

(2001) 04 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : Regular Second appeal No. 338 of 2000

Bhagat Ram (Since Deceased) through his Legal
Representatives Smt. Sagar Devi and Others

APPELLANT

Vs

Kuldip Raj

RESPONDENT

Date of Decision : 23-04-2001

Acts Referred:

Hindu Succession Act, 1956 — Section 29

Citation : (2001) 3 ShimLC 292

Hon'ble Judges : R.L. Khurana, J

Bench : Single Bench

Advocate : N.K. Thakur, for the Appellant; R.P. Singh, for the Respondent

Final Decision : Allowed

Judgement

R.L. Khurana, J.—The dispute between the parties pertains to the estate of one Jhallu son of Shri Nand Lal of village Amlehar, Tehsil Amb of District Una. It is admitted case of the parties that the said Jhallu was deaf, dumb and of unsound mind by birth. He died unmarried. According to the Plaintiff Bhagat Ram, he being the nephew (sister's son) of deceased Jhallu is his only natural legal heir entitled to succeed to the estate of the deceased. On the other hand, the Defendant-Respondent has claimed title to the estate of deceased Jhallu on the basis of a Will alleged to have been executed in his favour by Shri Nand Lal, father of deceased Jhallu.

2. On the basis of pleadings of parties, as many as seven issues were framed on 12.10.1990 by the learned trial Court:

1. Whether the Defendant is interfering in the possession of the Plaintiff and ownership of the Plaintiff as alleged? OPP
2. Whether the Plaintiff has suppressed the true facts? If so, its effect? OPP
3. Whether this suit is not maintainable in the present form as alleged?

OPD

4. Whether the Plaintiff has no locus standi to file the present suit as alleged? OPD

5. Whether the Plaintiff is estopped from filing the suit on account of his act and conduct as alleged? OPD

6. Whether father of accused Jhallu had executed a valid Will during his life time in favour of Defendant's father as alleged? If so, its effect? OPD

7. Whether the Defendant is owner in possession of the suit land on the basis of Will dated 2.9.1937 as alleged? OPD

8. Relief.

3. The learned trial Court vide its judgment dated 26.3.1993 dismissed the suit. It was held that the Plaintiff Bhagat Ram was not the nephew of deceased Jhallu and, as such, was not the legal heir. Insofar as the Defendant is concerned, it was held that no valid Will was proved to have been executed in his favour by Shri Nand Lal, father of deceased Jhallu. After holding that neither the Plaintiff nor the Defendant is the legal heir of deceased Jhallu, the learned trial Court went on to hold that the estate of deceased Jhallu stood vested in the State Government by way of escheat u/s 29 of the Hindu Succession Act.

4. Feeling aggrieved, both the parties went up in appeal before the learned District Judge, Una. Both these appeals were heard by the learned Additional District Judge and disposed of by a common judgment dated 9.3.2000. The learned Additional District Judge dismissed both the appeal and upheld the findings of the learned trial Court on all the issues.

5. The Plaintiff is before this Court by way of present second appeal which has been admitted on the following substantial question of law:

Whether the two courts below have rightly held that the estate of deceased Jhallu stood escheated to the State Government u/s 29 of the Hindu Succession Act in the absence of a regular inquiry to hold that the deceased Jhallu has left behind no legal heir within the meaning of Hindu Succession Act?.

6. At the very out-set, it may be stated that such findings of the two courts below that the estate of Jhallu stood vested in the State Government by way of escheat u/s 29 of the Hindu Succession Act, 1956 are bad and cannot be sustained.

7. Section 29 of the Hindu Succession Act, 1956, provides :

If an intestate has left no heir qualified to succeed to his or her property in accordance with the provisions of this Act, such property shall devolve on the

Government; and the Government shall take the property subject to all the obligations and liabilities to which an heir would have been subject.

8. In *State of Bihar Vs. Radha Krishna Singh and Others*, the Hon^{ble} Supreme Court while dealing with the question of "escheat" of the estate of the deceased Maharaja Harendra Kishore Singh, who died issueless on 26.3.1893, has held:

Before closing the colourful chapter of this historical case we would now like to deal with the last point which remains to be considered and that is the question of Escheat. So far as this question is concerned, M.M. Prasad, J. has rightly pointed out that as the State of Bihar did not enter the arena as a Plaintiff to claim the properties by pleading that the late Maharaja had left no heir at all and, hence, the properties should vest in the State of Bihar, it would be difficult to hold that merely in the event of the failure of the Plaintiffs' case the properties would vest in the State of Bihar.

It is well settled that when a claim of escheat is put forward by the Government the onus lies heavily on the Appellant to prove the absence of any heir of the Respondent anywhere in the world. Normally, the Court frowns on the estate being taken by escheat unless the essential conditions for escheat are fully and completely satisfied. Further, before the plea of escheat can be entertained, there must be a public notice given by the Government so that if there is any claimant anywhere in the country or for that matter in the world, he may come forward to contest the claim of the State. In the instant case, the States of Bihar and Uttar Pradesh merely satisfied themselves by appearing to oppose the claims of the Plaintiffs-Respondents. Even if they succeed in showing that the Plaintiffs were not the nearest reversioners of the late Maharaja, it does not follow as a logical corollary that the failure of the Plaintiffs' claim would lead to the irresistible inference that there is no other heir who could at any time come forward to claim the properties.

9. Again in *State of Punjab v. Balwant Singh and Ors.* AIR 1991 SC 2301, it has been held:

The property is escheated to the Government when an intestate has left no heir qualified to succeed to his or her property. The property shall devolve on the Government and the Government shall take the property subject to all the obligations and liabilities of the property. It is only in the event of the deceased leaving behind no heir to succeed, the State steps in to take the property.

10. It was further held that Section 29, shall not operate in favour of the State if there is any other legal heir of the intestate. Section 29 itself indicates that there must be failure of heirs. "Failure" of heirs means total absence of heirs to the intestate.

11. The only question before the two courts below was whether the Plaintiff has inherited the property of deceased Jhallu or whether the Defendant has succeeded to the property of the deceased Jhallu under the Will. There was no

question before the two courts below if the deceased Jhallu had left behind any legal heir. Neither any claim was put forth by the State as to escheat, nor any inquiry was held by the two courts below to find out if there was any other legal heir of deceased Jhallu. In the absence of any inquiry with regard to existence or non-existence of legal heir of deceased Jhallu, the estate could not have been ordered to have been vested in the State Government by way of escheat u/s 29 of the Hindu Succession Act, 1956.

12. As a result, the present appeal is allowed to the extent that the findings of the two courts below holding that the estate of deceased Jhallu have vested in the State Government by way of escheat u/s 29 of the Hindu Succession Act, 1956 are set aside. The parties are left to bear their own costs.