

Smt. Bimla Devi Vs. Vir Singh and ors.

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Court : Himachal Pradesh

Decided On : Oct-08-1982

Judge : Vyas Dev Misra, C.J. and; Hira Singh Thakur, J.

Acts : Code of Civil Procedure (CPC) - Order 41, Rule 22

Appeal No. : L.P.A. No. 16 and cross objection No. 33 of 1970

Appellant : Smt. Bimla Devi

Respondent : Vir Singh and ors.

Advocate for Def. : Ramesh Chand, Adv.

Advocate for Pet/Ap. : H.K. Bhardwaj, Adv.

Disposition : Appeal dismissed

Judgement :

V.D. Misra, C.J.

1. This LettersPatent Appeal is directed against the judgment of a learned single Judge.

2. One Saran Dass left behind two widows and two sons. Before his death. Saran Dass made a gift of the property in dispute to his wife Simla Devi. After the death of Saran Dass the sons tiled a suit challenging the gift deed. It was averred by the

plaintiffs that the gifted property was ancestral and as such their father Saran Dass could not make a gift of the same. Therefore, they claimed possession of the property in dispute. This suit was resisted. Bimla Devi, the donee, denied that the property was ancestral. The trial court came to the conclusion that a part of the land in dispute was ancestral whereas the other part was not ancestral Qua the plaintiffs. It also held that according to the customary law by which the parties were governed, the gift made by the deceased in favour of his wife Bimla Devi was valid. The suit was therefore, dismissed. On plaintiffs' appeal the Additional District Judge partly allowed the appeal. It was held by him that according to the customary law the gift was bad in respect of the ancestral property.

3. Now Bimla Devi filed a regular second appeal. A single Judge of the then Himachal Bench of the Delhi High Court partly allowed the appeal. It was ruled that though the gift of the ancestral property was invalid, Bimla Devi was entitled to a share in the property of her deceased husband as one of his legal heirs under the Hindu Succession Act, 1956. It was, therefore, held that Bimla Devi along with the other widow of the deceased was entitled to one-third share in the ancestral property of her deceased husband and was thus entitled to joint possession of the ancestral portion of the suit property along with the respondents. Bimla Devi has now filed the present Letters Patent Appeal. Cross-objection has been filed by the respondents.

4. Mr. H.K. Bhardwaj, learned counsel for the appellant, has not been able to persuade us to hold that the judgment of the learned single Judge needs an interference. We find that an exhaustive judgment has been written by the single Judge dealing with all questions raised by the appellant. We would, therefore, dismiss the appeal.

5. As regards the cross-objection filed by the respondents, Mr. Bhardwaj has raised a preliminary objection that it is not maintainable. It is submitted that the provisions of Order 41 Rule 22 of the Civil P. C. do not apply to a Letters Patent Appeal which is filed under Clause (10) of the Letters Patent.

6. Our attention has been drawn to Division Bench judgments of the Allahabad and Madhya Pradesh High Courts reported as AIR 1957 AH 48 (Mt. Daroupadi

Debi v. S.K. Dutt) and AIR 1975 Madh Pra 115 (Smt. Satyabhamadevi Choubey v. Ramkishore Pandey).

7. Now it is contended that an appeal under Clause (10) of the Letters Patent is filed against a judgment whereas an appeal under Order 41 of the Civil P.C. , is against a decree. It is submitted that the words 'judgment' and 'decree' have different connotations in law. Since Clause (10) of the Letters Patent specifically uses the word 'judgment' only, the intention must have been to distinguish it from a decree. Moreover, the appeal lies only after the single Judge certifies the case as one fit for appeal. Without this certificate no Letters Patent Appeal can be entertained. It is, therefore, submitted that the provisions of Order 41 Rule 22 of the Civil P. C. do not in terms apply to a Letters Patent Appeal against the judgment of a single Judge. We find that in Daroupadi Debi's case (AIR 1957 All 48) the Allahabad High Court took a similar view. It was held (at p. 49):--

'It is true that a decree follows a judgment but that does not mean that the decree and the judgment are synonymous terms. The word 'judgment' in the Letters Patent does not have the same meaning which is given to the word 'judgment' by the Civil P. C. It is, therefore, clear that the provisions of Order 41, Rule 22, Civil P. C., do not apply in terms to the Letters Patent Appeal against the judgment of a single Judge.'

8. The Madhya Pradesh High Court in Satyabhamadevi's case (AIR 1975 Madh Pra 115) while dissenting from the Allahabad High Court and holding that Rule 22 of Order 41 of the Civil P. C. is applicable to appeals filed under Clause (10) of the Letters Patent, ruled that before entertaining a cross-objection, the respondent must be able to show that he was entitled to raise such objections by way of an appeal. It was also held that a party cannot claim a right to prefer an appeal by way of cross-objection merely because the other party has preferred an appeal after obtaining the necessary leave from the single Judge.

9. We need not in this case decide whether provisions of Rule 22 of Order 41 of the Civil P. C. in terms apply or not since we find that even according to aforementioned decision of the Madhya Pradesh High Court the respondent could not maintain the cross-objection without having first obtained the sanction of the

single Judge. The cross-objection has therefore, to be dismissed as not maintainable.

10. In the circumstances of this case, the parties are left to bear their own costs.

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