed the adopted child in her lap. Since then Smt. Indri has been treating Amar Nath as her adopted son and according to her the people in general have also been treating him as her adopted son. Indeed, Amar Nath plaintiff himself has deposed as Public Witness -8 that Smt. Indri is his 'Dharm Ki Ma' which really suggests that he treats her as his mother. He has not stated that according to him Smt. Ghalo is also to be considered as his mother. On this evidence, it seems to me that to permit the appellant now at this stage to urge that Smt Ghalo must also be treated to be Amar Nath plaintiff-appellant's mother is to allow him to put forth an entirely new case which instead of promoting would defeat the cause of justice. As a matter of fact, even otherwise, the appellant's case is not easy to sustain. In paragraph 496 (3) of Mulla's Hindu Law (1966 Ed.) at page 509, it is stated that where a Hindu, 'having two or more wives, makes an adoption in conjunction with one of them specially selected for the purpose, the wife so selected marks as the adoptive mother, and the other wives as mere stepmothers. The adopted son, according to this sub-paragraph, inherits only to the adoptive mother and to her relations, and she alone and her relations can inherit to him. The same principle is stated to be applicable when an adoption is made by one of several widows in pursuance of an authority left to her alone. In other cases, the legal position has been held to be unsettled. This paragraph, in my opinion, also lends support to the view taken by the lower appellate Court in this case. My attention has also been drawn to section 14(2) of the Hindu Adoption and Maintenance Act (78 of 1956), which provides for the determination of adoptive mother in certain cases. According to this sub-section, where an adoption has been made with the consent of more than one wife, the seniormost in marriage among them is to be deemed to

be the adoptive mother and the others to be setep-mothers) Shri A C. Hoshiarpuri, Ob behalf of the appellant though admitting Smt. Indri to be the senior wife points out that this Act came into force only in 1956 and that this can nto control the adoption made in 1944. In my opinion, the Jaw laid down in paragraph 496(3) of Mulla's Hindu Law, quite clearly governs this case and it is nto necessary to have resort to section 14(2) of the Adoption Act. I would thereforee be disinclined to express any opinion on the applicability of this sub-section and would nto base by conclusion on the basis of this provision of law.

(11) Question and Answer No. 35 of the Customary Law of the Kangra District to which both-ides have drawn my attention, quite clearly provides that if a man dies leaving a widow or widows son or or sons, daughter or daughters, brothers or other relatives, the inhertance passes to the sons and as the Chundawand rule is generally followed in Kangra District, a sonless widow is also entitled to a share of her deceased husband's property. Under this rule of customary law, Smt Ghalo would be entitled to share in Gopala's property. Amongest the illustrations from Tehsil Hamirpur, two instances have have been cited in which a widow having no child was given property along with the son of the deceased. One instance is from Mauz Bani and the other instance is from Mauza Chaniara. Question and Answer No. 78 of this compilation provides that in all cases of valid adoption the adopted son succeeds as a natural sen of his adopted father and that Dehra and Hamirpur Tehsils follow Chundawund rule in fixing his. share. This quite clearly supports the view taken by the lower appellate Court.

(12) For all the foregoing reasons, I have no hesitation in affirming the judgment and decree of the lower appellate Court which I hereby do and dismiss this appeal but with no order as to costs.