Rahul Behl and ors. Vs. Ichayan Behl and anr.

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Court : Delhi

Decided On : Aug-08-1991

Reported in : 1991(21)DRJ205

Judge : Usha Mehra, J.

Acts : Hindu Succession Act, 1956 - Sections 8

Appeal No. : Suit No. 3171 of 1988

Appellant : Rahul Behl and ors.

Respondent : ichayan Behl and anr.

Advocate for Pet/Ap. : S.P. Goel,; Anita Gupta,; S.N. Marwah and;

Judgement :

Usha Mehra, J.

(1) Plaintiff Rahul Behl and others have filed this suit for declaration against Smt. Ichayan Behl and Dr. Surendes Nath Behl on the grounds that house No R-20 Greater Kailash Part I New Delhi, was the self-acquired property of Dr. Brij Nath Behl. father of defendant No. 2 and grand-father of the plaintiffs. The plaintiffs have 1/6th share in the same. According to them the said property after the death of Dr. Brij Behl devolved on his heirs i e. three sons : Surender Nath Behl, Ravinder Behl, Sidharath Behl, his daughter Smt. Savita Luthra, his widow Smt.

Ichayan Behl. After the death of Dr Brij Nath Behl the property fell into the Hindu Joint Family and became a coparcenery property. Consequently the plaintiffs acquired I/6th share as co-parceners on their birth. Defendant No. 2, father of the plaintiffs had no right to release his 1/6th share in the house which actually belonged to co-parcenary consisting of the plaintiffs and defendant No 2 Relinquishment of his 1/6th share in favor of defendant No. 1 was illegal and against law. Defendant No. 2 was Karta of the plaintiffs and bad thus no authority to disinherit them from this coparcenary property. The release or gift made by defendant No. 2 in favor of defendant No. 1 is void and ineffective because it was not for a pious purpose. thereforee the impugned alienation of the 1/6th share in the property in question does not bind the plaintiffs or for that matter, defendant No. 2. Plaintiff No. 1 was born on 15th January, 1977 and plaintiffs No. 2 and 3 on 24th November, 1980. They were all members of the co-parcenery on the date of the release-deed.

(2) Defendant No. 1 put in appearance and controverter the stand taken by the plaintiffs. So far as defendant No. 2 is concerned, he was proceeded ex parte. Defendant No 1 while controverting the allegations of the plaint denied that the plaintiffs and defendant No. 2 as well as his wife constitute any joint Hindu family. According to her the property was self- acquired property of her husband Dr. Brij Nath Behl, father of defendant No. 2 and grand father of the plaintiffs. She denied that the l/6th share in the property was a co-parcenery property. thereforee no decree can be passed in favor of the plaintiffs.

(3) During the pendency of this suit defendant No. 1 has moved this application (I A 1006 of 1991) under Order 7 Rule 11 of the Code of Civil Procedure. By the impugned application defendant No. 1 has challenged the suit on the ground that it does not disclose any cause of action because the property in question was a self-acquired property of deceased Dr. Brij Nath Behl. He died intestate. The self-acquired property after the death of the deceased was inherited by all six heirs under Section 8 of the Hindu Succession Act in six equal shares. The remaining five legal heirs of the deceased released and relinquished their 1/6th share in favor of defendant No. 1 which relinquishment deed was registered on 19th March, 1984. The said release and relinquishment deed has already been acted upon and

implemented by the mutation of the house in question. When Dr. Brij Nath Behl died on 18th November, 1978, only plaintiff No. 1 was born. After the death of Dr. Brij Nath Behl the property did not fall into the common pool nor became a co-parcenery property. It was inherited in separate equal shares by the heirs in their individual capacity, thereforee defendant No. 2 did not inherit property as Karia of the joint Hindu co-parcenery. After the amendment of the Hindu Succession Act, the property fell to the share of defendant No. 2 in his individual capacity thereforee the plaintiffs have no locus standi and hence the plaint does not disclose any cause of action and should be returned.

(4) This application has been contested by the plaintiffs, inter alia, on the ground that it is frivolous amounts to the abuse of the due process of law.

(5) I have beard the learned counsel for the applicant-defendant No. 1 Mr. Som Nath Marwaha and Mr. S.P. Goel, learned counsel for the plaintiffs.

(6) It is an admitted case of the parties that Dr, Brij Nath Behl died on 18th November, 1978 leaving behind six legal heirs, namely three sons,, one daughter and his wife, defendant No 1 in this case. Each of the legal heirs inherited on equal share ie l/6th share of the property in question. It is also an admitted fact on record that all other five heirs of the deceased Dr. Brij Nath Behl executed jointly a relinquishment deed on 19th March, 1984 in favor of defendant No. 1, the widow of the deceased Dr. Brij Nath Behl.

(7) The point for consideration is did defendant No. 2 acquire the 1/6 share as a co-parcener of the joint Hindu family with plaintiffs and his wife or was it his individual l/6tb share in his capacity as heir of the deceased. It is not the case of the plaintiffs that deceased Dr. Brij Nath Behl and his sons, daughter and defendant No. 1 constituted a joint Hindu family. Hindu Law as it stands today clearly postulates that if it is a self-acquired properly of the father it falls into the hands of his sons not as co-parcenery property but devolve on them in their individual capacity. Since defendant No 2 acquired l/6th share by inheritance in his individual capacity, thereforee to my mind, plaintiffs have no right in that l/6th share of defendant No. 2. Defendant No. 2 had full authority to release and relinquish his l/6th share to whomsoever he wanted. In this regard reference can

be bad to the provisions of Section 8 of the Hindu Succession Act as amended by the Amendment Law of 1976 which is reproduced as under : '8. General rules of succession in the case of males- The property of a male Hindu dying intestate shall devolved according to the provisions of this Chapter- (a) firstly upon the heirs, being the relatives specified in Class I of the Schedule; (b) secondly, if there is no heir of Class I, then upon the heirs being the relatives specified in Class Ii of the Schedule; (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and (d) lastly, if there is no agnate, then upon the cognates of the deceased.'

(8) Applying the provisions of Section 8 of the Hindu Succession Act to the facts of this case it becomes clear that defendant No. 2 alone inherited the property to the exclusion of his sons because property devolved on defendant No. 2 in his individual capacity and thus the l/6th share which was squired by defendant No. 2 became his self acquired property. It could not form part of or become a co-parcenary property. In this regard reliance can be placed on the decision of the Supreme Court in the case of Commissioner of Wealth Tax. Kanpurv. Chander Sen etc. : [1986]161ITR370(SC) While relying the amended Hindu Succession Act, the Supreme Court observed that the property of male Hindu dying intestate shall devolve according to the provisions of Chapter Ii and Class I. Class I of the Schedule provides that if there is a male heir of Class I then upon the heirs mentioned in Class I of (he Schedule. The preamble of the Hindu Succession Act stales that it was an Act to amend codify the law relating to intestate succession among Hindus. Grandson can only be included if the son pre-deceased the father and then son of the pre-deceased son will inherit the property in the situation contemplated by Section 8. But if the son of a son who is intended to be excluded under Section 8 is to inherit then that would mean applying the old Hindu Law by virtue of which he used to get the right by birth in the property but that is now contrary to the scheme outlined in Section 8 of the amended Hindu Succession Act. It was further observed by the Supreme Court in the said case that it will be difficult to hold today that property which devolves on a Hindu under Section 8 of the Hindu Succession Act would be Huf in his hand vis-a-vis his own son, that would amount to creating two classes among the heirs mentioned in Class I, the male heirs in whose bands it will be joint Hindu family property and vis-a-vis his

own and family heirs with respect to whom no such concept could be applied or contemplated. The express word or Section 8 of the Hindu Succession Act cannot be ignored which mention heir in Class I of Schedule under Section 8 including widow, mother daughter and the son of pre deceased son etc. The express language of Section 8 excludes sons of son but only includes son of a pre-deceased son thereforee applying the above principle of law in the facts of this case it is clear that on the date of the death of Dr.Brij Nath Behl the property in question devolved on defendant No 2 not as Karta but in his individual capacity and the plaintiffs being the sons of the son cannot claim any right as co-parceners nor the property fell into the pool of the Hindu undivided family. This proposition of law has been reiterated by the Supreme Court in the case of Yudhister v. Ashok Kumar, : [1987]1SCR516 where it was held that after the amendment of the Hindu Succession Act, 1956 and in view of Section 8 when the son inherit the property in the situation contemplated by Section 8. he does not take as- Karta of his own Huf but takes it in his individual capacity it was further observed that when a property which devolves on a Hindu under Section 8 of the Hindu Succession Act, it would not be an Huf property in his own hands vis-a-vis his own sons. thereforee in view of this provision of law having been settled by the apex court the plaintiffs have no right to challenge the release and relinquishment deed dated 19th March. 1984. Defendant No. 2 was competent to relinquish his l/6th share because he acquired this property after the death of his father in his individual capacity. Being sole owner of l/6th share be could deal with the same in any manner he liked Hence to my mind plaintiffs have in fact, no locus standi nor any cause of action to file this suit challenging the release or gift made by defendant No. 2 in favor of defendant No. 1. They thereforee have no right to sue and challenge this release-deed. The plaint is thereforee liable to be rejected. Ordered accordingly.