

Suja and ors. Vs. Ram Narain and ors.

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Court : Rajasthan

Decided On : Jan-23-1992

Reported in : AIR1992Raj163; 1992WLN(UC)536

Judge : N.C. Kochhar, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 22, Rules 4(3) and 11

Appeal No. : Civil Second Appeal No. 125 of 1985

Appellant : Suja and ors.

Respondent : Ram Narain and ors.

Advocate for Def. : N.K. Jain, Adv.

Advocate for Pet/Ap. : M.M. Ranjan, Adv.

Disposition : Appeal partly allowed

Judgement :

N.C. Kochhar, J.

1. This appeal under Section 100 of the Code of Civil Procedure is directed against the judgment and decreedated 13-4-1985 passed by the learned Civil Judge, Sambhar Lake in Civil Appeal No. 3/82 (1/84) arising out of the judgment and decree dated 1-2-1982 passed by thelearned Additional Munsif, Sambhar

Lake in Civil Suit No. 4/73 (BT.1/81). The brief facts are as under: -

2. Laxmi Narain (the deceased) was the khatedar of the agricultural land in dispute situated in village Phagi of district Jaipur. He died on 10-3-1958 and after his death Ram Narain (the defendant No. 1), claiming to be the adopted sort of the deceased, claimed the khatedari rights in respect of the above said land and mutation in his favour was sanctioned on 11-8-1958. The defendant No. 1 sold a part of the property in dispute to Bhoora Mehravar son of Ganga Bux (the defendant No. 2), a party to Jagdish son of Shri Bux. (defendant No.

3) and another part to Bajrang son of Suja (the defendant No.

4) and executed sale deeds in their favour. Bhoora son of Lala (the plaintiff), who was the predecessor-in-interest of the present appellants instituted a suit staling that the deceased had left behind no heir of class-1 and that he was the nearest relation of the deceased and had as such inherited his rights in the property in dispute and that the defendant No. 1 was a distant relation of the deceased and had not acquired any right in the estate left behind by him and that the sale deeds executed by the said defendant in favour of the other three defendants were of no effect and were liable to be cancelled. He thus prayed for a decree for declaration that he had inherited the rights of the deceased in the property in dispute and that the sale deeds executed by the defendant No. 1 in favour of the above-said three defendants were void and of no effect and for possession of the land sold to the defendants Nos. 2 to 4 under those sale deeds. The suit was contested by the defendants. The defendant No. 1 has pleaded that the deceased had adopted him as his son during his lifetime and as such after the death of the deceased he had inherited the property in dispute and had rightly sold some parts of the same to the defendants Nos. 2 to

4. The defendants Nos. 2 to 4 also contested the suit and pleaded that they had purchased the property in question under the sale deeds validly executed by the defendant No.

1. After framing the necessary issues and recording the evidence produced by the parties, the learned trial Court came to the conclusion that the defendant No. 1

had been adopted by the deceased during his lifetime and after the death of the deceased had inherited the property in dispute and had validly sold the parts of the same in favour of the defendants Nos. 2 to 4 and as such the plaintiff was not entitled to any relief. Consequently, vide the judgment and decree dated 1-2-1982, the suit filed by the plaintiff was dismissed. After the pronouncement of the above-said judgment and some time before the plaintiff could file the appeal, the defendant No. 2 Bhoora Mehravan son of Ganga Bux died and the plaintiff, who did not know this fact, filed an appeal impleading Bhoora as one of the respondents. An application was moved on behalf of the defendant No. 1 stating that the legal representatives of Bhoora having not been impleaded in the appeal, it had abated and praying that it be dismissed as such. The plaintiff, thereupon, prayed that the name of the above said defendant-respondent be deleted from the array of the respondents and consequently, the name of the said defendant: respondent was deleted. After hearing the learned counsel for the parties, the learned first appellate Court came to the conclusion that the legal representatives of Bhoora son of Ganga Bux not having been impleaded the appeal had abated and dismissed the appeal as such. Feeling aggrieved, the plaintiff has approached this Court by filing this second appeal. During the pendency of the appeal in this court the plaintiff died and the present appellants were brought on record as his legal representatives.

3. I have heard, Shri M. M. Ranjan, Advocate for the appellants, Shri K. N. Jain Advocate for the respondents and have also perused the record of the case.

4. As noted above, in the plaint, two reliefs were sought. The first one was for declaration that the plaintiff was the near relation of the deceased and had inherited his estate to the exclusion of the defendant No. 1 and that the defendant No. 1 had not acquired any right in the same. The second relief was for possession of the property sold by the defendant No. 1 to the defendants Nos. 2 to 4 on the ground that the sale deeds executed by the defendant No. 1 in their favour were of no effect. For deciding as to what rights were inherited by the plaintiff and/or by the defendant No. 1 in the estate of the deceased, after his death, the court had to decide the controversy between the above-said two parties only and both of whom were present before the court and were parties on the

record of the appeal. The other reliefs sought by the plaintiff was in regard to the possession of the land sold by the defendant No. 1 to defendants Nos. 2 to 4. Admittedly, the defendants Nos. 3 and 4 were impleaded as the respondents in the appeal before the learned first appellate Court and the plaintiff could seek relief of possession of the land purchased by them from the defendant No. 1, if he could establish his right against the defendant No. 1. It has rightly been contended that the only effect of non-impleading the legal representatives of defendant No. 2 can be that the plaintiff cannot get relief of possession of the land which was purchased by the defendant No. 2 under the sale deed from the defendant No. 1 and as such the whole appeal cannot be said to have abated.

5. I am, therefore, of the view that the appeal had abated only qua the right of the plaintiff to get possession of the land sold to the defendant No. 2 by the defendant No. 1 but his remaining appeal subsisted and had to be decided by the learned first appellate Court.

6. Consequently, I partly allow this appeal and modify the impugned judgment and decree dated 13-4-1985 passed by the learned first appellate Court to the extent that the appeal stands abated only in regard to the right of the plaintiff to claim possession of the land sold to the defendant No. 2 under a sale deed executed by the defendant No. 1 in favour of the said defendant. The appeal is, therefore, remanded for the remaining controversy being decided on merits. At this stage, the learned counsel for the parties state that an Additional District Judge is now holding the court in Sambhar Lake and they pray that the matter be sent to his court for decision according to law and further that he be directed to dispose of the appeal at an early date. In this view of the matter, it is directed that the appeal should be laid before the learned Additional District Judge, Sambhar Lake before whom the parties, through their learned counsel, are directed to appear on 17-2-1992. The learned Additional District Judge, Sambhar Lake should decide the appeal as early as possible but not later than 30-6-1992.

7. The Dy. Registrar (Judl.) is directed to see that the file is sent back to the above-said court without any delay so as to reach there by 14-2-1992.

8. The appeal stands disposed of accordingly, but with no orders as to costs.

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