

(2011) 08 MP CK 0022
In the Madhya Pradesh High Court
Case No : S.A. No. 920 of 1997

Heera Lal

APPELLANT

Vs

Tijiabai (Since Deceased) Now by LRs Ravi Shankar Dubey
and Others

RESPONDENT

Date of Decision : 18-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 3B, 100
Hindu Succession Act, 1956 — Section 14, 15, 15(1), 16, 16(3)

Citation : (2012) 1 RCR(Civil) 754

Hon'ble Judges : A.K.Shrivastava, J

Bench : Single Bench

Advocate : A.K. Choubey, for the Appellant; Divesh Jain, Advocate Respondent Nos. 1 and 2 and Akhilesh Singh, Panel Lawyer Respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.—The unsuccessful defendant No. 1 Heera Lal who has lost from both the Courts below has filed this appeal u/s 100, Civil Procedure Code. The suit filed by plaintiffs Smt. Tijiabai and Smt. Dipiyabai has been decreed by learned trial Court and the first appeal which was tiled by defendants No. 1 and 2 Heeralal and Vinod Kumar has been dismissed by the impugned judgment and decree. Smt. Tijiabai and Smt. Dipiyabai filed civil suit for possession on the basis of title in respect of certain agricultural land which is the subject-matter of the suit; for awarding the damages Rs. 4,000/- and further for mesm profit @ Rs. 1000/-per annum till the possession is delivered to them. The admitted facts between the parties which are borne out from the pleadings and the judgment of the learned two Courts below are that the agricultural land, the description whereof has been mentioned in the plaint and which is the subject-matter of the suit, was owned by one Ramratan. One Dwarka Prasad and plaintiffs Smt. Tijiabai and Smt. Dipiyabai were born out of the wedlock from the first wife of Ramratan and from the second wife defendant No. 1 Heera Lal was born,

Defendant No. 2 Vinod Kumar is the son of defendant No. 1 Heera Lal. The other sister of plaintiffs namely Harko Bai had died which is also admitted to the parties.

2. In brief, the suit of the plaintiffs which was filed long back on 5-12-1985 (near about 26 years ago) is that the suit property was owned by Dwarka Prasad who had died in the year 1938 and after his death his widow Kalawati was possessing the suit property and on coming into force of Hindu Succession Act, 1956 (in short, the Act of 1956) Kalawati became the absolute owner. No child was born out of wedlock of Dwarka and Kalawati and after the death of Kalawati the plaintiffs who are the sisters of Dwarka Prasad became Bhumiswami of the suit property because the property in dispute devolved in them. Further it has been pleaded by the plaintiffs that defendant Heeralal was making yearly payment of the agricultural produce but same has been stopped by him with effect from 1978. Thereafter the plaintiffs submitted necessary application to get their names mutated in the revenue record in which the objections were submitted by the defendants 1 and 2. However, the Revenue Court directed to mutate the names of plaintiffs in the revenue record which was assailed by defendants by filing appeal but it was also dismissed. Hence a suit for possession has been filed by them.

3-4. The defendants refuted the plaint averments by filing their written statement. According to them Dwarka Prasad was having three sisters Harko Bai had already died but her two daughters namely Sarla Bai and Vidya Bai are alive and they have not been impleaded as parties. Further they have pleaded that the land in question was joint and after the death of Dwarka Prasad on account of exchange, the defendants have become Bhumiswami of the suit property. Further it has been pleaded by them that since 1938 they are possessing the suit property and by adverse possession also they have become Bhumiswami. A plea of limitation has also been raised in the written statement and according to the defendants, the suit is barred by time.

5-6. Learned trial Court on the basis of the averments made in the plaint and denial made in the written statement framed necessary issues and after recording the evidence of the parties decreed the suit. The first appeal which was filed by the defendants has also been dismissed by the impugned judgment and decree.

7. In this manner this second appeal has been filed by the defendant No. 1 Heeralal before this Court.

8. This Court on 22-4-1998 admitted the appeal on the following substantial questions of law :-

(i) Whether the appellant was entitled to a share in the suit property along with the respondent Nos. 1 and 2 u/s 15 of the Hindu Succession Act?

(ii) Whether both the Courts below should have granted a decree for joint

possession ?

9. The contention of Shri A.K. Chouhey, learned counsel for the appellant is that defendant Heeralal being the step-brother of Dwarka Prasad and because Dwarka Prasad was owing the suit property and he died issue-less prior to coming into force of the Act of 1956. his widow Kalawati became absolute owner of the suit property u/s 14 of the said Act and on account of her death since she died issue-less, in terms of section 15(1)(b) of the Act of 1956. defendant No. 1 Heeralal being the heir of her deceased husband Dwarka Prasad the disputed property devolved in him and it did not devolve in plaintiffs who are the sisters of Dwarka Prasad (deceased husband of Kalawati). Hence, it has been prayed by him that learned two Courts below erred in substantial error of law in decreeing the suit of plaintiffs. Learned counsel has also invited my attention to Article 43 of Mulla's Hindu Law.

10. Resisting the aforesaid submissions of learned counsel for the appellant, it has been put forth by Shri Divesh Jain, learned counsel for the plaintiffs that plaintiffs being the real sisters of Dwarka Prasad, they are having preferential right over defendant Heeralal who is the step-brother of deceased Dwarka Prasad and, therefore, learned two Courts below by correctly applying section 15(1)(b) of the Act of 1956 have decreed the suit of plaintiffs and therefore this appeal be dismissed.

11. Having heard learned counsel for the parties, I am of the view that this appeal deserves to be dismissed.

Regarding Substantial Question of Law No. 1 :-

12. Before answering substantial question of law No. 1, it would be condign to mention here that during the pendency of this appeal both plaintiffs Smt. Tijiabai and Smt. Dipiyahai had died and their L.R.s have been brought on record.

13. It is borne out from the pleadings, evidence and learned counsel for the parties also did not dispute to this proposition that appellant-defendant No. 1 Heeralal is the step-brother of Dwarka Prasad whose property is in dispute. It is also not disputed that Dwarka Prasad was having wife Kalawati and after the death of Dwarka Prasad which took place somewhere in the year 1938 Kalawati was possessing the suit property and even on coming into force of the Act of 1956 and therefore in terms of section 14 of the said Act she became the absolute owner of the suit property in the year 1956. Admittedly, no issue was born out of the wedlock of Kalawati and Dwarka Prasad. On bare perusal of the testimony of defendant Heeralal (DW-4) para 6, this Court finds that Dwarka Prasad was the son of his father from first wife and after her death his father Ramratan solemnized second marriage and he is the son of Ramratan from second wife. In para 7 of his cross-examination he has specifically admitted that the disputed property fell in the share of Dwarka Prasad in the family partition which took place during life time of their father Ramratan although immediately thereafter he has stated that there was no partition but again it was admitted by

him in the same breath that under the family arrangement the land in question was given to his step-brother Dwarka Prasad. Thereafter, the name of Dwarka Prasad was also mutated in the revenue record. Thus, the position which emerges from the pleadings of the parties and the evidence and particularly the testimony of defendant who has admitted in para 7 of his cross-examination that the suit property under the family arrangement had gone in the share of Dwarka Prasad. Thus Dwarka Prasad was the sole owner of the suit property till he died in the year 1938.

14. Needless to say that the plaintiffs are the real sisters of Dwarka Prasad and defendant No. 1 Heeralal is his step-brother. Since admittedly Kalawati (widow of Dwarka Prasad) died leaving behind no issue, according to section 16 of the Act of 1956 her right would devolve under Rule 1 among the heirs specified in sub-section (1) of section 15. Since Kalawati and Dwarka Prasad were not having any sons, daughters including children of any predecessor's son or daughter and Dwarka Prasad already died during the life time of Kalawati, therefore the right in the disputed property would devolve in the heirs according to Rule 2 of section 16. But, in the present case there is no heir in terms of Rule 2, hence the devolution of property would take place in accordance to Rule 3 of section 16 and according to this rule, the devolution of the property of the intestate of female Hindu would devolve upon the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and sub-section (2) of section 35 of the Act of 1956 which shall be in the same order and according to same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.

15. A pure finding of fact which has been recorded by learned two Courts below is that the property in dispute was of Dwarka Prasad and Kalawati inherited the disputed property from her husband and if that would be the position, since there is no heir of Kalawati mentioned in the category 15(1)(a) of the Act of 1956 therefore, the property would devolve upon the heirs of her husband. At this juncture it would be apposite to go through class II of the Schedule to section 8 of the Act of 1956 because there is no heir under class I and according to class II firstly the brother and then sister comes. According to me, if section 16(3) and section 15(1)(b) and class II of the Schedule to section 8 are kept in juxtaposition to each other and are read conjointly on the touchstone and anvil of the settled position of the law, it is carved out on marshalling the evidence and which is also not disputed to the parties that plaintiffs being the real sisters of Dwarka Prasad, the entire property in dispute of Kalawati would devolve in them.

16. No doubt, it is true that defendant No. 1 Heeralal is the step-brother of Kalawati's husband Dwarka Prasad but he is the half blood brother of plaintiffs. In this regard, it would be opposite to go through section 3 of the Act of 1956 which pertains to definitions and interpretation and particularly sub-section (1) clause (c) (i) according to which two persons are said to be related to each other

by full blood when they are descended from a common ancestor by the same wife, and by half blood when they are descended from a common ancestor but by different wives. Needless to say rather it is an admitted position that defendant No. 1 Heeralal is step-brother of Kalawati's husband Dwarka Prasad while the plaintiffs are his real sisters and thus defendant No. 1 Heera Lal is also the step-brother of plaintiffs. At this juncture it would be apt to borrow sufficient light from section 18 of the Act of 1956 which speaks that heir of full blood having preferential right over half blood. According to this section the heirs related to an intestate by full blood shall be preferred to heir related to half blood, if the nature of relationship is the same in every other respect and therefore I am of the view that plaintiffs being the real sisters of Dwarka Prasad are having preferential right over defendant No. 1 Heera Lal who is the heir related by half blood of Dwarka Prasad. The aforesaid situation has been dealt by the Full Bench of the Bombay High Court in Woman Govind Shindore and Others Vs. Gopal Baburao Chakradeo and Others, and also by the Kerala High Court in Narayanan Vs. Pushparajini and Others,

17. In Lachman Singh Vs. Kirpa Singh and Others, similar position appears to be there and only difference is that in case of Lachman Singh (supra) instead of step-brother, the question under consideration was that whether the step-son can share simultaneously with the son of a female and the Apex Court while considering the aforesaid provision came to hold that step son of a female dying intestate shall not be entitled to claim share simultaneously with her son. By applying the same analogy in the present case a step brother (defendant No. 1 Heeralal) cannot share the property of widow Kalawati simultaneously with real sisters of Kalawati's husband.

18. On the basis of the aforesaid proposition of law, Article 43 of Mulla's Hindu Law placed reliance by Shri Choubey, learned counsel for the appellant is not applicable because after the commencement of the Act of 1956, the devolution of the property of the male and female would be governed by the provisions of the Act of 1956.

19. On the basis of aforesaid enunciation of law, according to me learned two Courts below did not err in holding that appellant was not entitled to the share in the suit property along with respondents No. 1 and 2 u/s 15 of the Hindu Succession Act, 1956. The substantial question of law No. 1 is thus answered against the appellant and in favour of respondents-plaintiffs.

Regarding Substantial Question of Law No. 2

20. Since substantial question of law No. 1 is answered in favour of respondents 1 and 2 and against the appellant, as a natural corollary this substantial question of law which is totally based on the answer of substantial question of law No. 1 is also required to be answered against the appellant and in favour of respondents because the appellant would not become owner along with the plaintiffs u/s 15 of the Act of 1956 and, therefore, the Court was not required to pass the decree of

joint possession.

21. One important fact I would like to mention before parting with the decision of the case is that the suit was filed by plaintiffs Tijiabai and Dipiyabai arraying as contesting defendants 1 and 2 namely Hiralal and Vinod Kumar and the State of M.P. was arrayed as defendant No. 3 being a formal party under Order 1, Rule 3-B, CPC (State amendment) and no relief has been claimed against the State Govt. The trial Court decreed the suit in toto in favour of plaintiffs and against the defendants No. 1 and 2. The first appeal was filed by both the defendants namely Heera Lal and Vinod Kumar and the same was dismissed by the impugned judgment and decree. However, defendant Vinod Kumar has neither been made appellant nor he has been impleaded as pro forma respondent and thus the judgment and decree passed by learned two Courts below decreeing the suit against him became final and if this appeal is allowed, it will amount to passing an altogether different decree. The plaintiffs have sought decree against defendants 1 and 2 jointly and since it became final against the defendant No. 2 allowing the appeal would mean to split the decree and no such type of decree can be passed, therefore, apart from substantial questions of law which are decided against the appellant, from this angle also, the judgment and decree passed by the two Courts below cannot be set aside. Resultantly, this appeal fails and is hereby dismissed with costs. Counsel fee according" schedule, if pre-certified.