

**Ratanlal Vs. State**

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**Court :** Rajasthan

**Decided On :** Jul-14-1970

**Reported in :** 1970WLN334

**Judge :** L.S. Mehta, J.

**Appeal No. :** S.B. Criminal Miscellaneous Application No. 949 of 1969

**Appellant :** Ratanlal

**Respondent :** State

**Disposition :** Application allowed

**Judgement :**

**L.S. Mehta, J.**

1. This is a review application submitted on behalf of Ratan Lal under Section 561-A, Cr. P.C., for re-hearing the case. The averments in the application are that S.B. Criminal Revision No. 347 of 1968, was called for hearing on 24-10-1969. That day Mr. U.M. Trivedi, Advocate for the petitioner, was not present, His junior Shri Krishna Murari Advocate asked for an adjournment of the case for Monday the 27th October, 1969, when Mr. Trivedi was to come to Jodhpur. Shri Krishna Murari further prayed that he was unable to argue the case as the relevant case file was with the senior Counsel. This court. however, refused to adjourn the case

and acting on the facts narrated in the judgment of the court below presumed that the moveable property had not been seized from the petitioner. The petitioner prayed that in these circumstances the case may be reheard and proper direction be given. The above application was admitted by this Court on January 12, 1970, Keeping in view the principle that the party adversely affected should be given proper hearing before making an order of the return of the seized property State, Bank of India v. Rajendra Kumar : 1969 CriLJ659 . A notice was then issued to the opposite party. In this manner the review application has come up before this court for hearing today.

2. The brief facts of the case are alleged to be that Mst. Virji, widow of Kajorimal Bhandari of Chittor, died on March 25, 1961. It was suspected that the woman was murdered. The police registered a case against Ratanlal for the offence under Section 302, I.P.C. In the course of investigation it seized certain ornaments and coins from the house wherein Mst. Virji was living. The police after investigation submitted a final report. A question, however, arose as to whom the articles seized by the police should be returned. The subDivisional Magistrate, Chittorgarh, issued a proclamaion inviting objections in respect of the property in question. 3 persons namely, Ashok Kumar s/o Chhogalal, Ramchandra and Ratanlal, sons of Kajorimal, filed, objections. Ratanlal and Ramchandra claimed that they being the sons of the deceased Smt. Virji, widow of Kajorimal, the property should be given to them. Ashok Kumar claimed that he being the grand-son of Kajorimal was entitled to get a share in the property. Learned Sub-Divisional Magistrate rejected the claims of all the 3 objectors and directed that the claimants should obtain necessary orders from the civil court within 4 months, failing which the property would stand forfeited to the Government. Ratanlal, Ramchandra and Ashok Kumar filed appeals against the above order in the court of the Sessions Judge Pratapgarh, camp Chittorgarh. The learned Sessions Judge ordered that the property would stand forfeited to the State Government and the same should be sold under the orders of the District Magistrate or Sub-Divisional Magistrate or a Magistrate of the First Class, empowered by the State Government in this behalf. Dissatisfied by the above order, a revision application was moved in this Court. This court by its order, dated October 24, 1969, partially accepted the revision-application, set aside the order of the Sessions Judge, Partabgarh. camp

Cnittorgarh and directed that Ratanlal, Ramchandra and Ashok Kumar could establish their claims to the property in a civil court and the property could be made over to all the claimants or any of them in accordance with the order of the civil court and frill such claim was established, the property would remain in the custody of the State Government.

3. Aggrieved by the above order, the present review application has been filed on behalf of Ratanlal. I have heard Mr. U.M. Trivedi as also learned Deputy Government Advocate, Dr. S.K. Tiwari. From the record it is apparent that Mst. Virji died on March 25, 1961. The recovery of the moveable property in a suspected murder charge was affected by the police on April 6, 1961: vide recovery memo marked Ex. A in Criminal Case No. 21 of 1965, of the court of the Sub-Divisional Magistrate. Chittorgarh. In between the above two dates admittedly the house, in which Mst. Virji was living, was in possession of Ratanlal, as that house had fallen in his share in partition; vide Ex. 4. It is true that Mst. Virji was living in a separate room, but that does not mean that after her death that room including its contents did not fall in possession of Ratanlal. Under Section 523, Cr.P.C, what the court has to determine is as to which person is in possession of the property. The court has not to decide the question of title. It has to decide the question of right to possession, The person entitled to the possession of the property to whom delivery must be made is usually the person from whom it was seized vide U. Ba Hding v. Balobux Sodani AIR 1937 Rangoon 42.

4. In this case certain moveable property was recovered on April 6, 1961, from the house which was in the possession of Ratanlal. The charge against Ratanlal under Section 302, I.P.C., could not be brought home to him. In that situation, the property should have been restored to him. The State is not the claimant of the property. If Ashok Kumar and Ramchandra are aggrieved, they can bring a civil suit to vindicate their right. No useful purpose is likely to be served by retaining this property in the State custody sine die.

5. I accordingly allow this review application and direct that the property in question, seized by the police, should be returned to the applicant Ratan Lal.

