

Deep Narayan Singh and ors. Vs. Sarjan Singh and ors.

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Court : Kolkata

Decided On : Jul-15-2002

Reported in : (2002)3CALLT239(HC),2002(3)CHN364

Judge : Dilip Kumar Seth and ;Joytosh Banerjee, JJ.

Acts : [Hindu Succession Act, 1956](#) - Sections 3, 3(1), 11 and 18

Appeal No. : F.A. No. 199 of 1996

Appellant : Deep Narayan Singh and ors.

Respondent : Sarjan Singh and ors.

Advocate for Def. : Probhajyot Singh, Adv.

Advocate for Pet/Ap. : Dulal Chandra Roy, ;Saumindra Nath Sanyal and ;Arup Roy Chaudhury, Adv.

Disposition : Appeal allowed

Judgement :

D.K. Seth, J.

1. This appeal arises out of the judgment and decree dated 26th July, 1994 passed by the learned Judge, Second Bench, City Civil Court, Calcutta, in Title Suit No. 1299 of 1985 for partition. The suit was decreed against which the

defendants have come up in appeal. The suit related to a business, which was claimed by the plaintiff to be a joint business. The plaintiff's case, inter alia, was that the origin of the business was a medicine shop carried on by Pujan Singh, since deceased, stepbrother of the plaintiff's and the defendants in the present suit, through the first wife of their father. After the death of said Pujan Singh, the three stepbrothers inherited the said business and the tenancy right. The plaintiff's and the appellant Ram Narayan Singh became seized and possessed of the said business after the death of the said Pujan Singh. But through cunning maneuver Ram Narayan managed to run the business solely. However, the plaintiff's had still access in the shop where motorcycle is parked by the son of plaintiff No. 1. That the said Ram Narayan had brought some litigations against the plaintiff's even at the cost of jeopardising the tenancy right of the shop room. After the death of Ram Narayan Singh, the defendants No. 1 to 5 are managing and controlling the business. Neither Ram Narayan Singh rendered accounts during his lifetime nor the defendants Nos. 1 to 5 had rendered accounts after the death of Ram Narayan.

2. The learned trial Judge had found that the business was the joint business on the basis that it was inherited by the plaintiff's and the said Ram Narayan. The appellants, however, assailed the said finding on various grounds on merit to the extent that there was no material proof that the plaintiff's had joined in the business. According to the appellants. Ram Narayan was carrying on business with Pujan Singh and after the death of Pujan Singh he carried on the business all alone. Though, the appellants did not question the inheritance of the property or succession to the estate of Pujan Singh by the plaintiff's, yet he denied that the plaintiff's had any share or interest in the business.

3. At the hearing, the learned counsel for the plaintiff's/respondents had stressed that the right is being claimed in the property through inheritance. He had also pointed out from various documents that the jointness was admitted by Ram Narayan, since deceased, and that there are materials to show that the business was carried on jointly.

4. We have heard the learned counsel for the parties at length.

The pleadings: Jointness of the business:

5. Admittedly, a relief is based on the pleadings made in the plaint. It is the case made out in the plaint that is required to be gone into. The plaintiff's claim is based on devolution of Interest in the business by succession. We have gone through the pleadings in the plaint. It transpires that the entire foundation is based on succession. It was never pleaded that the plaintiff's had ever carried on business jointly with Pujan Singh. On the other hand, in paragraph 2 of the plaint, it is pleaded that Pujan Singh during his lifetime carried on business in the said shop room. No jointness of the business between the plaintiff's and the said Pujan Singh, since deceased, was pleaded in the plaint. In the written statement, however, it was pleaded that Ram Narayan was carrying on business with Pujan Singh, since deceased, and that Ram Narayan carried on the business all alone after the death of Pujan Singh. Thus there was a claim of jointness of business between Pujan Singh, since deceased, and the said Ram Narayan. predecessor in interest of defendants Nos. 1 to 5. In paragraph 4 of the plaint, it is also pleaded that by cunning maneuver Ram Narayan managed to run the business solely. Parking of a motorcycle by one of the sons of the plaintiff No. 1, does not indicate joint carriage of business and that too by an between the plaintiff No. 1 or the sons of the plaintiff No. 1. In paragraph 6 of the plaint, it is pleaded that defendants Nos. 1 to 5 are managing and controlling the business after the death of Ram Narayan though the assets and capital of Pujan Singh, since deceased, were inherited by the plaintiff's and the defendants. In paragraph 7, it is pleaded that Ram Narayan never rendered accounts of the said business. After the death of Ram Narayan, the defendants also failed and neglected to render accounts.

Claim based on inheritance:

6. Thus, from the pleading, It appears that there was no pleading of jointness of business between the plaintiff's and the said Pujan Singh, since deceased, or Ram Narayan, since deceased, or the defendants No. 1 to 5. The only basis was inheritance upon which the pleadings are founded. Even from the evidence of Sarjan Singh, the plaintiff No. 1, it appears that he had never deposed that he had been carrying business jointly along with Pujan Singh or with Ram Narayan. PW1

Sarjan Singh. in his deposition, at page 45 of the Paper Book, has admitted that during his lifetime, Pujan Singh was doing the business. After the death of Pujan Singh, the properties were inherited by the three brothers, namely, plaintiff Nos. 1 and 2 and Ram Narayan. Upon death of Pujan Singh, Ram Narayan came into possession of the shop room. The two plaintiff's mostly remained outside in connection with their order supply business. Then it was found that Ram Narayan had changed the name of the business and the licence was obtained in the name of his son. At page 46, he had admitted that Ram Narayan never rendered accounts. Ram Narayan was in custody of the properties left behind by Pujan Singh. At page 47, he had admitted that Pujan Singh was his step-brother. At the time of death of Pujan Singh, his sister Kadam Singh was alive. He admitted that Pujan Singh and Kadam Singh were the children by the first wife of his father; and that the plaintiff's and the defendants were the children by the second wife of his father. At page 48, he admitted that he has his own business at 9, Madan Mohan Burman Street with which Ram Narayan had no connection. At page 50, he had admitted that Pujan Singh used to carry on his business in his personal name. It is also admitted that the three brothers had been residing in three different places and had been carrying three different business. At page 52, he had admitted that he had never issued any letter asking Ram Narayan to render accounts. He also admitted that he did not do anything in the said business during the lifetime of Ram Narayan. At page 53, he admitted that he used to run his business at 9, Madan Mohan Burman Street. He had also categorically admitted that the three brothers used to live separately and had separate business (Question 50).

The points:

7. Thus, from the above statements, two things are clear. One that the business was carried on by Ram Narayan and that the plaintiff, Sarjan Singh, did not do anything in respect of the said business. The other that emerges is that there is one full-blooded sister of Pujan Singh at the time of the death of Pujan Singh in 1962. Thus, the claim that would be emerging from the materials is that by virtue of succession right is being claimed in the business. The other witnesses are not so material since PW2 had stated that he was 38 years in 1992. Thus, in 1962, when Pujan Singh died or in 1965, viz: at the time of death of Ram Narayan, he

was too young to have direct knowledge about this situation.

Burden of proof:

8. The question of inheritance will succeed only if it can be shown that the plaintiff's were the natural heirs of Pujan Singh. Inasmuch as, neither in the plaint nor in the evidence jointness of the business is being claimed or that the said business was being carried on jointly. Neither any nucleus of the business contributed by the plaintiff's has been proved. The success of a claim is based on the case made out in the plaint. One who asserts some facts is supposed to prove the same. One has to succeed on the strength of his own case. He cannot claim success on the weakness of the defence case. The existence of certain facts is to be proved by the person, who avers such facts (Section 101 Evidence Act). The burden of proof lies on the person who will fail if no evidence is adduced (Section 102 Evidence Act). Until such burden is discharged, the other party is not called upon to discharge his onus that might be on him.

Jointness of business not proved:

9. In the present case, if no evidence is adduced, the plaintiff's' claim would fail. Admittedly, after the death of Pujan Singh, the business was being run exclusively by Ram Narayan so long he was alive. After the death of Ram Narayan, the defendants No. 1 to 5 are running the business. They had never rendered accounts to the plaintiff's. Unless it is shown that the plaintiff's had acquired interest in the business by virtue of succession, they cannot succeed. Therefore, the plaintiff's have to prove either the jointness of the business or devolution of interest by succession. As discussed above, the plaintiff's had never pleaded jointness of the business during the lifetime of Pujan Singh. Unless jointness is pleaded during the lifetime of Pujan Singh, no interest could be claimed in the business of Pujan Singh after the death of Pujan Singh except by virtue of succession. At the same time, there was nothing on record on the basis of which the plaintiff's could establish or prove that the plaintiff's had been carrying on business jointly with Ram Narayan till the latter was alive or after his death. On the other hand, it has been pleaded that Ram Narayan had maneuvered to run the business solely and had changed the name and obtained licence in the name of

his son and that neither Ram Narayan during his lifetime nor the defendants No. 1 to 5 thereafter rendered any accounts. Except pleading parking of the motorcycle in the shop by the son of the plaintiff No. 1, nothing has been pleaded to claim Jointness in the business. In any event, after having pleaded that Ram Narayan had maneuvered to manage the business solely without rendering accounts, any claim of jointness would be contradictory. Thus, the only claim remains to be established is the fact of devolution of interest by succession.

Devolution of interest by succession:

10. Now let us examine as to how far the plaintiff's have been able to establish the fact of devolution of interest in the business of Pujan Singh by succession. The plaintiff's had not claimed devolution of interest by succession through Rani Narayan. In any event, Ram Narayan died, leaving defendants No. 1 to 5, his sons, who are Class I heirs under the Hindu Succession Act, by which the parties are governed. They exclude succession to the estate of Ram Narayan by the plaintiff's, who are, admittedly, Class II heirs under the Hindu Succession Act, Therefore, the only question remains to be examined is as to whether the plaintiff's had succeeded to the estate of Pujan Singh on the death of Pujan Singh to establish their claim. Since the pleadings are founded on the devolution of interest by succession, it is for the plaintiff's to prove the fact of devolution of interest by succession. If they are unable to do so, the suit will fail. Therefore, by reason of Section 102 of the Evidence Act, the burden lay on the plaintiff's to establish that the interest in the business developed upon them by succession on the death of Pujan Singh.

11. Admittedly, the parties are governed by Hindu Law. The death of Pujan Singh took place in 1962. Therefore, the succession would be governed by the [Hindu Succession Act, 1956](#). The jointness of the business having not been claimed along with Pujan Singh, there cannot be any jointness of the business and it could not be a joint business even if Sarjan Singh could be the Karta of a joint family, simply because of inheritance unless it is shown that it was so inherited.

Preference of full-blood among heirs of one entry of Class II:

12. Admittedly, Pujan Singh left behind Kadam Singh, a sister by full-blood. PW1 (plaintiff No. 1) admitted that Kadam Singh and Pujan Singh were the children by the first wife of their father late Gurdayal Singh. It is also an admitted proposition that Pujan Singh had no Class I heir under the Hindu Succession Act. Therefore, only Class II heirs are entitled to succeed to the estate of Pujan Singh. Brother and sister come within Entry II of Class II heirs under the said Act. Under Section 11 of the Hindu Succession Act, the property of an intestate is liable to be divided between the heirs specified in any one entry in Class II of the Schedule so that they can share equality. Therefore, in the present case, the property is to be divided among the heirs of Entry II of Class II between the brothers and sisters. But, in the present case, the plaintiff's as brothers, as appears from the materials on record, are not related by full-blood with Pujan Singh. Section 18 of [Hindu Succession Act, 1956](#) prescribes that heirs related to an intestate by full-blood, shall be preferred to heirs related by half-blood, if the nature of relationship is the same in every other respect.

13. The expression 'full-blood' and 'half-blood' are defined in Section 3(1)(e) of the Hindu Succession Act. According to the said definition, two persons are said to be related to each other by full-blood where they are descendent from a common ancestor by the same wife and by half-blood if their common ancestor is the same but they are born to different wives.

14. In *Satyacharan v. Urmila*, : [1970]2SCR294 , the Apex Court had held that heirs in one Entry of Class II take equally and simultancously. The brother is not to be preferred to the sister on the basis that brother numbered as (3) and sister as (4) in Entry II of Class II heirs in the Schedule. Therefore, if the parties are related by full-blood, then along with the brothers, the sister also would have succeeded to the deceased of the intestate. But when the intestate leaves on heirs related by full-blood and another related by half-blood, then the heir related by full-blood will inherit in preference to the heir related by half-blood, subject, however, to the condition that the nature of the relationship should be the same in every other respect. In *Ramgamma v. Annapumamma*, AIR 1963 Mys. 168, it was held that brothers and sisters in Entry II of Class II would exclude the other if one of them is related by full-blood and the other by half-blood.

15. The phrase 'nature of relationship is the same in every other respect' is to be read with reference to the classification made in Section 8 and 15 read with Sections 10, 13 and 16 respectively. Section 8 prescribes general rule of succession according to which the property of a male Hindu dying intestate devolves firstly upon the heir specified in Class I of the Schedule. Secondly, upon the heirs, being the relatives specified by Class II of the Schedule, if there is no heir of Class I. So far as the Class II heirs are concerned, heirs mentioned in one entry succeeds to the property of the intestate as tenant in common. Under Section 9, the heirs in one entry of Class II shall be preferred to those in the next entry. If the heirs of the intestate come within clause II, then the nature of relationship between all heirs in one entry of Class II shall be the same in every other respect. No distinction is made between male and female.

16. In *Sarwasi Singh v. Dhan Kaur*, ILR (1971) 1 Punjab 158, it was held that the nature of relationship between a brother and a sister is the same as both are children of the father of the intestate. The nature of relationship is to be reckoned in terms of the degree of ascent or descent or both. Therefore, full-blood sister excludes half-blood brother. In *Pursottam v. Sripad*, : AIR1976 Bom375 , it was held that a sister of full-blood will not exclude a brother of half-blood. But this decision was contrary to the ratio laid down in *Satyacharan* (supra). However, this decision was overruled by the Full Bench in *Woman Govind v. Gopal Baburao*, : AIR1984 Bom208 FB. In *Satyacharan* (supra), the Supreme Court had held that in the case of heirs in Class II, there cannot be any distinction on the ground of they are being male or female. Since legislature has given an equal place to brothers and sisters in the scheme of succession, the nature of relationship of brothers and sisters must be regarded as the same.

Application of the principle:

17. Admittedly, in the present case, Pujan Singh left behind Kadam Singh. sister by full-blood. Whereas Ram Narayan Singh and the plaintiff's were brothers by half-blood. In such admitted situation by reason of Section 18 of the [Hindu Succession Act, 1956](#), the plaintiff's and Ram Narayan could not claim any right to the business by virtue of succession. Ram Narayan did not claim his right in the

business by succession but by jointness, which he had alleged, to be carrying on along with Pujan Singh till alive and had carried on all alone after the death of Pujan Singh.

18. Thus, the plaintiff's could not claim the business by reason of succession since the said sister Kadam Singh by full-blood would have excluded the plaintiff's and the said Ram Narayan Singh since all of them come in the same entry of Class II heirs. Section 18 of the said Act makes a special provision, which precludes the heirs in the same entry if related by half-blood when there is an heir in the same entry related to the intestate by full-blood.

CONCLUSION

19. Thus the plaintiff's having been unable to establish their claim on the basis of succession, they can succeed only on the basis of jointness of the business. In this case, it appears that plaintiff No. 2 did not join the plaintiff No. 1 and claim jointness in the business. They are not also contesting the appeal. The plaintiff, PW1 also did not claim jointness of the business except claiming devolution of interest by succession.

20. Therefore, foundation having been found to be unavailable by reason of the law as discussed above, the plaintiff could not succeed on the basis of the plaint and the evidence adduced. In the circumstances, the suit cannot succeed and, therefore, the Judgment of the trial Court is liable to be set aside.

ORDER

21. In the result, the appeal succeeds. The judgment and decree appealed against is hereby set aside. The Title Suit No. 1294 of 1985. Second Bench, City Civil Court. Calcutta stands dismissed.

There will be no order as to costs.

J. Banerjee, J.

I agree.

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