

Roop Devi Vs. Sultan Singh

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Court : Delhi

Decided On : Mar-23-1982

Reported in : 1982(3)DRJ443; 1982RLR687

Judge : D.R. Khanna, J.

Acts : [Hindu Succession Act, 1956](#) - Sections 14(1)

Appeal No. : Suit No. 68 of 1975

Appellant : Roop Devi

Respondent : Sultan Singh

Advocate for Pet/Ap. : I.S. Mathur,; Arun Mohan and; R.K. Makhija, Advs

Judgement :

D.R. Khanna, J.

(1) APPELLANT'S husband owned suit property. It died on 27-2-42 leaving behind appellant and 3 sons. They partitioned the property. The share which appellant got, it was said that she was owner for life only. After the coming into force of [Hindu Succession Act, 1956](#), she in 1958 applied to Mcd that she had becomes full owner of her share and her name be also mutated. It was allowed. Her similar request to Dda was rejected. She in 1967 sued Dda & Ors. for declaration which was decreed. In 1971, heirs of one of the sons brought a suit that appellant was a

limited owner and on her death they would inherit the property. Suit was dismissed in 1973 and appeal against same is pending. In 1975 appellant sued heirs of Murarilal for possession for portion of her property in their possession. Appellant died during pendency of suit and on the basis of a will, her L R's were brought on record. The defendants, contention was that appellant had not become full owner. Issues framed were :

'1. Whether Roop Devi had not become the full owner of the house in dispute on the commencement of [Hindu Succession Act, 1956](#)? 2. Whether the defendants are liable to pay damages for use and occupation of the portion in dispute If so, at what rate. 3. Whether the suit is not properly valued for purpose of court-fee and jurisdiction regarding claim for possession 4. Whether defendants have become owners of property in dispute by adverse possession. 5. When did the adverse possession claimed by defendants commence 6. Whether or not the suit is within lime.

Issue No. 1:

(2) With the background of state of facts mentioned above, there is little doubt that in the year 1956 when the Hindu Succession Act came into force, Roop Devi held existing ownership right in the property in dispute. She had been allotted the same in the partition effected between her and the three sons in early forties soon after the death of her husband. It was not a case of her getting maintenance for her life time under the old Hindu Law. Instead the Hindu Women's Right to Property Act 1937 had come int

(3) S. 14(2) which saves properties from the applicability of sub-section , and is in the nature of an exception, has reference to those cases of grants where the interest in the guarantee is created by the grant itself or, in other words, where the gift, will, instrument, decree, order or award is the source of origin of the interest created in the guarantee. Where, however, the instruments referred to above are not the source of interest created but are merely declaratory or definitive of the right to property antecedently enjoyed by the Hindu female, sub-section (2) has no application, and it matters not if in such instruments it is specifically provided in express terms that the Hindu female had a limited estate or that she shall not

aliente the property or that the property would revert on her death to the next reversioner, such terms are merely the reiteration of the incidents of the Hindu Law applicable to the limited estate. (See P. Pattabiraman v. P. Ammal, 1970 Mad. 257, and Banusaheb v. Smt. Gangabai 1972 Born. 16. The Supreme Court too had the occasion to consider the implication of section 14 of the Hindu Succession Act in the context of a property given to a female in lieu of maintenance, and observed that where a property is acquired by Hindu female at a partition or' or in lieu of right of maintenance, it is in virtue of pre-existing right and such acquisition would acquire full ownership u/s 14(1). The operation of sub-section (2) was held confined to cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing right, under a gift, will, instrument, decree, order or award, the terms of which prescribe a restricted estate in the property (see Vaddeboyina v. Vaddehoyina 1977 S.C. 1945 and Bal Valid v. Thakorbai 1979 S.G. 933

(4) In the present case Roop Devi had much solid ground to stand on inasmuch as she had not got this property in lieu of right of maintenance, but as a result of the right of share in partition created by Hindu Women's Right to Property Act, 1937. The issue has, therefore, to be decided in the negative and against the defendants. In lacs, the decision given in the earlier suit by V.D. Misra, J. brought by defendants No : 1 and 2 against her for declaration that she was only a limited owner, binds defendants No : 1 and 2 rule of rest judicata applies. It was clearly held that she had become full owner under the Hindu Succession Act as she was holding a pre-existing limited estate in this property at the time when the enactment came into force. The other defendants, of course, were not parties in that litigation. However, that decision can very well be looked at as a precedent, and I am in respectful agreement with the same. Of course, an appeal against that decision is at present pending. If and when the defendants succeed in that appeal and are able to establish that her estate continued to be limited in spite of the coming into force of the Hindu Succession Act, that decision can operate as rest judicata qua defendant No 1 and 2 in the present suit as well.

(5) The contention of the defendants that Roop Devi had relinquished her claim to all other properties which had fallen to the share of the three sons in the partition,

cannot be accepted as to extend that part of the rights in this property which had not vested as a limited owner in Roop Devi. In other words, it cannot be taken that mode of devolution of this property on her death as it existed under the old Hindu Law before the Hindu Succession Act, was left unimpaired. Rather what she had relinquished were her rights in the properties which had been specifically allotted to the sons. Issues No : 4 to 6

(6) The partition conferred right of residence in the three sons in this property in during the life time of Roop Devi. The sons, therefore, have been residing along with their families in the property. Their possession thus was clearly the result of this arrangement, and must be treated as permissive. The question of their acquiring adverse possession was rejected by V.D. Misra, J. in the previous litigation moved by defendant No : 1 and 2. The other defendants are in possession through these defendants. It is not shown that any time prior to 1971, when the earlier suit was brought by defendants No.: 1 and 2, they asserted adverse possession over this property. The suit has to be treated as within time.

(7) From the side of defendants No: 1 and 2, it has been sought to be pleaded that they were alive at the time when partition was effected in the year 1942, and when under the same right to residence was conferred on their father Murari Lal in this property, the same should be treated to ensure for them as well as members of his joint Hindu family. This right, according to them, vested in them by birth, and could not be treated as divested or eliminated by the Hindu Succession Act. I am, however, unable to deduce from that partition that the right of residence conferred on the three sons extended to their families as well, or at least to the sons already in existence then. The partition deed was explicit in bestowing that right on the three sons, and there is nothing to hold that right of residence was made available in perpetuity to their families, or even to the sons who were then alive. In fact, she could have been entitled to exclusive possession, to this property under the partition, and the sons could not claim any right of residence. When she extended that to them, it had no implication that after the death of any of them, the right of his family to reside was as well acknowledged. Issue No: 2

(8) Roop Devi had served a notice on the defendants to vacate the portion of the property in their possession before institution of this suit. They having failed to do so, the plaintiff is entitled to compensation by way of damages for unauthorised use and occupation. In the suit, the claim has been made on the basis of Rs. 25.00 per day. The property is an old one, situated in old Delhi. Rents in those days for smaller properties were not very high. Considering this circumstance, as well as the unfortunate fact that the family of Murari Lal fell in disfavor after his death with Roop Devi, as often happens in our special system when preceased son's family loses favor, I am inclined to allow damage at the rate of Rs. 300.00 per month. Issue No : 3

(9) The valuation fixed in the present suit for purposes of court-fee and jurisdiction has been Rs. 1,00,000.00 . Similar was stated to be the valuation in the suit which defendants No : 1 and 2 had earlier brought against Roop Devi. I thereforee, accept the valuation declared in the present suit.

(10) The result, thereforee, is that the suit of the plaintiff for possession and damage amounting to Rs. 200.00 is decreed with costs. The defendants are further restrained from making any additions or alterations in the property, or letting out or parting with its possession in any manner.