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Court : Himachal Pradesh

Decided On : Aug-02-2011

Judge : Kuldip Singh

Appeal No. : R.S.A. No. 194 of 2009

Appellant : Puran Chand

Respondent : Bholi and Others

Advocate for Def. : Smt. Kishan Dei. The

Judgement :

Kuldip Singh, J.

1. The dispute of succession to the estate of Smt. Kishan Dei between father and daughters has reached this Court in second appeal. The appellant-father has lost in both the Courts below.

2. The facts, in brief, are that appellant had filed a suit for declaration with consequential relief of permanent prohibitory injunction against respondents regarding the land described in the plaint. The pleaded case of the appellant is that he solemnized his marriage with Smt. Kishan Dei and is having respondents 1 to 5 daughters from Smt. Kishan Dei, who inherited suit land from her father Nanda. Smt. Kishan Dei died intestate on 15.05.1998 leaving behind appellant and daughters respondents 1 to 5.The appellant is entitled to inherit the estate of Smt.

Kishan Dei along with respondents 1 to 5 to the extent of 1/6th share.

3. It has been alleged that mutation No. 431 was attested by Assistant Collector, 2nd Grade, Nalagarh, on 13.01.1999 regarding the estate of Smt. Kishan Dei. The respondent No. 1 preferred an appeal against the order dated 13.01.1999 which was dismissed by Sub Divisional Collector, Nalagarh, on 30.06.1999. However, Divisional Commissioner, Shimla, on 28.10.1999 recommended the revision for setting aside the order dated 30.06.1999 of Sub Divisional Collector, Nalagarh. The Financial Commissioner allowed the revision on 27.05.2006.The subsequent revision petition filed by the appellant before the Financial Commissioner, Shimla, was also dismissed on 08.01.2007. The appellant has pleaded that order of Divisional Commissioner and orders of Financial Commissioner are liable to be set aside.

4. The respondents were served, they put in appearance through Advocates, but did not file any written statement. The appellant appeared his own witness as PW-1 and relied documents Ex. P-1 to P-4. He admitted that Smt. Kishan Dei got the suit land from her father Nanda by way of inheritance.

5. The learned Civil Judge (Senior Division), Nalagarh, dismissed the suit on 28.05.2008. On 16.01.2009 the learned District Judge, Solan, affirmed judgment, decree dated 28.05.2008. The appeal with the consent of the parties was heard at the admission stage, on following substantial question of law:-

Whether the appellant will succeed to the estate of Smt. Kishan Dei his wife along with daughters respondents 1 to 5 under Section 15 of the Hindu Succession Act, 1956, when admittedly Smt. Kishan Dei had inherited the suit property from her father Nanda on his death?

6. Mr. Dinesh Bhanot, Advocate, has submitted that Section-15(2)(a) and Section 16 of the Hindu Succession Act, 1956, (for short ‘Act’) will apply only if deceased Hindu female does not have any children and not otherwise. He has contended that the appellant is entitled to succeed 1/6th share along with respondents 1 to 5 to the estate left by Smt. Kishan Dei. The learned counsel for the respondent No. 1 has submitted that admittedly Smt. Kishan Dei got the property from her father,

therefore, after her death, respondents 1 to 5 will succeed to Smt. Kishan Dei to the exclusion of appellant.

7. The Section 15 of the Act is as follows:-

“General rules of succession in the case of female Hindus. - (1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,-

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in subsection (1), -

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in subsection (1) in the order specified therein, but upon the heirs of the husband.”

8. It has not been denied that the case of the appellant does not fall in sub-section (1) of Section 15 nor it falls in clause (b) of sub-section (2) of Section 15. The sub-section (2) starts with non-obstante clause, in other words, when the case falls

under subsection (2) then it over-rides sub-section (1) of Section 15. The point in issue now is no more res-integra in view of pronouncement of the Apex Court in Radhika (SMT) Versus Aghnu Ram Mahto (1994) 5 SCC 761.

9. In Radhika (supra) appellant is the daughter of respondent through second wife. The mother inherited the properties of her maternal grandfather. The appellant is the only issue of her mother. On the death of her mother, who died intestate, the respondent filed partition suit claiming half share as Class-I heir of his wife. The trial Court dismissed the suit. The District Judge reversed the decree and held that appellant and respondent are Class-I heirs and decreed the suit for partition in equal moiety. The High Court dismissed the second appeal.

10. The Supreme Court in Radhika (supra) has held as follows:-

“3. A reading thereof clearly indicates that for the property inherited by a female Hindu from her father or mother, in other words female’s paternal side, in the absence of her son, daughter or children of the pre-deceased son or daughter, the succession opens to the heirs of the father or mother and not to Class 1 heirs in the order specified in sub-section (1) of Section 15 and in the order of Section 16. In other words, the children and the children of the predeceased son or daughter of the Hindu female alone are entitled to get such property. Thus, husband stands excluded from the succession to the property inherited by female Hindu from her father’s side. Accordingly, we hold that since the mother of the appellant had inherited the suit property from her grandfather, her husband-respondent stood excluded from intestate succession to the estate left by her. The courts below obviously had overlooked the provision in Section 15, in particular sub-section (2) thereof and illegally granted a decree.”

11. In the present case, the property had devolved on Smt. Smt. Kishan Dei after the death of her father Nanda. The respondents 1 to 5 are the daughters of Smt. Smt. Kishan Dei. In view of Radhika (supra) and in view of clause (a) of sub-section (2) of Section 15 of the Act, the appellant is not entitled to inherit the estate of Smt. Smt. Kishan Dei along with respondents 1 to 5. The two Courts below have rightly appreciated the material on record. There is no merit in the appeal. The above substantial question of law is decided against the appellant.

12. In view of above discussion, appeal fails and is accordingly dismissed with no order as to costs. CMP No. 310 of 2009 is also disposed of in view of dismissal of the appeal.

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