

Mangala and Another Vs. Dhuruwa and Others

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Court : Chhattisgarh

Decided On : Mar-19-2012

Judge : N. K. Agarwal

Appeal No. : S A No 181 of 2003

Appellant : Mangala and Another

Respondent : Dhuruwa and Others

Judgement :

(Prayer: SECOND APPEAL UNDER SECTION 100 OF THE CIVIL PROCEDURE CODE)

1. This is plaintiffs' second appeal filed under Section 100 of CPC against the judgment and decree dated 21.01.2003 passed by the 7th Additional District Judge (F.T.C.), Durg in Civil Appeal No.3-A/2002 affirming the judgment and decree dated 05.03.1993 passed by 6th Civil Judge, Class-2, Durg in Civil Suit No. 123A/1991.

2. Facts of the case, in brief, are as follows:

(i) The pedigree of late Seera Singh is as follows:

Seera Singh

sons

Amru (Died) wife Chiter Singh (Died)

Shri Ram (Died)

Soniya (died) Wife Hirabai (Died)

(issueless)

(Daughter)

(Daughters)

Kevra Bai (Wife of Shive

Prasad (Died on 12.12.86)

Dhanbai(D) Daijanbai (D) Rewatibai (D)

W/o Nandu - W/o Parsadi W/o Samaru Daughter

Kewra Bai kept wife of Shyam

Ratan

Son and daughters Sadhu(D)-Son (Mangala) (P-1) Santara

Bai (D)

Sukhchand (D-2) Pandit (P-1)

Panchu (D-3) Son Hemlal (P-2)

Radhabai (D-4) Wife

GayaBai

KrishnaBai (D-5)

Rajendra (P-4) Ravindra (P-5)

Son Dhuruwa (D-1)

(ii) The descendants of Daijanbai, wife of Parsadi and Rewati, wife of Samaru along with descendant of Kewrabai, W/o Shiv Prasad, namely, Hemlal had filed a civil suit before the trial Court seeking relief of declaration, injunction and possession with regard to the suit land admeasuring 24.98 acres situated at village Nandini. All the reliefs were directed against respondent/defendant No.1 - Dhuruwa.

(iii) According to the appellants/plaintiffs, the defendant - Dhuruwa had no title over the undivided property of late Seera Singh. While taking out the copy of Kistbandi and Khasra Panchshala, they found the name of respondent No.1 - Dhuruwa has been mutated against the name of Kewrabai. They had further pleaded that Dhuruwa had taken possession of 5.55 acres of land and is attempting to take possession of the entire property. It was also pleaded that Dhuruwa was not the son of Kewrabai, therefore, he was not entitled to any share in the property and that the will executed in his favour is forged and fabricated.

(iv) By filing written statement, the defendants denied the claim put forth by the plaintiffs. According to the defendants, Amru (son of late Seera Singh) had died prior to coming into force of Hindu Succession Act, 1956 (henceforth 'the Act of 1956'), leaving no male descendant. His widow - Soniabai was only having limited interest in the property and was only entitled to be maintained out of the corpus of Hindu Undivided Family property. After death of Amru, his share in the property devolved upon surviving sons of late Seera Singh, namely, Chiter Singh and Shriram. Chiter Singh died issueless, therefore, his undivided share in the property devolved upon Shriram and thus Shriram became full owner of the entire property. Kewrabai was the daughter of Shriram and had married to one Shyam Ratan by custom of 'Chudi'. Prior to her Chudi marriage with Shyam Ratan, her marriage

was solemnized with Shiv Prasad. Out of wedlock with Shiv Prasad, she had a daughter - Santrabai and Santrabai was blessed with a son, namely, Hemlal, appellant/plaintiff No.2. Kewrabai had executed a will in favour of defendant No.1 - Dhuruwa. Pursuant to said will executed by Kewrabai, after her death, defendant No.1 - Dhuruwa became exclusive owner of the entire property. Defendant No.1 had also set-up a counter-claim, seeking relief of injunction and possession against the plaintiffs.

(v) The trial Court decreed the suit as well as counter claim in part and declared Dhuruwa (defendant No.1) to be co-owner of the property left behind by late Seera Singh to the extent of 2/3rd share, finding inter alia, Sonia Bai, i.e., widow of Amru was limited owner of the property and was recorded as a co-owner in the revenue records; after coming into force of the Act of 1956, Sonia Bai had become absolute owner to the extent of her husband's share; after death of Chiter Singh, who had died issueless, since heirs of Class-I category were not available, therefore, his undivided share devolved upon Shriram, who was heir of Class-II category; after death of Shriram, Kewrabai, being the only legal heir of Class-1 category, became the sole owner of the property to the extent of 2/3rd share; as she had executed a will, which was found to be duly proved, her estate devolved upon Dhuruwa, who is the beneficiary under the will.

(vi) Two separate appeals were filed against the judgment and decree of the trial Court, one by the plaintiffs and another by Dhuruwa. Both the appeals were dismissed by the first appellate Court vide judgment and decree impugned. Hence, this appeal.

3. This Court, vide order dated 01.07.2010, admitted the appeal on the following substantial questions of law:

"(i) Whether the Courts have committed an error of law by holding that after death of Chiter Singh his brother would succeed to the 2/3rd share of the property belonging to the common ancestor Seera Singh and that Soniya could get only 1/3rd share?

(ii) Whether the Courts below have applied the correct principle for devolution of property on the survivors of the family belonging to the Seera Singh, after death of his son Chiter Singh.

(iii) Whether the Courts below are justified in excluding plaintiff No.2 Hemlal from succeeding to the property through her mother Santara Bai who was daughter of Kewra Bai?

4. Shri Vishnu Koshta, learned counsel appearing for the appellants/plaintiffs, while not disputing the above facts, would submit: the share of Chiter Singh, on his death, devolved simultaneously upon Soniya, wife of Amru and Shriram, and therefore, the Courts below have erred in holding, after death of Chiter Singh, his entire share devolved upon Shriram and Shriram became owner of $\frac{2}{3}$ rd share in the property.

5. Per contra, Shri G.D.Vaswani, learned counsel appearing for respondent No.1, by referring to Sections 8 and 9 of the Act of 1956, would submit: there was no class-I legal heir of deceased Chiter Singh; Shriram and Soniyabai, both were class-II heirs; name of brother, i.e. Shriram finds place in the second entry whereas the name of brother's widow, i.e. Soniyabai finds place in 6th entry; as per Section 9 of the Act of 1956, heirs in the first entry in class-II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry and so on in succession; therefore, the share of Chiter Singh in the property would devolve only in favour of Shriram and not in favour of Soniyabai, i.e., widow of Amru and the learned Courts below have not committed any illegality in passing the judgment and decrees impugned and substantial questions of law framed by this Court do not arise at all in the instant case.

6. I have heard learned counsel for the parties, perused the records of both the Courts below including judgment and decree impugned.

7. Sections 8 and 9 of the Act of 1956 read thus:

8.) General rules of succession in the case of males.-

The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter-

- (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule.
- (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule.
- (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased, and
- (d) lastly, if there is no agnate, then upon the cognate of the deceased.

9.) Order of succession among heirs in the Schedule.-

Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs, those in the first entry in class II shall be preferred to those in the second entry, those in the second entry shall be preferred to those in the third entry, and so on in succession.

8. As per Section 8 of the Act of 1956, the property of a male Hindu, died intestate, shall devolve firstly, upon the heirs, being the relatives specified in class-I of the Schedule annexed to Section 8 of the Act of 1956; secondly, if there is no legal heir of class-I, then upon the heirs, being the relatives specified in class-II of the Schedule.

9. As per Section 9 of the Act of 1956, among the heirs specified in the Schedule, those in class-I shall take simultaneously and to the exclusion of other heirs; those in the first entry in class-II shall be preferred to those in the second entry, those in the second entry shall be preferred to those in the third entry, and so on in succession.

10. Admittedly, Chiter Singh left behind only two heirs, one Soniyabai, widow of his brother - Amru and Shriram, i.e., his brother. Both were class-II heirs. Brother's name finds place in the second entry whereas the name of brother's widow finds place in sixth entry. As per Section 9 of the Act of 1956, heirs in the first entry in class-II shall be preferred to those in the second entry; those in the second entry

shall be preferred to those in the third entry and so on in succession. Therefore, the share of Chiter Singh in the property, after his death, would devolve upon only in favour of Shriram, and not in favour of Soniyabai.

11. Admittedly, Kewrabai was only class-I legal heir of Shriram. After his death, Shriram's 2/3rd share in the property, being only class-I legal heir of late Shriram, would devolve solely upon her. Kewrabai had executed Will deed in favour of respondent No.1 - Dhuruwa, which was found to be duly proved by both the Courts below, therefore, after her death, the property in the hands of Kewrabai would devolve upon Dhuruwa and Dhuruwa became co-owner of the property to the extent of 2/3rd share, i.e., share of Shriram in the joint property. Kewrabai, being the only heir of Shriram, was competent to dispose of her 2/3rd undivided interest in the property, as per Section 30 of the Act of 1956, even to the exclusion of her legal heir.

12. For the foregoing, it is crystal clear that the Courts below have rightly decided the case and have rightly held: after death of Chiter Singh, his share in the joint property devolved upon his brother Shriram; after death of Shriram, the 2/3rd undivided interest in the joint property devolved upon Kewrabai and pursuant to Will deed executed by her, the same devolved upon respondent No.1 to the exclusion of plaintiff No.2 - Hemlal. Accordingly, the substantial questions of law framed by this Court are answered in favour of respondent No.1.

13. In the result, the appeal, being devoid of merit and substance, is liable to be and is hereby dismissed.

14. In the facts and circumstances of the case, there shall be no order as to costs.

15. A decree be drawn accordingly.

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