

Hari Dutt Vs. Shiv Ram

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Court : Himachal Pradesh

Decided On : Apr-27-1978

Reported in : AIR1979HP41

Judge : T.U. Mehta, Actg. C.J. and; C.R. Thakur, J.

Acts : [Hindu Succession Act, 1956](#) - Section 14(1) and 14(2)

Appeal No. : Second Appeal No. 126 of 1969

Appellant : Hari Dutt

Respondent : Shiv Ram

Advocate for Def. : Indar Singh, Adv.

Advocate for Pet/Ap. : Chhabil Dass, Adv.

Disposition : Appeal dismissed

Judgement :

T.U. Mehta, Actg. C.J.

1. This second appeal arises out of the suit filed by the appellant-plaintiff for the possession of the agricultural land measuring 4 kanals and 14 marlas situated at village Mohalta in the District of Hamirpur.

2. Short facts of the case are that the disputed land, along with other lands, was an ancestral property held by one Sardaru. This Sardaru had a son named Surjan. Surjan had three wives, named, Bholi, Aurku and Sundari. The evidence recorded in the case reveals that Surjan's relations with his second wife Aurku were not cordial as he was suspecting that Aurku was unchaste. Evidence also reveals that on account of this suspicion Surjan had expelled Aurku from his house. Thereupon, Sardaru, the father of Surjan, made a gift of the land measuring 9 Kanals and 18 Marias in favour of Aurku in the month of March, 1926.

3. Sardaru's son Surjan thereupon filed a declaratory suit bearing No. 239 of 1927 against his father and Aurku in the court of Sub-Judge, Kangra. On 20th March, 1927, this suit was compromised as per document Exhibit P4. Thereafter, a decree in terms of this compromise was passed as found at Exhibit P5. According to this consent decree, the following arrangement was made.

4. There was a total holding of 29 Kanals and 14 Marias. Out of this land, Sardaru, the father of Surjan, retained 2 Kanals 14 Marias with himself. Out of the remaining land, 18 Kanals were given to Surjan and 9 Kanals were given to Aurku. It was, however, stipulated that Aurku would not be competent to alienate this land of 9 Kanals till her lifetime. In other words, a life interest was created in favour of Aurku with regard to these 9 Kanals of land.

5. It is further found that though Surjan had three wives, he had no issue. Therefore, on 12th June, 1931, Surjan adopted the present appellant Hari Dutt by the adoption deed found at Exhibit P1. However, at this time Surjan's third wife was carrying and a son was expected. Subsequently, a son was born to Surjan by his third wife Sundari. This son is respondent Shiv Ram in this case.

6. Thereafter, [Hindu Succession Act, 1956](#) came into force and then on 9th April, 1963, Aurku, who was given 9 Kanals of land by virtue of the above referred consent decree, made a will bequeathing all the property held by her in favour of respondent Shiv Ram. It is admitted that thereafter Aurku died on 4th Feb., 1969 and after her death mutation with regard to the disputed 9 Kanals of land has been made in favour of Shiv Ram, the respondent.

7. The case of the appellant-plaintiff is that he is entitled to one half share in these 9 Kanals, because Aurku was to enjoy rights in these 9 Kanals only during her lifetime. The contention of the appellant is that Aurku was given life interest in these 9 Kanals of land for the first time when consent decree was obtained in the year 1927, and that being so, the case falls within the provisions of Sub-section (2) of Section 14 of the Hindu Succession Act and not under Sub-section (1) of that Section.

8. It is found that during the course of the trial several issues were framed by the trial court. But when the matter came up before the learned Additional District Judge in appeal, the parties pressed only two issues, namely, issues Nos. 3 and 4, which are as under:

'(3) Whether there was any compromise decree in Suit No. 230 of 1927? If so, in what terms and to what effect?

(4) Whether Smt. Aurku was a limited owner of the property in dispute and its effect.'

While deciding these issues, the learned Additional District Judge came to the conclusion that Aurku had acquired full ownership rights under Section 14 (1) of the Hindu Succession Act over the disputed land and was, therefore, entitled to bequeath this property in favour of the respondent by testamentary disposition. The reasoning adopted by the learned Additional District Judge for coming to this conclusion can be best stated in his own words as under:

'This cannot be denied that Smt. Aurku was already in possession of this land as donee from Sh. Sardaru, when the compromise, copy Ex. P4, was entered into. By virtue of this compromise, the rights of Smt. Aurku which were those of absolute ownership at that time were curtailed and changed into those of a limited ownership. Thus by virtue of this compromise, Smt. Aurku relinquished a part of her rights and by no stretch of imagination can it be said that she acquired any land or rights of any kind by virtue of this compromise'.

According to the learned Additional District Judge, therefore, this is not a case wherein the provisions of sub-s. (2) of Section 14 would apply.

9. The learned Advocate of the appellant has contended in this appeal that the gift in favour of Aurku made by her father-in-law Sardaru was an independent transaction as there is nothing in the record to show that it was made in recognition of Aurku's right of maintenance. It was pointed out that according to the Hindu Law applicable to Punjab this gift was liable to be set aside as it was made without the consent of the other coparcener, namely, Surjan, the husband of Aurku. It was for that reason, contended the learned Advocate of the appellant, that Surjan filed a suit to avoid that gift, and compromise was arrived at in that suit by virtue of which Aurku was given only the life interest in the gifted property. But even here, there is nothing to show that the life interest was given by this compromise in recognition of Aurku's right of maintenance. It was further contended that as a matter of fact, Aurku had lost her right of maintenance as she was expelled by Surjan having been found unchaste. According to the appellant, therefore, when Aurku got life interest by virtue of compromise in the year 1927 she got the same for the first time independently of any existing prior right in the disputed property.

10. While dealing with these contentions it should be first considered whether it is open to the appellant to contend in this appeal that Aurku had lost her right of maintenance on account of her alleged unchastity. The learned Advocate of the appellant relied upon the recognised custom that in Kangra, where the parties resided at the relevant time, a woman who was expelled by her husband for unchastity lost her right to be maintained, and contended that since Aurku had given birth to an illegitimate child she was expelled by her husband as a result of which she lost her right of maintenance. In our opinion, this plea is not open to the appellant, because no issue on the alleged loss of right of maintenance by Aurku has been insisted upon by the appellant in the trial court even though it has been specifically pleaded in the written statement that gift in favour of Aurku was made by her father-in-law to provide for her maintenance as her husband had deserted her. Moreover, when the matter came to be heard by the learned Additional District Judge, only two issues, as already stated above, were pressed by the

present appellant. We should, herefore, proceed on the footing that Aurku had not lost her right of maintenance at any time during her life.

11. The only question which, therefore, remains to be considered in this appeal is whether Aurku acquired limited interest in the property for the first time by virtue of the consent decree in 1927 A. D. or whether even before the said consent decree she had acquired some right in this property. If she acquired some right in the property even before the limited right contemplated by Sub-section (2) of Section 14 of the Hindu Succession Act came into existence, then Sub-section (1) of Section 14 would operate and the previously acquired right would ripen into full ownership.

12. The facts stated above show that Aurku being the undivorced wife of Sur-jan had the right to be maintained out of the ancestral family properties as well as the personal property of her husband. Since she was deserted by her husband her father-in-law made an absolute gift of the suit property in her favour. By this gift her right to be maintained out of the family property did not come to an end. It however, continued to remain in existence and if the property gifted by her father-in-law was found insufficient for her maintenance she could have legally proceeded against the rest of the family properties in the hands of the coparceners of the family including her own husband. Thus, the gift of 9 Kanals of land in her favour by her father-in-law did not detract in any manner from her existing right to enforce her right of maintenance on family property. Therefore, the contention of the learned Advocate of the appellant that Aurku's right of maintenance became 'obliterated' as a result of gift by her father-in-law has no force.

13. If that be so, the question whether this gift made by Aurku's father-in-law was voidable or not, is not quite material, because even if the gift was sought to be avoided and was actually declared void, Aurku's right to claim maintenance from the family property including the suit property of 9 Kanals remained intact up to the date on which compromise was arrived at in the suit filed by her husband. In other words, when limited right of life estate contemplated by the compromise came into existence there was already in existence Aurku's right of maintenance as against the same property. This right was acquired by her independently of and prior to the

gift in her favour. If this is so, it is not possible to say that the right contemplated by the compromise decree came into existence for the first time when the compromise was arrived at in the year 1927 A. D.

14. It was contended that there is nothing to show that this compromise was the result of recognition of Aurku's right of maintenance and, therefore, the limited right contemplated by this compromise must be held to have come into existence for the first time so as to attract the operation of Sub-section (2) of Section 14. We find that this argument is devoid of merits for two reasons, namely, (1) the facts of this case show it very clearly that Sardaru, the father-in-law of Aurku, made the gift in Aurku's favour because Aurku's husband had deserted her. In the subsequent compromise reached in the year 1927 this gift was limited up to the lifetime of Aurku also for the same reason, and hence it was nothing but the recognition of her right to be maintained; and (2) law does not require that the operation of Sub-section (2) of Section 14 can be saved only in those cases where previously existing rights are recognised! in subsequent transactions of gift, will, decree, award etc. On plain reading of Sub-section (1) and Sub-section (2) of Section 14 of the Hindu Succession Act it is clear that rights contemplated by both the sub-sections may be acquired in any possible manner and independently of each other. Therefore, in cases where the right contemplated by Sub-section (2) has come into existence with regard to any property, if it is found that in that property the female Hindu has already acquired and possessed a similar right, then Sub-section (2) cannot be allowed to impinge upon the efficacy of Sub-section (1). If the subsequently acquired right under Sub-section (2) is a plain and avowed recognition of the previously existing right, as was the case in the Supreme Court decision in *Vaddeboyina Tulasamma v. Sesha Reddi*, AIR 1977 SC 1944 the matter is simple, because it at once shows, on the face of it, that the subsequent acquisition is not the first of its type. But even in cases where there is no nexus between the previously existing right and the right coming into existence subsequently under Sub-section (2) of Section 14, the operation of Sub-section (1) of that Section cannot be jeopardized for the simple reason that on account of the existence of the previous right it cannot be said that the right under Sub-section (2) came into existence for the first time. Suppose, for instance, a female Hindu acquired some limited interest in the property by purchase, and subsequently

acquired similar interest in the same property by a testamentary disposition, suppose also that none of these acquisitions has any nexus with each other, and has nothing to do with her right of maintenance. It is difficult to see how in such a case the operation of Sub-section (1) of Section 14 in favour of such a female can be stopped. That operation can be stopped only if it is found that the subsequent acquisition created a right in the property for the first time and the prior acquisition was no acquisition at all in the eye of law, being void ab initio. Establishment of nexus between prior and subsequent acquisition contemplated by Sub-section (2) of Section 14 is helpful in revealing that the right in question existed even before the subsequent acquisition, and, in most of such cases such a nexus can be noticed, but that does not mean that the establishment of such a nexus is a condition precedent for saving the operation of Sub-section (2) of Section 14. As explained by Bhagwati, J. in the above referred case of *Tulsamma v. Sesha Reddi* (at p. 1948 of AIR):

'Sub-section (2) must be confined to cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing right under a gift, will, instrument, decree order or award, the terms of which prescribe a restricted estate in the property.'

The ratio of this decision of the Supreme Court is that Sub-section (2) of Section 14 of the [Hindu Succession Act, 1956](#) acts as a proviso to Sub-section (1) thereof only in those cases where the restricted right contemplated by Sub-section (2) comes into existence for the first time. Cases where previously existing rights are recognised by a subsequent acquisition supply only one type of instances to prove that the right has not come into existence under Sub-section (2) for the first time. But there would be other types of instances also to prove the same fact. These other types of instances are those instances where a similar right is already in existence with regard to the same property even though there is no evidence to establish a nexus between such previously existing right and the right coming into existence under Sub-section (2). Therefore in our opinion, even if it is believed for the sake of argument that the compromise decree which contemplates limited life interest of Aurku in the suit property was not obtained in recognition of Aurku's right of maintenance, Sub-section (2) of Section 14 does not operate because

Aurku had already acquired her right in this property from the moment she entered into the family of her husband on marriage.

15. Now, looking to the question from altogether another aspect, it is found that before the consent decree was obtained in the year 1927 there was already an absolute gift existing in favour of Aurku. Even presuming that this gift could not have been made by one of the coparceners of the family without the consent of the other remaining coparceners, it makes the gift a voidable transaction and not a void transaction. A voidable transaction is not void ab initio, and operates as effectively as a valid transaction until it is challenged and declared void. Such a challenge was given by Aurku's husband Surjan by filing a suit in court. But in that suit the court was not required to give any declaration to avoid the transaction, because parties obtained a consent decree. This consent decree did not altogether obliterate the gift. What it did was to limit the operation of the gift only till the lifetime of Aurku. This means that while the original gift purported to give an absolute right in favour of Aurku, this absolute right was limited up to a particular time by the compromise. In other words, the compromise resulted merely in the adjustment of Aurku's right in the property. Such an adjustment cannot be said to have brought forth or created a right which was not in existence. From this angle also, it cannot be said that the compromise decree created right in favour of Aurku for the first time.

16. Some arguments were advanced to show that the consent decree amounted to novatio. Even believing this to be a correct proposition, it is difficult to understand how it helps the case of the appellant. In a novatio a new contract comes into existence in place of an old one, with the result that new rights and obligations come into existence in place of old rights and obligations. This line of reasoning also shows that new rights and obligations, which have replaced the old rights and obligations, have not come into existence for the first time.

17. Thus, considering the matter from all aspects, we find ourselves unable to accept the appellant's contention that Aurku's right in the property came into existence for the first time by the compromise decree. In that view of the matter it is not possible to say that this case is covered by Sub-section (2) of Section 14 of

the Hindu Succession Act. The result therefore, is that Sub-section (1) of Section 14 operates fully in this case, and therefore, on the date of the application of Hindu Succession Act, Aurku became the full owner of the suit property, and if she became the full owner of the suit property, she had sufficient power to dispose of this property by her will. This appeal, therefore, fails and the same is dismissed with costs.

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