
(2014) 10 MP CK 0055
In the Madhya Pradesh High Court
Case No : Second Appeal No. 1716/2006

Bharat

APPELLANT

Vs

Rajaram

RESPONDENT

Date of Decision : 29-10-2014

Acts Referred:

Hindu Succession Act, 1956 — Section 14

Citation : (2014) 10 MP CK 0055

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : Sanjay Sharma, learned counsel, Advocate for the Appellant

Judgement

Sanjay Yadav, J.—Heard on admission.

2. This appeal at the instance of plaintiffs is directed against judgment and decree dated 14.8.2006 passed in Civil Appeal No. 5-A/2006 by Third Additional District Judge, Katni, affirming judgment and decree dated 13.5.2005 passed in Civil Suit No. 26-A/2001 by Second Civil Judge Class II Katni.

3. Trial Court on a finding that Ketki Bai had no surviving right over the property bearing Khasra No. 332 Area 0.07 ha, 357 Area 0.10 ha, 381 Area 1.39 ha, 453 Area 0.62 ha, 496 Area 0.11 ha, 504 Area 0.28 ha, 522 Area 0.72 ha, 523 Area 0.15 ha, 532 Area 0.85 ha, 564 Area 1.27 ha, 621 Area 0.23 ha, 659 Area 0.06 ha, 815 Area 0.06 ha, 820 Area 0.29 ha, admeasuring total area of 6.20 Hectares situated at Village Patauri Patwari Halka No. 7 Tahsil Bahoriband District Katni; therefore, had no right to bequeath the property vide will dated 10.11.2000 in favour of plaintiffs, non-suited the plaintiffs by dismissing the suit for declaration and title over the suit property on the basis of said will vide judgment decree dated 13.5.2005.

4. Record reveals that Ketki Bai earlier married to Halke Lodhi and defendant Rajaram was born out of the said wedlock. Halke Lodhi died on 1.4.1950 resulting in devolution of right over the property belonging to Halke Lodhi in

favour of Ketki Bai and Rajaram (the defendant). However, Ketki Bai remarried Baisakhu in 1953 and out of the wedlock, plaintiffs were born.

5. It was the case of the plaintiffs that after advent of the Hindu Succession Act, 1956 (for short "1956 Act"), devolution of right over the property belonging to Halke Lodhi in favour of Ketki Bai was absolute and therefore, it was within her right to have bequeathed the said property in favour of the plaintiffs born from the wedlock between Ketki Bai and Baisakhu.

6. Both the Courts below, however, negated the contention holding that prior to advent of 1956 Act, woman's right in the property of her husband was governed by the Hindu Women's Right to Property Act, 1937 (for brevity "1937 Act"). And, since she remarried in 1953, the limited right which devolved in her over the property belonging to Halke Lodhi got extinguished and did not survive even after coming into force of 1956 Act.

7. These findings are being questioned by the plaintiffs vide this second appeal.

8. Section 2 of 1937 Act stipulates -

"2. Notwithstanding any rule of Hindu Law or custom to the contrary, the provisions of section 3 shall apply where a Hindu dies intestate leaving a widow."

9. Section 3 of 1937 Act envisages "devolution of property" stipulating -

"3.(1) When a Hindu governed by the Dayabhag School of Hindu Law dies intestate leaving any property, and when a Hindu governed by any other school of Hindu Law or by customary law dies intestate leaving separate property, his widow, or if there is more than one widow all his widows together, shall, subject to the provisions of subsection (3), be entitled in respect of property in respect of which he dies intestate to the same share as a son:

Provided that the widow of a predeceased son shall inherit in like manner as a son if there is no son surviving of such predeceased son, and shall inherit in like manner as a son's son if there is surviving a son or son's son of such predeceased son:

Provided further that the same provision shall apply mutatis mutandis to the widow of a predeceased son of a predeceased son.

(2) When a Hindu governed by any school of Hindu Law other than the Dayabhag School or by customary law dies having at the time of his death an interest in a Hindu joint family property, his widow shall, subject to the provisions of subsection (3), have in the property the same interest as he himself had.

(3) Any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu Woman's estate, provided however that she shall have the same right of claiming partition as a male owner.

(4) The provisions of this section shall not apply to an estate which by a customary or other rule of succession or by the terms of the grant applicable

thereto descends to a single heir or to any property to which the Succession Act, 1925, applies."

10. Thus, as per sub-section (3) of Section 3 of 1937 Act, any interest devolving on a Hindu widow under the provisions of Section 3 shall be the limited interest known as a Hindu Woman's estate.

11. In the case at hand, admittedly, in the year 1953, Ketki Bai remarried Baisakhu. Thus, limited interest which devolved in her over the property belonging to Halke Lodhi extinguished as after remarriage, she was no more widow of Halke Lodhi. Learned counsel for the appellants though has sought assistance from Section 14 of 1956 Act; however, the said provision also does not come to the rescue.

12. Section 14 of 1956 Act provides for-

"14. Property of a female Hindu to be her absolute property. - (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.- In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a Civil Court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."

13. That, 1956 Act was brought into force w.e.f 17th June, 1956 and before commencement of 1956 Act, an inturn operation of Section 14 thereof.

14. Right of Ketki Bai, the mother of plaintiffs, in Halke Lodhi's property got extinguished in the year 1953 on her remarriage as would create any right in her favour to continue to owe the property of Halke Lodhi by devolution. As such, she had no right to bequeath the same vide will dated 10.11.2000 as would have created any right in favour of the plaintiffs.

15. The conclusions arrived at by the Courts below that Ketki Bai had no right to bequeath the suit property by executing the will in favour of the plaintiffs who are not born out of the wedlock between Ketki Bai and Halke Lodhi, cannot be faulted with.

16. Consequently, since no substantial question of law arises for consideration,

appeal fails and is dismissed. No costs.