

Baan Singh and Others Vs. Devi Ram and Others

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Court : Himachal Pradesh

Decided On : Oct-19-2011

Judge : Deepak Gupta

Appeal No. : R.S.A. No. 39 of 2002

Appellant : Baan Singh and Others

Respondent : Devi Ram and Others

Judgement :

Deepak Gupta, J.

1. This Regular Second Appeal is directed against the judgment and decree of the learned Additional, Sirmour at Nahan dated 20.10.2001 whereby he partly allowed the appeal of the defendants.

2. Respondents 1and2 Devi Ram and Bhajju filed a suit against Ghassi Ram and Telu Ram (predecessors-in-interest of the present appellants) and Smt.Chandno respondent No.3 herein was the proforma defendant. In the suit it was claimed that the plaintiffs Devi Ram and Bhajju and proforma defendant Chandno were the real brothers and sister of Mohi Ram. They were the children of Kalia from his second wife Juno Devi. It was alleged that prior to his marriage with Juno Devi, Kalia was married to one Jhungri and Ghasi Ram, defendant No.1, was born out of this wed-lock. The case of the plaintiffs, in short, was that since their brother Mohi Ram had died issueless, the plaintiffs alongwith defendant No.2 Telu Ram and Chandno

who were the real brothers and sister of Mohi Ram alone were entitled to succeed to the estate of Mohi Ram. However, Ghasi Ram and Telu Ram had in connivance with the revenue staff got the estate of Mohi Ram attested in their favour vide Mutation No.660 dated 4.6.1994 and Mutation No.1525 dated 11.6.1993. According to the defendants, Mohi Ram, Telu and Ghasi Ram were 'joridar' brothers having a common wife Dharmi. They claimed that in accordance with the custom in 'joridara' system it is the joridar brothers who inherit the estate of the deceased and the estate is not succeeded according to the provisions of the Hindu Succession Act.

3. The learned trial Court held that the custom stood abrogated after coming into force the Hindu Succession Act, 1956 and since admittedly the so called marriage with Dharmi had taken place after 1969, there could be no valid polyandrous marriage. On facts also, it was held that, in fact, Dharmi was not the wife of Mohi Ram. Therefore, the suit of the plaintiffs was decreed and a decree for declaration was granted that the plaintiffs and defendants 2and3 alone are entitled to succeed the estate of Mohi Ram in equal shares. The defendants were also permanently restrained from interfering in the rights of the plaintiffs.

4. The defendants filed an appeal. The learned lower Appellate Court upheld the findings of the learned trial court on merits and also came to the conclusion that no 'joridara' system could exist after 1956 and that Ghasi Ram had no right to succeed to the estate of Mohi Ram. However, as far as the relief of injunction was concerned, the learned lower appellate court held that since there was no shred of evidence to show that the defendants 1and2 had held out threats to dislodge the plaintiffs from the suit land, no relief of injunction could be granted.

5. Aggrieved by this judgment and decree, defendants 1and2 filed the present appeal. During the court of the appeal they expired and their legal representatives have been brought on record. The plaintiffs also filed cross objections claiming that the relief of injunction should have been granted to them.

6. This appeal was admitted on the following question of law:

“Whether Mohi Ram, deceased constituted ‘Joridara’ with Ghassi Ram, Telu Ram and on the death of Mohi Ram, his property will be inherited by whom?”

7. In my view, another question also arises and is, “whether any ‘joridara’ system can exist after coming into force of the Hindu Succession Act, 1956.”

8. To understand the question, it would be appropriate to refer to the ‘joridara’ system. This custom was a mixture of both polygamy and polyandry. Under this Joridari system the eldest brother amongst the brothers was the pivot and the woman who was brought into the house in a marriage ceremony became the wife of all the brothers who joined him or associated with him. It was not necessary for all the brothers to join the Joridari but when two or more brothers join together in this common marriage the wife became the common wife of these brothers. If over a period of time the brothers wanted to marry another woman and bring her into the family she also became the joint wife of all the brothers.

9. Therefore, if there were more than one wife, all the wives were the common wives of the brothers. According to Dr. Y.S.Parmar, (former Chief Minister of Himachal Pradesh) in his treatise “ Polyandry in the Himalayas” where the system of Joridari was followed the local customs governed the field and the ordinary Mitakshara School of Law did not govern inheritance or succession between the parties. When a number of brothers joined together to have one or more wives the offspring of the common wife or wives were treated as the sons or daughters of the family. The property was inherited only by the eldest brother. On his death the property was not inherited by the children but by the next eldest brother. It was only after all the brothers expired that the eldest male child would inherit the property.

10. This Court has dealt in detail with the Joridari system in Partap Singh vs. Guman Singh and another, Latest HLJ 2010 (HP) 857, and it is not necessary to go into the entire concept of Joridari system. In the aforesaid case, this Court clearly held that after the coming into force of the Hindu Succession Act, 1956, by virtue of Section 4 of the Act, any text, rule or interpretation of Hindu law or custom or usage being part of the law immediately before the commencement of the Act shall cease to have effect in respect of the matters governed by the Act. It was

clearly held that after the year 1956 succession amongst Hindus shall be governed by the Hindu Succession Act and not by custom. No polygamous or polyandrous marriage is valid after coming into force of the Hindu Marriage Act, 1956. Even, according to defendants 1 and 2 the alleged joridari marriage with Dharmi took place in the year 1969. No such marriage could be valid after 1956. Even otherwise both the Courts below have come to a finding of fact that Dharmi was the wife of Ghasi Ram and not the wife of Mohi Ram.

11. Mohi Ram was the real brother of Telu Ram, Devi Ram, Bhaju and Chandno. He and Ghasi Ram had a common father but their mothers were different.

12. Under Section 3(e) of the Hindu Succession Act, 1956, relationship of full blood, half blood and uterine blood has been defined as follows:

“(e) "Full blood", "half blood" and "uterine blood"-

(i) Two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife, and by half blood when they, are descended from a common ancestor but; by different wives;

(ii) Two persons are said to be related to each other by uterine blood when different husbands descend them from a common ancestress but by different husband;

Explanation: In this clause "ancestor" includes the father and "ancestress" the mother;”

13. Therefore, when two persons are descended from a common male ancestor from the same wife, they are related by full blood and when the father is same but mothers are different then they are stated to be related by half blood. If the mother is the same and the fathers are different then the two siblings are said to be related by uterine blood.

14. In the present case, from the material on record, it is apparent that Devi Ram, Bhajju, Telu Ram and Chandno were related by full blood to Mohi Ram whereas Ghasi Ram was his half blood brother.

15. Under Section 8 of the Hindu Succession Act, the property of a Hindu male, dying intestate, devolves firstly upon the heirs specified in Class-I of the Schedule. In case, there are no heirs of Class-I then upon the heirs specified in Class-II of the Schedule. Thirdly, if there are no heirs in class I and II then upon the agnates of the deceased and if there be no class I and II heirs and no agnates then upon the cognates of the deceased.

16. Section 9 of the Act further lays down that amongst the heirs specified in the schedule, those in class-I shall take simultaneously to the exclusion of all other heirs whereas in Class II, the heirs in the first entry shall be preferred to those in the second entry and in absence of the father the heirs in second entry shall be preferred to those in the third entry and so on. In class-II, entry No.1 only relates to a father and under entry No.2 brothers and sisters are covered. The explanation to this schedule lays down that in this schedule reference to a brother or sister does not include reference to brother or sister by uterine blood. This obviously indicates that when reference to brother or sister is made it includes a brother or sister by half blood. Therefore, a half blood brother or sister would also be included in entry No.2 of Class- II of the schedule to the Hindu Succession Act and would be entitled to inherit the property of a half blood brother or sister in equal proportion to a full blood brother or sister. Only the brothers or sisters of uterine blood would not fall under this entry.

17. In view of the above discussion, it is obvious that Ghasi Ram was also a half blood brother of Mohi Ram and he had an equal share in the estate of Mohi Ram. As a result of above, it is obvious that all five i.e. Devi Ram, Bhajju, Ghasi Ram, Telu Ram and Chandno shall inherit the property of deceased Mohi Ram in equal shares.

18. It would be pertinent to mention that during the pendency of the appeal, Ghasi Ram expired and his legal representatives were brought on record. Therefore, there is no question of granting any injunction. The appeal is, therefore, partly allowed and though the suit of Devi Ram and Bhajju is decreed and it is held that Ghasi Ram and Telu Ram were not joidars and could not by themselves inherit the property of Mohi Ram. A decree is passed that the plaintiffs Devi Ram and

Bhajju alongwith Ghasi Ram, Telu Ram and Chandno shall inherit the property of Mohi Ram in equal shares. A decree sheet be prepared accordingly. Cross Objections are dismissed. No order as to costs.

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