

(1960) 08 P&H CK 0033

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 378 of 1958

Gurdas Dayaram

APPELLANT

Vs

Mst. Prito and Another
 Mst. Prito and Another Vs
Gurdas Dayaram

RESPONDENT

Date of Decision : 23-08-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 32 Rule 7
Hindu Succession Act, 1956 — Section 14

Citation : AIR 1961 P&H 203

Hon'ble Judges : G.D. Khosla, C.J;D.K. Mahajan, J

Bench : Division Bench

Advocate : D.N. Aggarwal and Shamair Chand, for the Appellant;

Final Decision : Allowed

Judgement

Mahajan, J.—This is an appeal under Clause 10 of the Letters Patent directed against the decision of Tek Chand J. reversing in appeal the concurrent decision of the Court below. In order to appreciate the (acts giving rise to this appeal, a short pedigree-table of the parties may be set out.

KAKA _____ | _____ | | |
Daya Ram Pal = Ishri Ram Kishan | | widow Gurdas Ruldu | Plaintiff |
_____ | _____ | | Smt. Prito Smt. Channo Defendant No. 1
Defendant NO. 2

On the 27th of March, 1935, Ram Kishan and Smt. Ishari gifted their estates, which they had inherited from Kaka, to Smt., Prito and Smt. Channo, defendants Nos. 1 and 2 respectively. This gift was challenged by Daya Ram on the usual ground that the property was ancestral and the gift would not affect his reversionary rights after the death of the donors. This suit was decreed on the 28th of February, 1936. Ram Kishan died on the 6th of December, 1937. On his death, a suit was filed by Gurdas son of Daya Ham On the basis of 1936 decree for possession of one-half of his estate.

Only one-half was claimed because the other one-half would go by succession to Smt. Ishari. This suit was decreed on compromise on the 23rd of March, 1938. There is another litigation which ensued inter partes in the year 1944 with regard to 1/12th share of Ham Kishan's estate. In this litigation, Smt. Prito and Smt. Channo raised a contention that the 1936 decree was not binding on them because at the time the decree was passed they were minors and the claim of the plaintiff had been virtually admitted by their guardian and it was also alleged that there was fraud practised in obtaining the 1936 decree. These pleas did not prevail with the trial Court as well as on appeal with the Senior Subordinate Judge.

2. The present dispute has arisen on Smt. Ishri's death. She died in January, 1953 and on the 17th of February, 1953, Gurdas filed a suit for possession of the land, which Ishri got from her son Ruldu, which Ruldu had inherited from Pal, and Pal from Kaka. This suit was a necessary consequence of 1936 decree. It was decreed by the trial Court and on appeal the trial Court's decision was affirmed.

Against this decision, a second appeal was preferred to this Court, which came up for hearing before Tek Chand J. In the meantime, the Hindu Succession Act had come into force. It was argued before the learned Single Judge on the basis of Section 14 of the Hindu Succession Act that the property being in actual possession of Smt. Prito and Smt. Channo, they had become absolute owners thereof.

It was further contended that this Act put an end to the reversionary right and as such there could be no question of the reversioners being any longer entitled to the estate. These pleas prevailed with the learned Single Judge, who allowed the appeal and reversed the decision of the Courts below. And on a certificate being granted, the present appeal under Clause 10 of the Letters Patent has been preferred.

3. So far as the decision of the learned Single Judge is concerned, it suffers from a number of infirmities. The succession opened out long before the Hindu Succession Act came into force. As the provisions of the Hindu Succession Act are not retrospective, it would be governed by the law prevailing at that time. Under that law, the plaintiff was entitled to the decree. So far the position of the defendants is concerned, they held the possession under a gift.

That gift was held to be in-operative after the death of the donors. It partly became inoperative on the death of Ram Kishan and Ram Kishan's estate was taken possession of by his heirs, namely, Gurdas plaintiff and Ishri widow of Pal in equal shares in pursuance of 1936 decree. With regard to the estate of the other donor, the gift came to an end on her death by virtue of the inter partes decree of 1936. Therefore, the possession of the donees thereafter cannot be said to be lawful.

They had no title left to retain the possession of the donated property. Now

coming to the provisions of Section 14 of the Hindu Succession Act, it cannot be disputed that the possession contemplated by that section is lawful possession and not the possession of a trespasser. On this question, the matter admits of no doubt, particularly in view of the decision of the Supreme Court in *Gummalapura Taggina Matada Kotturuswami Vs. Setra Veeravva and Others*, and the decisions of this Court in *Mst. Bakhtawari Vs. Sadhu Singh and Others*, and a decision of *Gosain and Bedi JJ. in Ram Singh v. Smt. Pritam Kaur*, S. A. No. 177 of 1957, decided on 17-5-1960.

These decisions have held the decision of Tek Chand J. under appeal as not laying down the correct rule of law. I am in respectful agreement with the aforesaid decisions. I may also mention that the decision of Tek Chand J. was also not approved by my Lord the Chief Justice earlier than the aforesaid Division Bench decisions of this Court and this is specifically noticed by *Gosain and Grover JJ. in Mst. Bakhtawari Vs. Sadhu Singh and Others*, In this view of the matter, this appeal must succeed.

4. Faced with this difficulty, the learned counsel for the respondents sought to support the decision On another ground. His contention is that the 1936 decree was a compromise decree and the compromise affected the minors and the suit could not have been compromised without the leave of the Court and as no leave of the Court was granted, the decree passed on the compromise must fail. There is a fallacy in this argument. There was no compromise entered into before the Court. All that happened was that the guardian of the minors in the written statement stated that in order to save costs, the claim of the plaintiff was being admitted.

It was on the basis of the written statement that the decree, followed. Therefore, the provisions of Order 32, Rule 7 of the CPC have no applicability. In any case, even if it be regarded as a compromise decree, the matter was subsequently agitated in the 1944 litigation and negatived. To that decision, the defendants were party and therefore that decision will operate as *res judicata* and the argument based on the provisions of Order 32, Rule 7 of the Code will not be open to the defendants and must be repelled.

5. For the reasons given above, this appeal succeeds and is allowed. The decision of the learned Single Judge is set aside and that of the lower appellate Court is restored. In the circumstances, there will be no order as to costs in this Court.

G.D. Khosla, C.J.

6. I agree.