

Master Daljit Singh and ors. Vs. S. Dara Singh and ors.

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SooperKanoon Citation : sooperkanoon.com/691629

Court : Delhi

Decided On : Jan-31-2000

Reported in : 2000VAD(Delhi)341; AIR2000Delhi292; 85(2000)DLT794; II(2000)DMC134; 2000(54)DRJ509

Judge : J.B. Goel, J.

Acts : Hindu Adoption and Maintenance Act, 1956 - Sections 20

Appeal No. : I.A. No. 2538/97 in Suit No. 1478/99

Appellant : Master Daljit Singh and ors.

Respondent : S. Dara Singh and ors.

Advocate for Def. : Mr. D.V. Khatri, Adv.

Advocate for Pet/Ap. : Mr. Suresh Gupta, Adv

Judgement :

ORDER

J.B. Goel, J.

1. This application (I.A. 2538/97) has been filed by the plaintiffs under Section 20 of the Hindu Adoption & Maintenance Act (for short 'the Act') for grant of interim maintenance and for return of Istridhan etc.

2.Amardeep Singh was married to plaintiff No. 4 on 25.9.1982. He died on 20.10.1995. Plaintiffs 1 and 2, his two minor sons, plaintiff No. 3, a minor daughter and plaintiff No. 4 his widow have filed the suit for partition of movable and immovable properties alleged to be joint family properties, grant of maintenance and recovery of Istridhan of plaintiff No. 4. The defendants No. 1 to 4 are father, mother, brother and brother's wife respectively of Amardeep Singh.

3.It is alleged that Amardeep Singh was working along with his father in the joint family business of manufacturing and repair of various agricultural implements being run under the name of Guru Gobind Singh Iron Works. That business was formerly being run by defendant No.1 as Karta in partnership with his brother Sardar Karnail Singh but partnership was dissolved on 30.9.1990. Then the business was started in partnership between defendants No.1, 3 and Amardeep Singh on 1.10.1990. This business otherwise was a joint family business.

4.It is alleged that joint family acquired various properties out of the joint family business and funds, namely (1) Property No. 2003, Railway Road, Narela; (2) Joint family business being carried in the same property; (3) 1000 sq. yds. plot of land at Kureni Village; (4) 700 sq. yds. plot in Khasra No. 11/16/2 Village Sanoth; (5) 250 sq. yds. plot at Swatantra Nagar, Narela; (6) A Jeep; (7) A scooter and (B) Rs. 3,50,000/- in cash. It is also alleged that valuable dowry goods, jewellery and cash of Rs. 21,000/- were given by her parents and gold jewellery was also given to her by defendants and at the time of marriage of plaintiff No.4, which remained and is with the defendants. After the death of Amardeep Singh, the plaintiffs were thrown out of the house on 12.1.1997 in wearing clothes. Neither any dowry/ Istridhan articles nor any share in the joint family properties has been given to the plaintiffs; plaintiffs have no earnings, means or assists for their maintenance and are depending on the brother of plaintiff No. 4 for their maintenance. Interim maintenance has been claimed @ Rs. 15,000/- per month.

5.Plaintiffs have been allowed to sue as indigent persons.

6.Defendants in their written statement and reply have denied that there was any joint family business or the family owned any joint family funds or property. It is alleged that defendant No.1 was formerly doing business in partnership with his

brother Sardar Karnail Singh since 1948 uptill September, 1990 and the earnings from the business is his self acquired income; there were no joint family funds or property; that he had purchased a house in 1972 out of his self earnings, that house was sold in 1988 for Rs. 1,60,000/- and out of its sale proceeds he purchased property at 2003 Railway Road, Narela; and plot of land at Village Kureni, and he had no other property, that Amardeep Singh after his marriage in 1982 started residing separately and had his own separate business and independent income. He was taken as partner for a short period but he did not work, he was addicted to drinking and due to his bad habits the partnership had to be dissolved in 1992 itself; after his death plaintiff No.4 is doing the business of her husband and also embroidery work earning a handsome income; that plaintiffs have left his house without any reason; he is ready to support them if they live with him in his house. It is denied that there was any joint family funds or the business is joint family business or the business was started with any joint family funds. It is thus denied that the plaintiffs are entitled to any maintenance.

7.Learned counsel for the plaintiffs has contended that the family is joint, business is joint family business and various properties have been acquired out of joint family funds and business and the plaintiffs are entitled to the share of the deceased Amardeep Singh in the family business and assets; they are also entitled to maintenance till their share in the properties is given to them. Reliance has been placed on Gurdip Kaur Vs . Ghamand Singh Dewa Singh and Sachchanand Wadhvani Vs . Smt. Nisha & Ors., : AIR 1990 MP247 which has followed .

8.Section 19 of the Act provides for the right of a widowed daughter-in-law to claim maintenance from her father-in-law. Section 19 reads as under:-

'19. Maintenance of widowed daughter-in-law. - (1) A Hindu wife,whether married before or after the commencement of this Act,shall be entitled to be maintained after the death of her husbandby her father-in-law :

Provided and to the extent that she is unable to maintain herselfout of her own earnings or other property or, where she has no property of her own, is unable to obtain maintenance-

(a) from the estate of her husband or her father or mother, or

(b) from her son or daughter, if any, or his or her estate.

(2) Any obligation under sub-section (1) shall not be enforceable if the father-in-law has not the means to do so from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share, and any such obligation shall cease on the remarriage of the daughter-in-law.'

9. The conditions for entitlement to maintenance by a widowed daughter-in-law from her father-in-law thus are: (1) the widowed daughter-in-law is unable to maintain from her own earnings or from her properties or (2) from the estate of her husband or father or mother; or (3) from her son or daughter or his or her estate; and (4) the obligation of the father-in-law is only to provide maintenance out of any coparcenary property in his possession out of which the daughter-in-law has not obtained any share.

10. The plaintiffs have been allowed to sue as indigent persons after giving opportunity to the defendants to lead evidence. Defendants have not brought any material on record to show that the plaintiffs are possessed of any property or have any earnings or inherited any property from any estate of the deceased Amardeep Singh. There is also no material that the plaintiff No. 4 has inherited any estate from her parents or has got any income from any other estate. It is also not the case of the defendants that plaintiffs have got any share out of the family business or from any coparcenary property or any property in possession of the defendants.

11. In *Gurdip Kaur (supra)*, in the majority decision it was held that the term 'coparcenary property' occurring in Section 19(2) of the Act means the property which consists of (1) ancestral property; or (2) joint acquisition; or (3) property thrown into the common stock; and (4) accretions to such property.

12. The law about the joint family and joint family property is well settled. A joint Hindu family consists of all persons lineally descended from a common ancestor, and includes their wives and unmarried daughters. The joint and undivided family

is the normal condition of Hindu Society. An Undivided Hindu family is ordinarily joint not only in estate, but also in food and worship. The existence of joint estate is not an essential requisite to constitute a joint family and a family, which does not own any property, may nevertheless be joint. Where there is joint estate, and the members of the family become separate in estate, the family ceases to be joint. Mere severance in food and worship does not operate as a separation.

13. Possession of joint family property is not a necessary requisite for the constitution of a joint Hindu family. Hindus get a joint family status by birth and the joint family property is only an adjunct of the joint family (Mulla on Mitakshara Hindu Law, Para 212, 17th Edition).

14. Property according to the Hindu Law may be divided into two classes, namely, (1) joint family property; and (2) separate property. Joint family property may be divided according to the source from which it comes into (1) ancestral property and (2) separate property of coparcenars thrown into the common coparcenary stock.

15. Ancestral property is a species of coparcenary property. If a Hindu inherits property from his father, it becomes ancestral in his hands. And his sons, grandsons and great grandsons acquired an interest by birth in the coparcenary property. The ownership of the coparcenary property is in the whole body of coparcenary and enjoyment thereof is in common.

16. Property jointly acquired by the members of a joint family with the aid of ancestral property is joint family property and the properties jointly acquired by the members of a joint family without the aid of ancestral property may or may not be joint family property. Whether it is so or not is a question of fact in each case. The term 'joint family property' is synonym with coparcenary property. Separate property includes self acquired property. (Mulla on Hindu Law, Para 220, 17th Edition).

17. Where the property has been acquired in business by persons constituting a joint Hindu family by their joint labours, the question whether the property so acquired is joint family property or whether it is merely the joint property of the joint acquirers will depend on the intention of the parties.

18. Whether the separate property of a member of a joint family is impressed with the character of joint family property or not, the legal position has been noticed in K.V. Narayanan Vs . K.V. Ranganadhan and others : [1976]3SCR637 as under:-

'..... It is true that property separate or self-acquired of a member of a joint Hindu Family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with intention of abandoning his separate claim therein but the question whether a coparcener has done so or not is entirely a question of fact to be decided in the light of all the circumstances of the case. It must be established that there was a clear intention on the part of the coparcener to waive his separate rights such an intention cannot be inferred merely from the physical mixing of the property with his joint family or from the fact that other members of the family are allowed to use the property jointly with himself or that the income of the separate property is utilised out of generosity or kindness to support persons whom the holder is not bound to support or from the failure to maintain separate accounts for an act of generosity or kindness cannot ordinarily be regarded as an admission of a legal obligation. (See Venkata Reddi Vs . Lakshmana, : [1964]2SCR172 and G. Narayana Raju Vs. G. Ghamaraju, : [1968]3SCR464 .'

19. It is not the case of the plaintiffs nor there is anything on the record to show that defendant No.1 had inherited any ancestral property. In any case this could be determined on trial. Defendant No. 1 has pleaded that he has been doing business in partnership with his brother Sardar Karnail Singh since 1948 up till 30.9.1990. At present there is no material on record that this business was set up with any joint family funds. Amardeep Singh was not born in 1948. This business was apparently separate business of the two brothers. Amardeep Singh would be a child in the year 1972. He had not contributed anything in the setting up of this business. As pleaded in the written statement, defendant No.1 had purchased a house in the year 1972 and sold it in the year 1988 for Rs.1,60,000/-. That house apparently was the self-acquired property of defendant No.1 and any property purchased by him out of the sale proceeds of his self-acquired property. Defendants have pleaded that Amardeep Singh was not doing any work and after marriage he started living separately and was doing his own business. Amardeep Singh after

he became adult might be assisting in his father's business but that in itself would not make it a joint family business nor the properties acquired from the income of this business as joint family properties. On the material at present on record, it is not possible to say that any property was acquired out of the joint earnings of Amardeep Singh as member of the joint family. Whether the income from the business or any property acquired by the father was thrown by him in joint stock and treated as joint family property could be determined on trial of the suit.

20. Defendants No. 1, 3 and Amardeep Singh had started business in partnership on 1.10.1990 after dissolution of partnership between defendant No. 1 and his brother on 30.9.1990. That business was dissolved in April, 1992, itself. It is alleged that the partnership had to be dissolved due to excessive drinking habits and other bad habits of Amardeep Singh. Amardeep Singh had died in October 1995, that is, after three years thereafter. He remained ill before his death, remained hospitalised and was also operated upon. Defendant No. 1 has pleaded that he had spent over Rs. 20,000/- on his treatment. In all probability he must have taken his share out of that partnership assets to set up his own separate business. In the circumstances, as at present, it cannot be said with certainty that there is any coparcenary property in the hands of defendant No.1 or other defendants. In that view, no order for the interim maintenance can be passed against defendant No.1 in favor of plaintiff No.4 . Defendants would not be liable to maintain plaintiffs No. 1 to 3 also. Application so far as claim for interim maintenance is concerned is dismissed.

21. As regards Istridhan of the plaintiff No.4, defendants have denied that they have any Istridhan of the plaintiff. They have pleaded that the plaintiffs were living separately in a room in their house at 2003, Railway Road, Narela, they have locked that room when left and their goods/articles are lying in that room. Whether any Istridhan of plaintiffs is kept by defendants or not could be determined at trial. Defendants have no objection if the plaintiffs take their goods/articles from the room locked by them in their house. If they desire, plaintiffs shall be allowed by the defendants to take/remove their goods from locked room of house No. 2003, Railway Road, Narela. This application is allowed to this extent.

22. Nothing stated herein shall be deemed to be expression of opinion on merits of the controversy involved.

23. I.A. is disposed of accordingly.

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