

Ram Chand and ors. Vs. Dhani Ram and ors.

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Court : Himachal Pradesh

Decided On : Jun-23-2010

Judge : Surjit Singh, J.

Appellant : Ram Chand and ors.

Respondent : Dhani Ram and ors.

Disposition : Appeal dismissed

Judgement :

Surjit Singh, J.

1. This regular second appeal by the defendants-appellants is directed against the judgment and decree dated 28.4.1999, of learned District Judge, Solan whereby, dismissing the defendants-appellants appeal, decree dated 8.1.1992 of learned Sub Judge 1st Class, Arki, passed in a suit for declaration, with consequential relief of possession, filed by respondent-plaintiff Dhani Ram, has been upheld.

2. Appeal was admitted on the following three substantial questions of law:

1. Whether the plaintiff had no locus standi to file and maintain the present suit for possession being remote reversioner, when daughter of Smt. Ajudhya, namely, Smt. Damodri Devi succeeded to the estate after enforcement of the Hindu Succession Act. Was not such decree of declaration obtained in favour of

reversioner to enure for the benefit of the nearest heir?

2. Whether in a suit where the only question was legality and validity of the alienation made by the widow were involved, could the question of parentage of a child for whose marriage the money was obtained by such sale, could be a question directly and substantially an issue in such proceedings thereby rendering such findings 'resjudicata' in subsequent suit for possession filed by the reversionary after the death of the widow who made the alienations. Was not such judgment inadmissible in the subsequent proceedings to uphold the relationship?

3. Whether the decree of declaration obtained by the reversionary regarding alienation of the limited estate of the widow has been rendered unenforceable and redundant after the enforcement of Hindu Succession Act on account of the fact that the widow became full owner of such property, could the present suit held to be maintainable by remote reversionary?

3. Factual matrix of the case is not in dispute. Shingaru, husband of one Ajudhya Devi and Jiwanu, father of plaintiff Dhani Ram, were real brothers. They were joint owners of the suit property. Shingaru died in the year 1924. He was issueless, but married to Ajudhya Devi. On his death, Ajudhya Devi inherited his property as a limited owner, known as widow's estate in law, during those days. She made sale of the property, inherited from her husband Shingaru, in favour of the present appellants, on 5.12.1949. That sale was challenged by Jiwanu, brother of Shingaru and father of present respondent-plaintiff Dhani Ram, on the ground that Ajudhya was holder of only widow's estate and also that sale was without legal necessity. Ajudhya and the vendees, who were predecessors of the present appellant-defendant, were impleaded as defendants. Ajudhya did not contest the suit. Predecessors of the present appellants filed a suit and pleaded that sale was for legal necessity. That case was decided by Senior Sub Judge, Mahasu, vide judgment dated 23.1.1951, copy Ex.PW-1/A. The operative part of the judgment read as follows:

From the above conclusion, I grant a decree with cost against the defendant and hold that the sale deed dated 5.12.1949 executed by defendant 2 in favour of defendant No. 1 is void and shall not effect the reversionary rights of the plaintiff

after the death of defendant No. 2.

4. Appeal was filed against the said judgment dated 23.1.1951, which was dismissed by the District Judge. After passing of that judgment, predecessor of the appellants-defendants and after his death, appellants-defendants remained in possession. Ajudhya died in the year 1988. After her death, respondent-plaintiff filed the suit, giving rise to this appeal, for declaration that he, as a reversioner, was entitled to inherit Ajudhya's property, which she had sold to the appellants-defendants and also sought decree for possession of the suit land in his favour. By that appellants-defendants had further sold, some part of the suit property to the predecessors of proforma respondents, who too were impleaded as defendants.

5. Appellants -defendants contested the suit. They pleaded that suit was not maintainable, as Ajudhya had a daughter by the name of Damodri Devi, who was preferential legal heir, compared to plaintiff-respondent and in her absence, plaintiff respondent was not entitled to possession of the suit property. It was also stated that when the sale deed dated 5.12.1949 had been declared void, vide judgment Ex.PW-1/A, that meant in law that no sale was made by Ajudhya Devi and her widow's estate stood restored and by virtue of the provisions of Section 14(1) of the Hindu Succession Act, 1956, she became absolute owner and on her death, her daughter Damodri Devi was entitled to inherit the suit property.

6. Trial Court framed various issues, based on the pleadings of the parties and held that plaintiff was entitled to recover possession, being reversioner. Appellants' plea that Ajudhya held the property as a limited owner and her limited ownership ripened into full ownership, by virtue of Section 14(1) of the Hindu Succession Act, 1956 was repelled. Consequently, suit was decreed. Appeal was carried by the appellants-defendants to the Court of District Judge, which stands dismissed.

7. I have heard the counsel for the parties and gone through the record.

8. It has been submitted on behalf of the appellants -defendants that when the sale made by Ajudhya in favour of appellantsdefendants had been declared void, vide judgment Ex.PW-1/A, that automatically meant that Ajudhya's right as a limited owner in the property stood restored and by coming into force of Hindu

Succession Act, 1956, her limited ownership ripened into absolute ownership. He has placed reliance upon a number of judgments in support of his submission.

9. Admitted facts are that Ajudhya had executed sale deed in favour of the appellants-defendants predecessor. Sale deed was challenged, not by Ajudhya, but by predecessor of respondent - plaintiff Dhani Ram, on the ground that Ajudhya was only a limited owner and the sale made by her was without legal necessity. Suit filed by Dhani Ram's predecessor was decreed and sale was declared void and decree in the terms reproduced hereinabove was passed. From a bare reading of the above reproduced operative part of the judgment Exc.PW-1/A, it is clear that benefit of the decree was meant only for the reversioners and not for Ajudhya Devi. Otherwise also, Ajudhya Devi could not have obtained any benefit under the aforesaid decree, because she had herself made sale and had never challenged it. Even if it be assumed that she could also get benefit under the decree, she never sought to get the same, because for that she was supposed to have refunded the sale consideration.

10. Precedents, which have been relied upon, are not applicable, because in all the judgments cited, facts were different. Females, who were held to be in possession, in the relied upon judgments, had not made any alienation. They were, though not in physical possession, they had a right to possess the property inherited by them as limited owners and it was in that context that law was laid down that the words 'any property possessed by a female Hindu' did not necessarily mean actual physical possession, but also constructive possession and the right to possess. Citations of the precedents relied upon are Shakuntla Devi v. Kamla and Ors. : (2005) 5 SCC 390, Smt. Laxmi Devi v. Chain Singh and Ors. Latest HLJ 2009 (HP) 81, Smt. Chinti v. Smt. Daultu etc. 1971 SLJ 142, Raghubar Singh and Ors. v. Gulab Singh and Ors. : (1998) 6 SCC 314 and Gummalapura Taggina Matada Kotturuswami v. Setra Veeravva and Ors. : AIR 1959 SC 577.

11. Another submission made by learned Counsel for the appellants-defendants is that even though Ajudhya never remained in physical possession of the suit property after she made the sale, but she had the right to possess it when the sale

had been declared void, vide judgment Ex.PW-1/A. According to him, the effect of the judgment was that possession of the appellants became permissive and it was for and on behalf of Ajudhya Devi. This submission is also without merit, in view of the reasons already recorded.

12. In the earlier suit, it was pleaded that the sale was not for legal necessity, because plea that Damodri Devi, daughter of Ajudhya, for solemnizing whose marriage money was required, was not the daughter of Shingaru, but was born four years after his death, was upheld. In view of that finding in the earlier suit, vide judgment Ex.PW-1/A, two Courts below have held that Damodri was not a reversioner. That judgment binds the present appellants-defendants, because they were party to the suit in which that judgment was delivered and, therefore, they cannot be heard to say that that judgment cannot be relied upon.

13. In view of the above discussion, all the substantial questions of law are answered against the appellants-defendants and consequently, appeal is dismissed.

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