
(1989) 08 MP CK 0053
In the Madhya Pradesh High Court
Case No : F.A. No. 1 of 1975

Dharamwati Bai (deceased by Lrs.) and Others	APPELLANT
Vs	
Shiv Singh (deceased by LRs.) and Others	RESPONDENT

Date of Decision : 22-08-1989

Acts Referred:

Evidence Act, 1872 — Section 18
Hindu Succession Act, 1956 — Section 14(1)

Citation : AIR 1991 MP 18

Hon'ble Judges : T.N. Singh, J

Bench : Single Bench

Advocate : S. Arun Misra, for the Appellant; K.K. Lahoti and Gupta, for the Respondent

Final Decision : Allowed

Judgement

T.N. Singh, J.—This appeal is by defendant No. 1 (since deceased) whose sale deed dated 10-1-1963 (Ex. D/22) has been declared not binding on plaintiff Shiv Singh and who is enjoined permanently from interfering with plaintiff's ownership and possession of the property covered by the sale deed. The sale deed was executed by defendant No. 2 and the decree bound her also, but during the trial of the suit, she expired and in this appeal, her adopted son, Vijay Singh, is impleaded as respondent No. 2.

2. The suit out of which this appeal arises was instituted on 17-8-1964 and occasion evidently was provided by judgment rendered on 7-2-1964 by this Court in Second Appeal No. 140 of 1963 in which late Janki Bai defendant No. 2, was arrayed as respondent No. 2. That appeal arose out of a suit instituted by the appellant late Bapu Saheb Tomak father of plaintiff Shiv Singh. Be it mentioned, however, that during the pendency of the instant appeal Shiv Singh also died. But, it is also noteworthy that even during his lifetime, he was not interested in presenting the suit and as such, defendant No. 6 Harish Chandra (herein respondent No. 7) secured an order from this Court under which he was

allowed to conduct the suit. There is no doubt that he has acquired interest pendente lite in the suit property in virtue of an agreement of sale thereof executed in his favour by plaintiff Shiv Singh on 18-2-1968. As in the Court below, here also the contest is mainly between defendant No. 1 Dharmavati (since deceased) and defendant respondent Harish Chandra.

3. In Civil Suit No. 25 of 1962, giving rise to aforesaid Second Appeal No. 140 of 1963, plaintiff Bapu Saheb, Shiv Singh's father, had sued the State Government for recovery of rent for the period from 26-9-1948 to 23-3-1968 in respect of the suit premises and in that suit Janki Bai was impleaded as defendant No. 2. Defendant No. 1, State Government, pleaded that it was prepared to pay rent for the suit premises on entitlement to receive that rent being settled by court by deciding the contest between the plaintiff and defendant No. 2. Among others, the following two issues were framed in that suit:

"(3) Whether defendant No. 1 is tenant of the plaintiff and he (plaintiff) is entitled to collect rent?

(4) Whether the plaintiff was entrusted with the arrangement of the Sansthan included the disputed house and no right of ownership was transferred to him?"

Both issues were decided in favour of defendant No. 2 and she was held entitled to receive rent from the State Government for the suit premises. The decision of the trial Court was eventually confirmed in the Second Appeal and this Court confirmed the finding of the lower appellate Court that Bapu Saheb Tamek was her agent only and entitlement to receive the rent for suit premises was that of Janki Bai. In taking that view, the Court below and also this Court in Second Appeal, relied on the decision of the Council of Regency which is also proved in this case as Ex. P/2. That decision was rendered on 17-11-1930.

4. In this appeal, the main contention raised to assail validity of the decree is based on the plea of resjudicata with respect to the decision aforesaid in civil suit No. 85 of 1962, confirmed in Second Appeal No. 140 of 1963 (Ex.D/6). However, in my view, it is necessary dehors that plea, to determine if the decree in its two parts is otherwise valid. In other words, the questions to be decided in this appeal are-- (a) whether the plaintiff has proved his ownership and possession of the suit premises; and (b) whether defendant Dharmavati Bai could be validly enjoined and her sale deed dated 10-1-1963 could be validly cancelled. Both questions undoubtedly are mixed questions of law and facts.

5. In the facts and circumstances of the case, I am of the view that if the second question is decided in appellant's favour, it would not be necessary to decide the first question. Accordingly, it has to be determined as facts and law if deceased Janki Bai had valid title to the suit property which she could pass to the appellant. What is not in dispute is that Janki Bai's husband Sardar Yeshwant-rao Tamak was in the service of erstwhile Ruler of Gwalior State though it is disputed that the suit property was his Jagir. When he died, his brother Bapu Saheb was alive and plaintiff's case is that the suit property devolved on Bapu Saheb by right

of survivorship as it was the ancestral property of the family. That Yeshwant Rao died in 1924 is also an admitted fact. What is proved in this case is also that after her husband's death, the name of Janki Bai alone was mutated in Revenue records in respect of the suit property and that position continued till 1962 and even thereafter. It appears from Ex. D/ 26-A that in the proceedings initiated by Bapu Saheb in Tahsildar's Court for cancelling Janki Bai's mutation, an order was passed on 17-4-1963 in his favour. However, that order was set aside on 22-7-1963 in appeal and Janki Bai's mutation was restored therein. That decision was challenged in revision before the Board of Revenue unsuccessfully, as it appears from Ex. D/28. Although mutation entries by themselves do set aside title, the position in law is also that they are of presumptive value and the legal presumption can be rebutted by person challenging the entries. In support of this legal position, Apex Court's decision in the case of Abdul Waheed Khan Vs. Bhawani and Others, is cited. In that case, their Lordships held that in a suit based on title when such an entry is relied upon by one or the other parties, the Court shall presume it to be correct unless the other parties rebut the presumption.

6. However, it is necessary to trace further the legal source of title of Janki Bai dehors the mutation entries. In that connection reliance is placed on the decision in the civil suit No. 25 of 1962. It is submitted that although the question of title was not directly and substantially in issue in that suit, the finding therein on issue No. 3 that Bapu Saheb was managing the suit property as an agent of Janki Bai and she had possessory interest to collect rent for that property even in 1960 or 1964 was binding on Bapu Saheb and his successor-in-interest. On behalf of respondent Harish Chandra, reliance is placed on this Court's decision in *Bharosilal AIR 1929 MP 122*), but the holding of that case does not advance his case. Therein, it was held that any matter which may be "incidentally" and not "subsequently" in issue cannot be said to be decisive of controversy subsequently raised despite there being some sort of identity between controversies raised at two different stages. I am of the view that although the finding and decision on issue No. 4 as respects "right or ownership" of Babu Saheb on the suit property may not be res judicata that on issue No. 3 would be definitely so. For this view, support is received from the decision cited by appellant's counsel. (See AIR 1927 56 (Privy Council); *Gulabchand Chhotalal Parikh Vs. State of Bombay (Now Gujarat)*, It is rightly submitted that in that suit, instituted in 1962, it was open to plaintiff Bapu Saheb to base his claim on family arrangement proved in this case as Ex. P/1, said to be executed on 14-2-1957 between him and his son Shiv Singh. He had free and full opportunity to prove his case that the right to possess the suit property and to realise rent therefore even in 1969 was his and not of Janki Bai because the suit property was ancestral property of the family. Accordingly, there was no scope, according to him, for the trial Court to record the finding in the suit subsequently instituted by Shiv Singh on the basis of the said Ex. P/1 that Bapu Saheb and not Janki Bai had been in possession of the suit property.

7. In the premises aforesaid, the defendant Dharamavati Bai and Janki Bai have invoked the aid of Section 14(1) of Hindu Succession Act, 1956. It is contended that even if the case of the two defendants that the suit property was Yashwantrao's Jagir is not accepted, Janki Bai must be deemed to have perfected her title to the suit property by prescription, being in possession thereof from 1924 to 1936 and on that footing even, her claim was rightly decreed in 1963. By operation of law, therefore, she became "full owner of the suit property" and she could make valid alienation thereof. Support for this view, I read in decisions cited at the Bar. In their latest decision is Gulwant Kaur's case AIR 1987 SC 2261, their Lordships of the Apex Court held that "it makes no difference whether the property is acquired by-inheritance or device or at a partition or in lieu of maintenance or arrears of maintenance or by gift or by her own skill or exertion or by purchase or by prescription or in any manner whatsoever". (See also Bai Vajia (Dead) by Lrs. Vs. Thakorbbhai Chelabhai and Others, Jagannathan Pillay, AIR 1987 SC 1493; Gopal Singh, *ibid* 2394).

8. Learned Counsel for respondent Harish Chandra has seriously contended Janki Bai's entitlement u/s 14(1) of the Hindu Succession Act, for short, "H. S. Act", relying on Ex. P/1 and he has also cited case law. In my view, however, the crucial fact is that mutation entries and finding in civil suit No. 26 of 1962 about Janki Bai's possession of suit property in 1956, when the Act had come into force, being unimpeachable, respondent's contest must fail. How she came into possession is not material as held in Gulwant Kaur and Another Vs. Mohinder Singh and Others, (*supra*) and other cases because her possession in terms of explanation to Section 14(1) would be deemed as possession in exercise of her "preexisting right" to maintenance on the death of her husband Yeshwant Rao in 1924. The decision of Council of Regency was rendered on 17-11-1920 but she had acquired possession of suit property prior to that as per mutation entries. However, I also do not think if there is anything to be read in Ex. P/1 as would suggest that her claim to maintenance was settled only thereunder and she was deprived of possession of the suit property thereunder. In that order, at para 1, is the recital that Janki Bai shall be paid for lifetime Rs. 150/- per month, but the cause for that is also mentioned. That would be paid to her by the Finance Department, it is stated, as interest on deposits. In her evidence in Suit No. 25 of 1962, further clarification can be read. She deposed that she was to be paid Rs. 180/- per month because Rs. 50,000/- was in deposit at Bhopal. Counsel's reliance on Kothi Satyanarayana AIR 1987 SC 363 is evidently inappropriate as that deals with Sub-section (2) of Section 14 which is not the case here. Indeed, nothing in Ex. P/2 suggests that the suit property had been given to her thereunder and that is also not the case set up in the plaint. Noroini Devi AIR 1970 SC2198 was also a case of Section 14(2) and as such, no assistance can be derived by the respondent from that decision, for the same reason.

Relying on G. Krishan Das AIR 1978 SC 361, counsel submitted that the widow claiming absolute estate in any property in terms of Section 14(1) is to be placed in possession thereof with the specific direction that it was so done to provide for

her maintenance. I do not think if that is the ratio or holding of the decision though that certainly is stated as the factual position obtaining in that case. The scope and ambit of Section 14(1) has been clearly explained and amplified in *Gulwant Kaur and Another Vs. Mohinder Singh and Others*, and other cases above referred and, in my view, it is not the law that the widow has to prove any specific direction and of her acquisition of possession on the basis thereof. It rather appears clear to me that to overcome the effect of the change in law in 1956, the father and son (plaintiff Shiv Singh of the instant case and plaintiff Bapu Saheb of Civil Suit No. 25 of 1962) engineered the device manifested in the family settlement executed by them exclusively and by name also, on 14-2-1957. In that document, they took special care to mention that Janki Bai would have no interest in the suit property and that property under the settlement would be regarded as of Shiv Singh's ownership because Janki Bai was to be paid Rs. 150/- per month for her lifetime under the order of the Regency Council. Provision was also made for her residence separately. What is necessary to be underscored in this context is the fact that, unfortunately, neither in the family settlement (Ex. P/1) nor in the Regency Council's order (Ex. P/2). It is noted that provisions for Janki Bai's maintenance had not been made otherwise earlier in 1924 on her husband's death. In any case being executed as late as in 1957, it could hardly affect the right already vested in Janki Bai.

9. For all the foregoing reasons, I am of the opinion that Janki Bai having become absolute owner of the suit property by operation of law, her alienation of that in favour of appellant Dharmawati Bai by sale deed (Ex. D/22) executed on 10-1-1963 was valid. The trial Court erred in law in passing a decree against her, cancelling that sale deed and from restraining her from exercising her lawful right in virtue thereof.

10. However, few words may also be said about plaintiff Shiv Singh's case in regard to his claim of title to the suit land. Nothing also except the family settlement (Ex. P/1) and Regency Council's order (Ex. P/2) has come on record in proof of that claim. Respondent Harish Chandra's counsel has placed, therefore, implicit reliance on the so called admission of Janki Bai in her evidence given in Civil Suit No. 25 of 1963, proved as Ex. P/4. As she expired during the course of trial of Shiv Singh's suit from which this appeal arises, she could not be evidently examined in this suit. It is true that in her evidence, she had stated in the cross-examination that entire "ancestral property" was acquired during the lifetime of her great grand father-in-law and that her husband Yeshwantrao, or even his father Madhavrao, had not acquired any property. That statement cannot, in my opinion, be regarded as her admission that the suit property was also ancestral property merely because she stated that the entire ancestral property was under the management of the court of wards. It is settled law that an admission of any party has to be read in its entirety and no statement out of context can constitute admission of any fact. In her examination-in-chief, she clearly and categorically stated that the Court of wards had taken up the management of the entire ancestral property and the suit property was ex-

cepted. I may also observe in this connection that by admission, no title can be created and indeed, in the circumstances of the case, I would also hold that plaintiff Shiv Singh was not absolved of the duty of providing independently the fact that suit property was ancestral property.

10A. Plaintiff Shiv Singh was not examined and defendant/ respondent Harish Chandra examined some witnesses and also gave his own evidence in the suit. The evidence of his witness Ganesh Ram is of zero value as he admitted having no personal knowledge about the suit property or even about how Yeshwantrao and Bapu Saheb conducted themselves with respect to that property. The same criticism applies to his other witness Purshottom Rao. He even admitted that he was the legal adviser of the family of Yeshwantrao and Bapu Saheb and yet he deposed that he had so talk with Yeshwantrao's widow Janki Bai about Ex. P/1 which he had attested at the instance of late Bapu Saheb. Harish Chandra's own evidence is that he had hired the suit house from Shiv Singh in 1964 and that Shriram had given his possession and yet, no explanation is forth coming as to why Shrirao was not examined. Surprisingly, trial Court has referred to Shriram's evidence in another suit filed in 1964, but how that evidence was admitted and proved as Ex. P/5 is not stated. According to me, relying neither on Ex. P/5 nor even on other documents of that suit namely, Exs. P/10, P/11 and P/12, plaintiff Shiv Singh's possession or title as respects the suit property can be held legally established.

11. Although counsel has supported trial Court's reliance on negative evidence that Yeshwantrao's name did not figure in Qawaid Jagirdars Gwalior State, that exercise I must consider futile. Whether defendants Dhar-mawati Bai and Janki Bai could prove or failed to prove their case that suit property Was Yeshwantrao's Jagir, would be of little value to support plaintiffs case. He must stand or fall on the strength of his own case and he must prove independently his own title on the suit property. I have no doubt that there is no positive evidence on record on which the plaintiff can lead to derive support for proof of his title to the suit property and indeed, even as respects possession thereof prior to 1964, when the instant suit was instituted. I find no warrant in law to uphold the finding and conclusion on Issue No. 3 of the trial Court that on the basis of Ex. P/1 and Shriram's tenancy as per Ex. P/5 or even as per Ex. P/10, P/11 and P/12, the plaintiff has established his claim as sole owner of the suit property and his possession thereon since 1987. To expose the ? of that conclusion, I have to simply state that Shriram (as per Ex. P/5) gave evidence that not plaintiff Shiv Singh, but his father Bapu Saheb was his landlord to whom he was paying rent till 1962. Evidently, on his evidence, sheet-anchor of plaintiffs case, namely, the family arrangement (Ex. P/1), must be held to be a sham transaction and nothing else.

12. In the circumstances aforesaid, I am constrained to hold that the impugned judgment and decree are not sustainable in law in any view of the facts proved in this case. The appeal accordingly succeeds and is allowed. The judgment and

decree passed by the trial Court are set aside and the suit stands dismissed. But, there shall be no order as to costs is this Court.