
(1986) 12 RAJ CK 0016
In the Rajasthan High Court
Case No : Civil First Appeal No. 90 of 1974

Fazlur Rehman by Lrs. Rehmat Bai

APPELLANT

Vs

Mst. Safia and Another

RESPONDENT

Date of Decision : 16-12-1986

Acts Referred:

Citation : (1987) 1 WLN 577

Hon'ble Judges : S.N. Bhargava, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surendra Nath Bhargava, J.—This is plaintiff's first appeal.

2. The plaintiff-appellant Rehmat Bai and defendant No. 1 Mst. Safia are two wives of Badruddin who died. After the death of Badruddin his mother Mst. Gulab Bai, plaintiff Rehmat Bai and defendant No. 1 Mst. Safia were his legal heirs. Mst. Gulab Bai also died and thereafter, plaintiff and defendant No. 1 remained the only legal heirs of deceased Badruddin. According to the plaintiff, Mst. Gulab Bai at the time of her death left two properties which were in joint possession of the plaintiff and the defendant No. 1. These properties comprised of two houses, one in Kishorepura Mohalla, and another in Bhatapada, Rampura, Kota. Since the relations between the plaintiff and the defendant No. 1 became strained, plaintiff filed the suit out of which this appeal arises, for partition and sought a further declaration that defendant No. 1 had no authority to sell the house situated in, Kishorepura Mohalla to defendant No. 2, Aajak Vilson by a registered sale deed dated 20th March, 1969, and therefore, the sale deed was null and void.

3. The suit was contested by the defendants. It was submitted by the defendant No. 1 that both the houses belonged to Mst. Gulab Bai and she gave them to defendant No. 1; that she had been in possession as owner of the properties. It was further submitted that the plaintiff had filed a suit against the defendant No. 1 for partition of the properties left by deceased Badruddin, which has been

dismissed and hence the suit out of which appeal arises, was not maintainable.

4. The trial court framed the following Issues:

(1) Whether the two houses described in para No. 3 in plaint were bequeathed by Mst. Gulab Bai to the defendant ?

(2) Whether the defendant No. 1 had no right to dispose of the house described in para 3(b) in plaint to defendant No. 2 and the sale is void and ineffective against the plaintiff?

(3)(a) Is the plaintiff entitled to partition ?

(b) Is the plaintiff estopped from claiming partition of these houses as she did not include them in a suit filed in Ujjain Court ?

(4) Is the suit under-valued ?

(5) Relief.

5. After recording evidence, the suit was dismissed by the trial court. Hence, this appeal.

6. I have heard learned Counsel for the parties. Learned Counsel for the appellant has submitted that during the pendency of the suit, the plaintiff had applied for amendment of her plain but was wrongly disallowed by the trial court vide its order dated 3-4-1974. He has further submitted that since there was no issue on the question as to whether Badruddin was son of Mst. Gulab Bai or not, learned District Judge ought not to have discussed this aspect and given a finding thereon. He has further submitted that the learned District Judge has erred in holding that Mst. Gulab Bai was the owner of the properties and was entitled to deal with the same in any manner she liked. Mst. Gulab Bai had no source of income of herself. She being mother-in-law of both plaintiff and the defendant No. 1, was managing the entire properties left by Badruddin and after her death, the plaintiff was entitled to half share in those properties. He has further submitted that the defendant No. 1 has not been able to prove the execution of the Will in accordance with law and therefore, no right vested in the defendant No. 1 by the alleged will.

7. On the other hand, learned Counsel for the respondents supported the judgment of the trial court and further submitted that the amendment was sought at a very late stage. The suit had been filed on 10th March, 1970 and the parties evidence was over on 31-1-1974 and arguments had been heard on 22-3-1974. The amendment sought was bound to change the whole character of the suit and therefore, the trial court was right in rejecting the amendment application. He has further submitted that the Will (Ex. 1) by which Mst. Gulab Bai bequeathed the house of Kishorepura Mohalla to defendant No. 1 has been fully proved. DW 2 Mohd. Ishak has deposed that Gulab Bai executed the Will (Ex. 1) in his presence and appended her signatures. DW 3 Mohd. Shafi has also deposed that Gulab Bai put her signatures on the Will (Ex. 1) in his presence. As

against this, there is only solitary statement of Rehmat Bai plaintiff who has deposed that Mst. Gulab Bai was not in a lit state of health when she is alleged to have executed the Will (Ex 1). The house situated at Kishorepura Mohalla was purchased by Mst. Gulab Bai after death of Badruddin and therefore, the plaintiff cannot claim any share in the said property through her husband Badruddin. As regards the house in Rampura Mohalla, plaintiff has herself admitted that the house belongs to Mst. Gulab Bai. In her statement, she has deposed that the house was purchased by her in her name and as well as in the name of Gulab Bai.

8. It has further been submitted that the plaintiff had filed a suit for declaration and possession against the defendant No. 1 and Mst. Gulab Bai in Ujjain but the said properties were not included in the suit filed at Ujjain. If the disputed properties really belonged to Badruddin, they ought to have been included in the suit filed at Ujjain.

9. I have given my thoughtful consideration to the whole matter and have also gone through the record of the case.

10. It is true that amendment can be allowed even at the appellate stage. The present suit was filed on 10-3-1970, parties had concluded their evidence on 31-1974 and the arguments were also heard on 22-3-1974. It was thereafter that the plaintiff moved an application for amendment on 22-3-1974. The plaintiff in his application for amendment did not specify any reasons or grounds as to why the amendment had become necessary and why those facts were not mentioned in the original plaint. It appears that it was only after the arguments were heard and the plaintiff thought some weakness in her case that she applied for amendment and the learned trial court has given reasons for not allowing the amendment I have also gone through the order dated 3-4-1974 by which it rejected the amendment application. I think the trial court was right in rejecting the amendment application as it would have changed the whole nature of the case and a new case was sought to be made out by way of amendment. I am not inclined to interfere with the discretionary order passed by the trial court in this regard.

11. Now, coming to the finding on Issue No. 1. Defendant No, 1 examined herself and also produced DW-2 Mohd. Ishaq and DW-3 Mohd. Shafi to prove execution of the Will (Ex. 1). I do not find any lacuna in the same. Defendant No. 1 has been able to prove execution of the Will (Ex. 1) in accordance with law. Both DW 2 and DW 3 have stated that Will (Ex. 1) was executed by Mst. Gulab Bai in their presence and she had signed in their presence; that they had also signed as attesting witnesses, in her presence and thus, the house situated in Kishorepura Mohalla which was purchased by Mst. Gulab Bai was bequeathed by her to defendant No. 1 by Will (Ex. I) and therefore, she was entitled to and with the same as an owner and the plaintiff had no right to the same.

12. As regards the other property in Rampura Mohalla, it has come in evidence that this was purchased by defendant No. 1 in the name of Mst. Gulab Bai and

herself. It is not necessary for me to go into the question as to whether Badruddin was the son of Mst. Gulab Bai or not because that question was not in issue directly and the parties had not led any evidence in that regard, because learned Counsel for the appellant has failed to show any provision in the Mohammedan Law whereby a daughter-in-law has any share in the property of her mother-in-law. I have not been able to lay hand upon any provision which may entitle the daughter-in-law to claim succession in the property left by mother-in-law. The house situated in Kishorepura Mohalla belonged to Mst. Gulab Bai and she bequeathed the same to defendant No. 1 who has sold the property to defendant No. 2. Therefore, such sale cannot be declared to be void or ineffective. With regard to the house situated in Rampura, plaintiff has herself admitted that the house belonged to Mst. Gulab Bai and since no succession can be claimed by the plaintiff, she was not entitled to any share in the property of Mst. Gulab Bai as she has DO right in the property of her mother-in-law. It was for the plaintiff to have proved as to how she is entitled for partition in the property which belonged to and owned by Mst. Gulab Bai, her mother-in-law. Since the plaintiff has failed in doing so, I think the trial court was right in dismissing the suit of the plaintiff.

13. In the result, I do not find any force in this appeal and the same is dismissed without any order as to costs.