

Lal Chand Vs. Dalipa

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Court : Delhi

Decided On : Mar-06-1968

Reported in : 4(1968)DLT348

Judge : S.N. Shankar, J.

Acts : [Hindu Succession Act, 1956](#) - Sections 14(2); Hindu Women's Rights to Property Act, 1937 - Sections 3

Appeal No. : Regular Second Appeal No. 215 of 1967

Appellant : Lal Chand

Respondent : Dalipa

Advocate for Pet/Ap. : A.S. Sud,; K.D. Sood and; B.B. Vaid, Advs

Judgement :

S.N. Shankar, J.

(1) This second appeal is directed against the order of Shri G. S. Bedi, .District Judge, Gurdaspur and ex officio Additional District Judge, Hoshiarpur at Dharamsala, dated April 26, 1960, upholding the decree of the trial Court in respect of two thirds share in the property mentioned in the plaint and dismissing the appeal with costs

(2) The brief facts are that one Shyama owned land measuring 168 kanals 15 marlas with a share in Shamalat as detailed in the plaint situate in Tikka Dhundia, Mauja Ktoia, Tehsil Hamirpur. He had three sons, Kantu, Lakhu and Gopala. Kanthu died leaving Mt. Garibo as his widow. Lakhu had a son Dalipa who was the plaintiff in this case. Gopala died leaving a widow. Mt. Gango who was cited as 'a defendant in the case. Mt. Garibo widow of Kanthu also died in the year 1954 and the estate held by her came to be divided between Dalipa and Mt. Gango with the result that Mt. Gango came to possess one-third share of her deceased husband Gopala as well as one-half share of the estate of Mt. Garibo in the land of Shyama.

(3) On May 18, 1957. Mt. Gango gifted her property in favor of her brothers Lal Chand and Barfi Kam. On November 11, 1957, Lal Chand sold a part of the property gifted to him in favor of Dilip Singh, Udham Singli and Ram Singh.

(4) On December 30, 1957, Dalipa filed a suit for declaration that the gift made by Mt. Gango in favor of her brothers was invalid as she held only a life estate and the gift was also without any necessity and without any consideration and in contravention of the terms of a compromise that had been arrived at between her and the plaintiff and brothers in the suit filed by the plaintiff and Mt. Garibo against the donor. On February 27, 1959, this suit was decreed and it was held that Smt. Gango had only a limited estate and the [Hindu Succession Act, 1956](#), did not confer any greater rights on her in respect of the two-thirds share that she had inherited from her husband. The suit in respect of the one-third share of the property in suit received by her after the death of Mt. Garibo was, however, dismissed. The defendants against whom the suit had been decreed thereupon filed an appeal which was dismissed by the learned Additional District Judge, Hoshiarpur on April 26, 1960. This second appeal is against the aforesaid order.

(5) The learned counsel for the appellants contends that after the coming into force of the [Hindu Succession Act, 1956](#), the donor Mt. Gango had become the full owner of the two-thirds share in the property acquired by her after the death of her husband Gopala but the learned counsel for the respondents contends that in the year 1950 Mt. Garibo widow of Kanthu and Dalipa the present plaintiff had filed a

suit against Mt. Gango for possession in respect of the property forming the subject matter of the gift on the ground that Mt. Gango had gone unchaste and had also given birth to a daughter on January 3, 1946, who however had died immediately thereafter on January 27, 1946, and in this suit a compromise had been arrived at in terms of the statements given by Mt. Gango and the present plaintiff as a result of which the suit was dismissed. He says that according to this compromise based on her statement proved on the record as Exhibit P. 1. Mt. Gango had agreed that she would hold the property in question for her life time only and that she would not alienate it in favor of any one. therefore the learned counsel contends that the case falls within subsection (2) of section 14 of the [Hindu Succession Act, 1956](#) and Mt. Gango cannot claim any absolute ownership or full proprietary rights in respect of this property and had no power to make the gift in respect thereof.

(6) The only point therefore that emerges for consideration in this case is whether Mt. Gango had acquired the property in question under the compromise or order of the Court so that provisions of section 14 of the [Hindu Succession Act, 1956](#) were attracted to this case Before dealing with the legal aspect of the question involved it is necessary to set out the terms of the statements of the parties in the previous suit resulting in the compromise relied upon by the respondents.

(7) As stated earlier. Exhibit P 1 is the certified copy of the statement of Mt. Gango. When translated in English it would read as under:-

'We parties have compromised in terms that I will be entitled to separate my share in the land by partition and get into exclusive possession of it and would be entitled to the exclusive use of its produce during my life time. I will not alienate in favor of any one any part of that land which comes to my share. Parties may be left to bear their own costs in this suit. During my life time the plaintiffs to this suit will not be entitled to obtain possession of my land. shall not create any incumbrance over my land and I have no intention to effect any marriage.'

Statement of Mt. Garibo has been proved on the record as Exhibit P. 2 and this when translated in English would be as under : -

'I have heard the statement of Mt. Gango defendant. She can have her land partitioned. The suit may be decided accordingly. The parties to be left to bear their own costs.' Exhibit P. 3 is the statement of Dalipa the present plaintiff to the suit. The English translation of his statement would be as under :- 'I have heard the statement of Mt Gango defendant The suit may be decided in terms of that statement Parties may be left to beai their own costs.

Exhibit P. 4 is the order of the Court on the basis of the statements which directs that according to the statements of the parties the suit of the plaintiff may be dismissed and parties he left to bear their own costs and that the defendant shall nto in any case alienate the property in suit.

(8) The learned counsel for the appellants contends that Mst. Gango did nto in fact acquire the propperly in suit under this compromise and I find substance in this submission. A perusal of the above statement of Mt. Gango shows that she maintained even at the ti.The of the compromise in terms of her statement that she had independently a share in the property inherited by her from her husband a.id in terms of the compromise she reiterated her right to have it partitioned to obtain separate possession thereof. Under section 3 of the Hindu Women's Rights to Property Act, 1937, when a Hindu governed by the Mitakshara law or by customary law died intestate his widow was entitled in respect of the property to the same share as a soen subject to the provisions of sub-section (a) namely that the interest devolved on such a widow would only be limited interest known as Hindu women's estate. The incidence of a widow's estate would be attached to the interest so acquired by her by virtue of the express statutory estate created in her favor and it has been judicially held that this carried with it a light to alienate her interest in the coparcenary property for any legal necessity That being the position at the time when the compromise was arrived at all that Mt. Gango agreed was that she will continue to have her limited estate as a widow with a right to have her share in the land separated by partition but she will nto have a right to alienate the said property. It is thus nto for the first time that Mt. Gango came to acquire any interest in the property under the compromise I am unable to accede to the contention of the learned counsel for the respondents that because Dalipa and Mt. Garibo had filed a suit and on the allegations made by them in the plaint, Mt.

Gango was likely to lose her estate altogether, therefore the compromise should be construed to have conferred a fresh estate on her and she should be deemed to have acquired the property under the decree or order of the Court. Apart from the fact that in the result the suit was dismissed and the allegations made by Garibo and Dalipa in the plaint were not pressed to the stage of adjudication by the Court the terms of the statement of Mt. Gango as mentioned already by themselves rule out the possibility of the plaintiffs to the suit having intended to confer any fresh estate on her and Mt. Gango having agreed to accept the same.

(9) Reference in this connection may be made to *Smt. Sharbati Devi v. Pt. Hiralal and another*. In this case after the death of D, a Hindu male, in 1938, his properties were mutated half and half between his son H and the widow of another predeceased son. In 1950 a suit was filed by H against S and it ended in a consent decree declaring H as sole heir and owner. S was given possession of suit land only for her life and her rights in respect of alienation etc. were restricted. S, however, still sold the suit land. A suit for possession of the land covered by the sale was thereupon filed and a prayer in the alternative was made for a declaration that the sale made by the widow may be declared void and ineffective. The position taken up was that as the property forming the subject matter of the sale had been acquired by the widow under the consent decree therefore she was not entitled to alienate the same in any manner in contravention of the compromise. The court held that by the consent decree she did not get any larger interest nor was she put in possession of more properties or share in the properties than what was in her possession already by virtue of the mutation effected in her capacity as a widow. therefore, it was not by virtue of the decree that she came to be in possession of the suit property and as such sub-section (i) of section 14 of the Hindu Succession Act did not apply. While examining the import of sub-section (1) and sub-section (2) of section 14 of the Hindu Succession Act it was observed :

'To my mind, the language of section 14 is quite clear and leaves no room for doubt that if any property is possessed by a female Hindu which will include immovable property acquired in lieu of maintenance, then she would become the full owner thereof by virtue of subsection (1). Sub-section (2) in that event cannot come into operation. It will apply only if for the first time a female Hindu acquires it

in any of the ways mentioned in that sub-section i. e. by a gift or under a will.....or under a decree..... it will, therefore, depend on the facts of each case as to whether any property had already been acquired under sub-section (1). If the answer be in the affirmative, then sub section (2) cannot apply. If it is in the negative, subsection (2) will become applicable provided the property is acquired in any of the several ways mentioned therein.'

(10) A similar view was taken in *Brij Lal v. Gurdas Ram*, and it was held that while the word 'Acquire' in sub-section(1) of section 14 of the Hindu Succession Act was to be given the widest possible connotation the same word in sub-section (2) is to be construed in a narrower sense and thus construed a property within the meaning of sub section (2) is said to be acquired when prior to the acquisition the female Hindu acquiring it had no interest in the property and it was for the first time by virtue of the gift, will or other instrument mentioned in the sub-section that the property was acquired by her. Where a female was in possession of land in which she had acquired the widows estate on death of her husband her case would be covered by sub section (1) and not by sub-section (2) of section 14 of the Act and the subsequent compromise between her and her husband's collaterals curtailing her rights will not effect her position.

(11) The question also came up for consideration before a Division Bench of the Andhra Pradesh High Court in *Allariddi Venkata Subbareadi and another v. Altariddi Penckalamma* where it was held that sub-section (2) of section 14 is in the nature of an exception to sub section (1) and that on a reading of sub section (2) it is clear that it applied only to properties acquired by way of gift or under a will or under any other instrument.

(12) The learned counsel for the respondent has placed reliance on *Mt. Kirpo and other v. Bakhtawar Singh*, where it was held that in case of a dispute between two rival claimants and the settlement thereof by a compromise the titles of the contending parties in respect to the property flow from the compromise because they give up their respective claims and accept the compromise as the basis of their title and in these circumstances they acquire property under the compromise. The facts of this case were, however, different. In that case *Mt. Kirpo* had

remarried after the death of her husband. On her remarriage a dispute arose as to whether she had forfeited the right to the property she had acquired from her husband by reason of this marriage. This dispute was compromised. In para 4 of the report the Court has held: 'That dispute was compromised and it seems to have been assumed that she had forfeited her estate. By the compromise she was allowed to retain possession of the property on the conditions specified in the compromise. In this situation and in the peculiar circumstances of this case, it must be held that she acquired the property in the year 1928 under the compromise.' This case does not assist the respondent. Mt. Gango never admitted the allegations made against her but on the contrary in the compromise she asserted that 'I will be entitled to separate my share in the land by partition and get into exclusive possession of it.' This clearly shows that there was no forfeiture of her estate in this case.

(13) Reliance was then placed on a Division Bench decision of the Punjab High Court in *Puran Singh and others v. Resham Singh* in which it was laid down that where it was established that the property was acquired under a decree, order or instrument section 14 will apply. On page 85 of the report in this case their Lordships, quoted with approval the observations in *Kirpo's case*: 'Section 14 is an exception to section 14 and in order that section 14 applies, it has to be established that the property was acquired under a decree or order or instrument. But if the estate is lost and it is re-acquired by reason of a compromise it will be tantamount to acquisition within the meaning of section 14.' In the case before them their Lordships found that the compromise on the basis of which the High Court made the decree did not recite any pre-existing rights of the parties. In fact the pre-existing rights of the widow in that case in regard to the land had come to an end with the forfeiture of the estate on account of unchastity and she acquired new rights to possession of half of the land then in dispute by way of maintenance subject to the terms as contained in the judgment of the High Court and in these circumstances the conclusion was that it was the decree of the High Court which put the widow in her new position and as such the provisions of sub-section (2) of section 14 of the Hindu Succession Act were attracted to the exclusion of sub-section (1) of this section.

(14) In view of the above legal position I have no hesitation in disagreeing with the finding of the learned District Judge that though Mt. Gango actually did not acquire the property by that compromise she was allowed to retain it on account of that compromise and for this reason provisions of subsection (2) of section 14 of the Hindu Succession Act were attracted. It is not correct to say as the learned District Judge has observed that in this case the property in question was again given to Mt. Gango on the conditions contained in the compromise deed.

(15) As a result of the above the present appeal is accepted and the suit of the Respondent 1s dismissed but parties are left to bear their own costs.

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