

Ram Chandra Vs. Sukh Deo and ors.

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Court : Rajasthan

Decided On : Mar-31-1970

Reported in : 1970WLN165

Judge : C.M. Lodha, J.

Appeal No. : S.B. Civil Second Appeal No 213 of 1963

Appellant : Ram Chandra

Respondent : Sukh Deo and ors.

Judgement :

C.M. Lodha, J.

1. This is a plaintiff's second appeal out of a suit for partition.
2. The plaintiff appellant Ramchander and the respondent-defendants Nos. 1 and 2 Sukhdeo and Satyadeo are brothers. The respondent-defendant No. 3 Smt. Lal Kanwar is the real mother of respondents Nos. 1 and 2, and step mother of the plaintiff. The father of the appellant and the respondent Nos. 1 and 2 died on 8-11-1950 leaving behind the appellant and the respondents as his heirs. The plaintiff's case is that his relations with the step mother and the step brother.? were strained, and, therefore, he had started living separate from them even during the life time of his father Sheodeo, and soon after his father's death he gave notice to the

defendants to partition the joint family property belonging to the parties. But the defendants turned a deaf ear and consequently he filed the present suit on 17-1-1951 in the Court of Civil Judge, Jodhpur for partition of the family property and claimed that his father had left ancestral immovable property as well as ornaments of gold weighing 73 Mohars, cash Rs. 9386/- and household articles worth Rs. 300/-. The suit has been resisted by the defendants on a number of pleas which it may not be necessary to reproduce here as the only points which survive for decision in this appeal are: (1) whether a decree for partition of the ornaments as mentioned in the schedule appended to the plaint should be granted in the plaintiff's favour? and (ii) whether the plaintiff is entitled to get any share out of the cash alleged to have been left by the plaintiff's father at the time of his death.

3. It may be stated here that the defendants had set up a will in their favour but the same was not recognised in view of the fact that it was not duly attested according to law. The dispute between the parties regarding the partition of immoveable property has been set at rest and it is admitted by the learned counsel for both the parties that the houses for which a decree for partition had been granted by the courts below have actually been partitioned by mutual adjustment between the parties. It is also admitted by the learned counsel for both the parties that there is no dispute between the parties regarding the distribution of the household articles and as already mentioned above the only question pertains to the claim for partition of ornaments and cash.

4. The learned District Judge from whose judgment this appeal has been preferred has negatived the plaintiff's claim for partition of ornaments and cash. He has held that the plaintiff's allegation that his father Sheodeo had left gold ornaments 73 Tolas in weight has not been proved by clear and cogent evidence. But at the same time assuming that these ornaments were there at the time of Sheodeo's death, he has come to the conclusion that the plaintiff had got his share of the ornaments in the shape of a 'Bot' and a 'Teek' in the life time of Sheodeo and these ornaments were worth more than 1/4th share of the plaintiff. In this view of the matter, the plaintiff's claim for partition of the ornaments was negatived.

5. As regards the cash, the plaintiff's claim as developed in the course of evidence was that Rs.2800/- were withdrawn by Sheodeo from the Jodhpur Railway Co-operative Credit Society during his life time and an amount of Rs. 5154/8/- was withdrawn by the defendant No. 3 Smt. Lal Kunwar, widow of Sheodeo on 28-11-1950 soon after the death of Sheodeo. The plaintiff has also alleged that a few months before his death Sheodeo had also withdrawn a sum of Rs. 2950/- from the Post Office Savings Bank Account on 29-6-1950. It was alleged that these three amounts were lying with the defendants out of which the plaintiff was entitled to get 1/4th share. The learned District Judge has held that the amounts withdrawn by Sheodeo, that is, Rs. 2800/- from the Co-operative Credit Society and Rs 2950/- from the Post Office Savings Bank Account must have been spent or utilised in some way by Sheodeo, himself, and that there was no proof that these amounts were lying with the defendants. As regards the amount of Rs. 5154/8/- alleged to have been withdrawn by Smt. Lal Kanwar on 28-11-1950, the learned District Judge found that this amount must have been spent by Smt. Lal Kanwar for the marriage of her daughter Smt. Janki, who had been married, admittedly, after the death of Sheodeo and also for education and marriage of defendant No.2 Satyadeo, who was admittedly a minor at the time of death of Sheodeo. He has further held that some amount must have also been spent by Smt. Lal Kanwar for her own maintenance. In this view of the matter, he also came to the conclusion that nothing was available for partition out of the cash amount alleged to have been received by Sheodeo as well as by Smt. Lal Kanwar.

6. Learned counsel for the appellant has urged that there is ample evidence on the record that Sheodeo had left behind ornaments weighing 73 Tolas at the time of his death, which the learned District Judge has not taken into consideration at all. He has, therefore, taken me through the evidence of the relevant witnesses to substantiate his contention in this respect.

7. After having gone through the statements of the plaintiff's witnesses it does appear that Sheodeo was possessed of some ornaments, though there is nothing definite to point out as to what was their value and whether they were 73 Tolas in weight. The objection of the learned counsel for the respondents is that the plaintiff had definitely alleged in his plaint that the property which he wanted to be

partitioned was ancestral joint Hindu family but he has failed to prove that the ornaments in question were ancestral or had been acquired by Sheodeo himself. He has also contended that all the ornaments mentioned in the schedule appended to the plaint are worn by ladies and have been proved to be in possession of defendant No. 3 Smt. Lal Kanwar, widow of Sheodeo. It is contended by him that they must be taken to be her 'Streedhan property not liable to be partitioned amongst the sons of Sheodeo. Learned counsel has also referred to the statement of D. W. 1 Deo Narain, Advocate, who has deposed that a 'Teek' and a 'Bor' weighing about 35 Mohars and 2 Mohars respectively were given by Sheodeo to the plaintiff after the death of the plaintiff's real mother. Learned counsel for the appellant however, submits that the evidence regarding delivery of 'Tetk' and the 'Bar' by Sheodeo to the plaintiff is discrepant and not at all convincing, and the learned District Judge was clearly in error in relying upon the statement of Shri Deo Narain

8. As to the question whether the ornaments alleged to be belonged to Sheodeo at the time of his death, there is the lone statement of the plaintiff that these ornaments were ancestral. Even the plaintiff has not given any detail as to what is his source of knowledge on the question whether the ornaments were ancestral or were acquired by Sheodeo himself? In these circumstances I find it difficult to accept the bald statement of the plaintiff made during the course of cross examination that the ornaments in question were ancestral. But apart from that, he would be entitled to get a share out of these ornaments, if it is proved that they belonged to Sheodeo. But on that point also the evidence is rather thin. The nature of the ornaments leaves no manner of doubt that they are not too many in number and are worn by ladies only. They are alleged to be in possession of Smt. Lal Kunwar and the contention of the learned counsel for the respondents that they may be deemed to be her Streedhan property cannot be said to be altogether without force. But apart from that the learned District Judge has preferred to rely on the statement of D.W. 1 Deo Narain to the effect that the ornaments weighing about 38 Tolas had been given to the plaintiff by Shedeo after his mother's death. Deo Narain has stated that a community feast was held after the death of Sheodeo's first wife when these ornaments were given to the plaintiff. It has, however, not been brought out in the course of examination as to when that

communal feast was held, D. W. 2 Jagannath and a few other witnesses have given varying dates regarding the alleged handing over of the two ornaments by Sheodeo to the plaintiff and they further state that the plaintiff relinquished his right in respect of other property of Sheodeo. The plaintiff's father-in-law Har Narain (P.W. 13) has stated that no 'Bor' or 'Teek' were handed over by Sheodeo to the plaintiff. The learned District Judge has chosen to place reliance on the testimony of Shri Deo Narain in preference to the statement of the plaintiff and his father-in-law -Har Narain. Learned counsel wants me to disbelieve Deo Narain's on the ground that according to this witness the plaintiff was an infant at the time of the alleged handing over of the two ornaments to him by his father, whereas according to other witnesses produced by the defendants the plaintiff was quite grown up. However, I find it difficult to hold that the plaintiff was infant at the time the ornaments are alleged to have been handed over to him by his father As already stated above Deo Narain has not been cross-examined as to what was the plaintiff's age when according to the witness the ornaments were handed over to him, nor the witness has been cross-examined as to whom the ornaments were handed over on plaintiff's behalf . No doubt Deo Narain has said that the ornaments were handed over to the plaintiff on the occasion of the community feast after the death of plaintiff's real mother Learned counsel for the plaintiff submits that it cannot be said from the statement of Deonarain that the 'Nyar'on account of the plaintiff's mother's death was held soon after her death. Be that as it may, the fact remains, that sitting as a Court of second appeal I cannot necessarily come to the conclusion that Deo Narain's statement is false, and, therefore, the finding arrived at by the learned District Judge that the two ornaments, namely a 'Teek' and a 'Bor' were given to the plaintiff by his father, must be accepted.

9. Learned counsel for the appellant has urged that assuming that two ornaments had been handed over to the plaintiff by Sheodeo, the plaintiff is still entitled to ask for partition of whatever ornaments remained after the death of Sheodeo, and whatever ornaments had been handed over by Sheodeo should not be taken into consideration. I, however, find it difficult to accept this contention. There is nothing to show that, the 'Teek' and the 'Bor' were handed over to the plaintiff as a gift apart from his share out of the ornaments belonging so Sheodeo. It may be observed that at the time of Sheodeo's death the plaintiff was grown up and

employed and was living separately from Sheodeo. In these circumstances, I do not see any sufficient reason for differing from the finding of the learned District Judge that the plaintiff has already got his share of the ornaments and was not more entitled to claim further share in the ornaments left with Smt Lal Kunwar at the time of the death of Sheodeo.

10. This brings me to the question of partition of the cash amount. It is not known when Rs 2800/- were withdrawn by Sheodeo from the Railway Co-operative Credit Society. All that P.W. 4 Kan Raj, who has been produced in this connection states is that Rs 2800/- were withdrawn by Sheodeo on different dates. It is very likely that Sheodeo might have drawn this amount before his death and must have spent it or otherwise utilised it. There is, therefore, nothing on the record to suggest that this amount was lying with the defendants at the time of Sheodeo's death. Similarly an amount of Rs. 2950/- was withdrawn by Sheodeo about 5 months before his death. Learned counsel for the respondent submits that Sheodeo had withdrawn this amount for his treatment as he was ailing. Be that as it may, it was the duty of the plaintiff to have proved that Sheodeo had left this amount with any of the defendants to be accounted for at the time of partition between the parties. During the period of 5 months Sheodeo had remained alive after withdrawing this amount it is very likely that he may have spent it or given it away to some-body, and unless it is proved that it had been left with any of the defendants for purposes of partition, the plaintiff is not entitled to claim any share out of it. Learned counsel for the appellant has strenuously urged that after the death of Shedeo his wife Smt. Lal Kunwar became the manager of the joint Hindu family consisting of herself and the three brothers and it was her duty to have rendered the accounts of these moneys. In support of his contention he has referred to *Manik Rao v. Deo Rao* AIR 1955 Nagpur 290, and *Jagmohan Laxmichand v. Ranchod Das* AIR 1946 Nagpur 84. The rulings relied upon by the learned counsel for the appellant are altogether distinguishable and based on different set of facts. In the present case in the first place there is no proof that at the time of Sheodeo's death these amounts were in tact and in the second place the analogy of the rights and liabilities of the manager cannot be pressed into service in the case of Smt. Lal Kanwar, widow of Sheodeo.

11. Learned counsel for the appellant, however had laid a great stress regarding the amount of Rs. 5154/8/-, admittedly withdrawn by Smt. Lal Kanwar from the Railway Co-operative Credit Society on 28-11-1950 only 20 days after the death of Sheodeo on the basis of the nomination made in her favour by Sheodeo. A contention was raised on behalf of the respondents that Smt. Lal Kanwar received this amount absolutely to the exclusion of all other heirs of Sheodeo. This contention Was repelled by the learned District Judge but has been again pressed before me. Learned counsel for the appellant has submitted that the defendant Smt. Lal Kanwar has not come forward with this case in the trial court nor did she come in evidence, and, therefore, she is not entitled to defend the case on this ground. However, after hearing learned . counsel for the parties I have come to the conclusion that the argument in this connection is based purely on the construction of the nomination form, Ex. P. W. 15/1, which is admitted document. Moreover the contention which the learned counsel for the respondents seeks to raise now was also raised before the learned District Judge and was heard and decided without any objection of its being entertained from the side of the plaintiff. I, therefore, do not feel inclined to reject this contention simply on the ground that it was not raised by Smt. Lal Kanwar either in her written statement or in the course of evidence.

12. The question whether a nomination made by a person is only in the nature of an authority to the nominee to receive the amount or in the nature of testamentary disposition has been a subject of controversy, in the decided cases of some High Courts. Learned counsel for the appellant has relied upon Ramballa v. Gangadhar AIR 1956 Cal. 275, M. Brahmamma v. K. Venkataramana Rao AIR 1957 A.P. 757, D. M Mudaha v. I. I. and B Corporation AIR 1957 Mad 115, Noor Mohbmed v. Sardar Khatun AIR 1949 Sind 38, Matadin v. Nathilal AIR 1951 Ajmer 42 and Union of Bharat v. Asha Bi AIR 1957 MP 79 in support of his contention that such a nomination only confers a right on the nominee to receive the money but the nominee is not entitled to get the money absolutely to the exclusion of all other heirs of the deceased person. On the other hand learned counsel for the respondents has relied on Piare Lal v. Ganpat AIR 1930 Lah. 437, and Kalisadhan v. Prafulla Chandra AIR 1926 Cal. 1061 in support of his contention that such a nomination can be construed as a testamentary disposition.

13. The cases which have been relied upon by the learned counsel for the parties, it may be stated here are either under the Provident Funds Act, 1925 or under the Insurance Act, 1938 which contain special provisions in this respect. Of course the law on the subject of Provident Funds and Insurance and for the matter of that contributions to other societies must in the ultimate analysis rest upon the terms of the rules controlling such contributions, but none of the parties has placed on the record nor has alleged that there were any rules framed by the former Jodhpur Railway Co-operative Credit Society Ltd., Jodhpur from which the amount of Rs. 5154/8/- lying in deposit to the credit of Sheodeo was withdrawn by Smt. Lal Kanwar. In absence of rules on the subject the nature of transaction has to be inferred from the language of the nomination itself. In order to correctly appreciate the rival contentions of the parties it would be proper to reproduce the relevant portion of the nomination Ex. P. W. 15/1:

3. In the event of my death the amount, together with interest to the date of maturity, shall be distributed among the persons mentioned below in the manner shown against their names;

and address Whether the nominee Age of Amount of the nominee is next of kin or nominee* share of for nominees obtains the deposit by deposit bequest of the depositor (exact relationship to be stated) 1 2 3 4* In the event of the nominee being a minor the depositor is advised to name the person or persons whom he would like to Act as guardian to the minor for the purpose of the above deposit. _____

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wife wife, yes. 30 Full of Sheodeo, C/o. Boron ki Ghati, Jodhpur Yours faithfully Two witnesses to Signature Name A B with Designation Sd-Sheodeo 28-2-1948. Sd/- Shrinath Address: RBC F/5892. Sd/- Manakchand Specimen Signature Sd/- Sheodeo E-589 Date 28-2-1948.

14. Learned counsel for the appellant submits that Union of Bharat v. Asha Bi : AIR 1957 MP 79 and Noor Mahomed v. Sardar Khatun AIR 1949 Sind 38 furnish a

useful analogy for the interpretation of the terms of the nomination in the present case. He has urged that if it was the intention of Sheodeo to make the nomination in the nature of testamentary disposition he would have added the words such as 'this is my last will', and since these word were not there the mere fact that it has been mentioned in the nomination that in the event of Sheodeo' death the amount shall be distributed among the persons named there in did not amount to testamentary disposition. It is true that the word 'will' has not been used in Ex. P. W. 15/1. But it appears from the language used in the document that the intention of Sheodeo was that in the event of his death the amount lying to his credit would be paid to the only nominee, his wife, Smt. Lal Kanwar. The Madhya Pradesh case AIR 1957 MP 79 as well as the Sind case AIR 1949 Sind 38 relied upon by the learned counsel were based on the interpretation of Section 5 of the Provident Funds Act, which reads as below:

1. Subject to the provisions of this Act. but otherwise notwithstanding anything contained in any law for the time being in force or any disposition, whether testamentary or otherwise, by a subscriber to, or depositor, in a Government or Railway Provident Fund of the sum standing to his credit in the Fund, or of any part thereof, any nomination, duly made in accordance with the rules of the Fund, which purports to confer upon any person the right to receive the whole or any part of such sum on the death of the subscriber or depositor, shall be deemed to confer such right absolutely, until such nomination is varied by another nomination made in the manner or is expressly cancelled by the subscriber or depositor by notice given in such manner and to such authority as is prescribed by those rules.

2. Notwithstanding anything contained in the Succession Certificate Act, 1889, or the Bombay Regulation VIII of 1827, any such person shall, on the death of the subscriber or depositor, be entitled to the grant of a certificate under that Act, or that Regulation, as the case may be, entitling him to receive payment of such sum or part, and such certificate shall not be deemed to be invalidated or superseded by any grant to any other person of probate or letters of administration to the estate of the deceased.

15. Hidayatullah C. J., in this connection has observed as follows in *Union of Bharat v. Asha Bai* : AIR 1957 MP79 :

The section merely wipes out all the personal and other law for the time being in force and also set at naught any other disposition by the subscriber whether testamentary or otherwise, creating a right in the nominee to receive the money from the Government or the other holder of the Provident Fund. It is also stated in the section that the nomination confers this right on the nominee absolutely.

In my opinion, this last provision cannot be read as making the nominee the owner of the fund. It only gives him the right to demand it unconditionally. To explain my meaning I give a few examples. It is not open to the holder of the fund to demand any document from a Court or to ask the recipient for an indemnity bond or security before the payment is made. the right is conferred absolutely or in other words, unconditionally.

There is nothing in those words which make the money belong to him after he has received it, and indeed, there is nothing in those words which shows that even before the death of the subscriber the nominee is entitled to a beneficial interest in the money

16. In *Noor Mahommed v. Sardar Khatun* AIR 1949 Sind 38 which has been relied upon by Hidayatullah C.J., also, all the relevant authorities were considered and it was held that the words of Section 5 did give the right to receive the money absolutely but not to appropriate it. The restriction on the recipient's right to appropriate the amount absolutely clearly seems to have been inferred from the language of Section 5 of the Provident Funds Act. As already stated above there is no law or rules governing nominations for withdrawal of amount from the Jodhpur Railway Co-operative Credit Society, and, therefore, no statutory restrictions can be pressed into service in the present case and the nature of the transaction and the intention of the maker of the document have to be inferred either on general principles or from the terms of the document itself. There is nothing to show in the nomination that the nominee was only authorised to withdraw the money and to hold it as a trustee for the benefit of all other heirs of deceased person. In this connection it may not be out of place to mention that Sheodeo had actually

executed a will in favour of his wife, and his son Satyadeo-minor, who was admittedly under the guardianship of his mother Smt. Lal Kanwar. The execution of this will was upheld but its validity has not been recognised on account of the fact that it was not duly attested according to law. As mentioned in the nomination form itself Smt. Lal Kanwar was about 30 years old at the time of nomination. The nomination was, attested by two witnesses and clearly says that in the event of the death of Sheodeo the amount would be distributed to his wife, Smt. Lal Kanwar. The mere fact that the word 'will' has not been used in the nomination form would not in any way detract from the real nature of the document. In my opinion, the nomination form fulfills all the conditions of a testamentary disposition and after a careful consideration of the facts and circumstances of the case I have come to the conclusion that the intention of Sheodeo was clearly to give away the amount lying to his credit in the Jodhpur Railway Co-operative Credit Society to his wife absolutely to the exclusion of all other heirs. In this view of the matter, the plaintiff or for the matter of that any other heir of Sheodeo is not entitled to get any share out of this money.

17. The learned District Judge has, however, considered the nomination form not as a testamentary disposition and has held that Smt. Lal Kanwar did not become the absolute owner of this money. I am, however, constrained to observe that he has not closely examined the question. But after careful consideration of the case law as well as the facts and circumstances of the present case I am of opinion that his conclusion in this respect is not correct. The decision on this point is by itself sufficient to dispose of the plaintiff's contention regarding the amount of Rs. 5154/8/-. However, it would be proper to refer to the other aspect of the matter also which has found favour with the learned District Judge in repelling the appellant's contention in this respect.

18. It may be noted that Satyadeo was about 15 years at the time of death of Sheodeo and Smt. Janki, daughter of Sheodeo was a minor to be married. It is well established that at the time of partition of joint Hindu family proper provision has to be made for the marriage of unmarried daughters, and, therefore it would be quite reasonable to infer that some money must have been spent by Smt. Lal Kanwar for the marriage of Smt. Janki. It is true that the defendants have not led

any evidence to show as to how much money was actually spent over the marriage of Smt Janki and how much expenses had otherwise been incurred by Smt. Lal Kanwar over the funeral ceremony and other ceremonies on the death of Sheodeo and the learned District Judge has based his finding on the so called common knowledge about the expenditure which may be incurred in the case of marriage of a daughter and education of a minor boy. But in the circumstances of the case I am not prepared to hold that his finding is necessarily wrong. Taking an over all view of the case his conclusion that there was no substantial amount left with Smt. Lal Kanwar for distribution among the brothers at the time of partition cannot be said to be erroneous.

19. In the result I do not find any substantial ground for interfering with the judgment and decree of the learned District Judge, and hereby dismiss the appeal. But in the circumstances of the case and looking to the relationship of the parties I direct that they shall bear their own costs.

20. Learned counsel for the appellant prays for leave to appeal to Divisional Bench. However, I do not consider it a fit case for grant of leave. The prayer is rejected.