Sm. Rani Dassya and ors. Vs. Sm. Golapi Dassya and anr.

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Court : Kolkata

Decided On : Jan-28-1930

Reported in : AIR1930Cal779,129Ind.Cas.362

Appellant : Sm. Rani Dassya and ors.

Respondent : Sm. Golapi Dassya and anr.

Judgement :

Mitter, J.

1. This is an appeal by defendants 1 to 4 and arises out of a suit commenced by the plaintiff for a declaration that defendant 1 Rani Dasee has no right to inherit the property of her husband Jogendra as she became unchaste during her husband's lifetime, and for a further declaration that certain kabalas, which had been executed by Rani Dasee in favour of defendants 2 to 4 are collusive and fraudulent. Both the Courts have held that defendant 1 was immoral and unchaste during her husband's lifetime and that therefore she was not competent to inherit her husband's estate. They have also found that the kabalas executed by defendant 1 in favour of defendants 2 to 4 are collusive and fraudulent.

2. Against the concurrent decisions of the District Judge of Bankura and the Munsif of the same district the present appeal has been preferred by defendants 1 to 4, and it has been argued by Mr. Bankim Chandra Mukherji who has appeared for the appellants that the suit offends against the provisions of Section 42,

Specific Relief Act and therefore should have been dismissed by the Court below. It is said that the Record-of-Rights disclosed that defendant 1 Rani Dasee was in possession of the property in respect of which the declaration was sought. This Record-of-Rights was finally published some time in the year 1924 and the present suit was instituted on 22nd January 1925. The lower appellate Court however has come to the conclusion on the evidence that the plaintiff Golapi Dasee who is the mother-in-law of Rani Dasee and the mother of Jogendra, was in possession of the disputed property at the time of the suit. There was evidence to sustain this finding by the lower appellate Court, for it is pointed out that the evidence on the side of the plaintiff shows that both Upendra the brother of Jogendra and Golapi Dasee, the plaintiff, paid rent to the zamindar who himself deposed in this case. If, as is found, the plaintiff was in possession it was not necessary for her to ask for consequential relief of recovery of possession. Mr. Mukherji' with great insistence urged before me that in arriving at the finding on the question of possession the lower appellate Court has not given proper legal effect to the presumption which arises under Section 103-B, Ben. Ten. Act, from the entry in the Record-of-Rights. Both the Courts below have referred to the Record-of-Rights. The first Court has pointed out rightly that the Record is no evidence of title. All that it shows is that at the date when the Record was finally published Rani Dasee was in possession of the disputed property. But it is admitted by Rani Dasee herself that Golapi Dasee, the plaintiff was living as a member of a joint family with Upendra and herself after the death of her husband. Under these circumstances having regard to the finding that Rani Dasee was not competent to inherit as she became unchaste during the lifetime of her husband and that Golapi was in possession, I do not think it is necessary to remand this case to the lower appellate Court for consideration of the effect of the Record-of-Rights and for consideration of the further question as to whether the entry in the Record-of-Rights has not been rebutted. As a matter of fact the present suit has been occasioned by reason of the entry in the Record-of-Rights which has cast a cloud upon the title of Golapi Dasee plaintiff as she is the next heir of her son Jogendra under the Bengal School of Hindu law by which this case is governed. I think therefore the ground urged by the learned advocate for the appellant must fail

3. With regard to the question of inheritance it has been sought to be argued that, as, there is nothing to show in the evidence of the mother of Jogendra and his brother that Jogendra did not condone the act of adultery committed by Rani Dasee with her sister's husband Bhuban it could not be said that Rani Dasee is disentitled from inheriting her husband's property. There is however evidence in this case amongst others of Ganga Ram Kundu, plaintiff's witness 7., which leads to the conclusion that Rani Dasee left her husband's home in his lifetime and was living as mistress of Bhuban, her sister's husband at the time of Jogendra's death. It is also pointed out that she was not allowed to perform the Sradh of her husband. This witness also points out that a panchayat was called and the panchayat declared, defendant 1 as an. outcast and that Jogendra consequently did not take her back. So there is no evidence that this act of unchastity was condoned by the husband. It is not necessary therefore to consider whether the decisions of the Bombay and the Allahabad High Courts in the case of Gangacdar Pardppa Alur v. Yellu [1912] 36 Bom. 138 and in the case of Radhe Lal v. Bhawani Ram [1918] 40 All. 178, which lay down that under the Hindu law a widow is not debarred from inheriting to her husband on the ground that she had become unchaste in her husband's lifetime, if the husband had condoned her unchastity, lay down the law correctly with reference to the texts of the Hindu sages. These two decisions however are not decisions in respect of that School of Hindu law which prevails in Bengal, consequently they should not be regarded as authorities controlling the law which regulates the Dayabhaga law of succession. On the other hand there is the text of Vrihat Menu to the effect that the widow of a childless man keeping unsullied her husband's bed and persevering in religious observances shall present his funeral oblation and obtain his entire share, which would seem to suggest that, unless the widow kept unsullied heir husband's bed up to the time, of her husband's death she would not be entitled to inherit her husband's estate. It is pointed out by their Lordships of the. Judicial Committee of the Privy Council in the case of Moniram Kolita v. Keri Kolitani [1880] 5 Cal. 776 that:

although the present participle is used in this text of Vrihat Mann it clearly refers only to the conduct of the widow up to the time of her husband's death, and not to her conduct subsequently.

4. The Bombay and the Allahabad decisions also have been commented on unfavourably by Mr. Golap Chandra Sastri in his book on Hinduj Law, Edn. 6, p. 468. The learned author points out:

But a woman's character-may be above all suspicion, and she may be purity personified, but if she does not love her husband, refuses to live with him, and habitually acts contrary to his wishes, then she cannot inherit from him, for she is not sadhvi.

5. He points out that the word 'sadhvi' as rendered into English by Colebrooke, is 'chaste.' Verse 165 of Chap. 5 of Manu's code has been rendered into English by Sir William Jones as follows:

While she, who slights riot her lord, but keeps her mind, speech and body devoted to him attains his heavenly mansion, and is called sadhvi or virtuous, by good men.

6. As I have already said, there is no evidence of condonation consequently it is not necessary to express any final opinion on the, question. In the texts to which I have referred already the question of condonation really does not come in for the purpose of determining as to whether the widow who has become unchaste during her husband's lifetime is entitled to inherit or not.

7. The result is that both the points urged fail and the appeal must be dismissed With Costs.

8. Mr. Mukherji has asked leave to appeal under the Letters Patent. I do not think that the circumstances of the case are such that leave should be granted, and I do not consider the case a fit one for appeal.