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**Sumer Chand Vs. State of Rajasthan**

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**SooperKanoon Citation** : sooperkanoon.com/750569

**Court** : Rajasthan

**Decided On :** Jul-07-1964

**Reported in** : AIR1965Raj2

**Judge** : Jagat Narayan, J.

**Acts** : Hindu Law; Hindu Succession Act

**Appeal No.** : Civil Misc. Appeal No. 85 of 1962

**Appellant** : Sumer Chand

**Respondent** : State of Rajasthan

**Advocate for Def.** : S.N. Guru, Deputy Govt. Adv.

**Advocate for Pet/Ap.** : Shrikrishna Mal, Adv.

**Disposition** : Appeal allowed

**Judgement** :

**Jagat Narayan, J.**

1. This is an appeal by one Sumer Chand against an order of the District Judge, Balotra refusing to grant Letters of Administration of certain properties which were in the possession of Kanmal and his widow Smt. Shanta.

2. One Fatendra Suri was the Yati of a Jain Upasara. He had two disciples Himmat Mal and Nemichand. On the death of Fatendra Suri, Himmatmal succeeded him. Kanmal was the disciple of Himmatmal and succeeded him. Kanmal married Smt. Shanta after succeeding to the properties of the Upasara. Smt. Shanta was murdered on 4-4-1961 sometime after the death of Kanmal. After her murder, the present application for Letters of Administration was made by Sumer Chand who is a disciple of Nemichand, He claimed a right to succeed to the Upasara properties on account of being a disciple of Himmatmal's Gurubhai Nemichand.

3. The application was opposed by the State on the ground that Kanmal ceased to be a Yati on his marriage to Smt. Shanta and succession to Kanmal thereafter was governed by the Hindu Succession Act, 1956 and Sumerchand not being an heir of Kanmal or Smt. Shanta under the Act, is not entitled to succeed to their properties. This objection was upheld by the learned District Judge.

4. I have heard the learned counsel for the parties and have perused the evidence on record. In my opinion, the decision of the learned District Judge is erroneous.

5. Evidence was produced by the petitioner to show that a Jain Yati does not become disqualified on his marriage. This evidence was not accepted by the learned District Judge on the ground that the witnesses were able to cite only one instance, in which a Jain Yati, who had married, succeeded to the Upasara property. My attention has been drawn to a Division Bench judgment of this Court in Bhatarak Lalchand v. Bhatarak Ratanchand, Second Appeal No. 13 of 1950, D/- 31-10-1950 (Raj) and to another judgment in the same case by another Division Bench by which leave to file appeal to the Supreme Court was rejected (Civil Certificate Case No. 2 of 1951, D/- 10-12-1951 (SC)). From these judgments it is clear that the majority of Jain Gurans are now married and marriage is not regarded as a disqualification for holding the office of Guran in a Jain Upasara. The Upasara properties in the hands of Kanmal, therefore, continued to be Upasara properties after his marriage to Smt. Shanta. On the death of Kanmal these properties were not inherited by his widow Smt. Shanta but were inherited by his nearest spiritual heir who, in this case, was Sumerchand appellant.

6. Entrance into a religious order generally operates as a civil death and the provisions of the Hindu Succession Act are not applicable to properties owned by a person who enters a religious order. The Hindu Succession Act contains no provision for succession to such properties. Such succession, therefore, continues to be governed by customary law. I accordingly hold that Sumerchand is entitled to inherit all the Upasara properties which were in the hands of Kanmal as he is his nearest spiritual heir according to customary law. The personal properties owned by Smt. Shanta shall, however, escheat to the State.

7. In view of my finding above, I allow the appeal in part, set aside the order of the learned District Judge and remand the case to his Court with the direction that he shall issue Letters of Administration in favour of the appellant in respect of the properties belonging to the Upasara, after holding such further enquiry, if any, as he may consider necessary.

8. In the circumstances of the case, I direct the parties to bear their own costs of this appeal.

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