

(1950) 10 SHI CK 0004
In the High Court Of Himachal Pradesh
Case No : Second Appeal No. 149E of 1947

L. Hira Lal and Others

APPELLANT

Vs

Rongi Ram and Others

RESPONDENT

Date of Decision : 25-10-1950

Acts Referred:

Citation : (1950) 10 SHI CK 0004

Hon'ble Judges : Harnam Singh, J

Bench : Single Bench

Advocate : Daya Krishan Mahajan, for the Appellant; D.N. Aggarwal, for the Respondent

Judgement

Harnam Singh, J.—In R.S.A. No. 149/E of 1947 Shri Daya Krishan Mahajan, learned Counsel for the Appellants, urges that the Courts below were wrong in deciding that Mt. Ram Rakhi had a widow's estate an the land in suit.

2. Briefly summarised the facts giving rise to this appeal are that Karman Mal, who was the last male holder of the land in suit, died in 1903 leaving behind Mt. Sohavi and Mt. Ram Rakhi. Mt. Sohavi is the daughter of Karman Mal and Mt. Ram Rakhi was the widow of Lachha Mal son of Karman Mal. The mutation of the land in suit was, however, sanctioned, in the name of Mt. Ram Rakhi on 18-5-1903.

3. On 12.11.1937, Mt. Ram Rakhi sold the land in suit to Imam Din and Pir Bakhsh for Rs. 600. Hira Lal, Kundan Lal, Harbhagwan and Arjan Das Respondents successfully obtained the land in suit by pre-emption. Mt. Ram Rakhi died in 1943 and on 10-4-1945, Mt. Sohavi instituted civil Suit No. 127 of 1945 for the possession of the land in suit alleging that Mt. Ram Rakhi had been in possession of the land in suit in lieu of maintenance and that she had no right to sell the land. In any case, Mt. Sohavi maintained that the auto effected by Mt. Ram Rakhi, being without consideration and necessity, was not binding on her. On 20.2.1946, Raunqi Ram, Manohar Lal and Mehr Chand instituted civil Suit No.

59 of 1946 for the possession of the land in suit alleging that Mt. Ram Rakhi had a widow's estate in the land in suit and that the sale effected by Mt. Ram Rakhi, being without consideration and necessity was not binding upon them. Raunqi Ram, Manohar Lal and Mehr Chand are sons of Mt. Durgi, daughter of Lachha Mal.

4. In the trial Court civil Suits Nos. 127 of 1945 and 59 of 1946 were consolidated and disposed of by one judgment. In deciding the points arising in civil Suits Nos. 127 of 1945 and 59 of 1946 the trial Court found that Mt. Sohavi was the daughter of Karman Mal and had a right to challenge the alienation but her suit was barred by limitation. The trial Court then found that the sale in question was for necessity to the extent of Rs. 80, that the suit of Raunqi Ram, Manohar Lal and Mehr Chand was within time and that they were entitled to succeed to the land in suit in preference to Mt. Sohavi. On the findings set out above the trial Court dismissed with costs civil Suit No. 127 of 1945 and in Civil Suit No. 59 of 1940 passed a decree with costs in favour of Raunqi Ram, Manohar Lal and Mehr Chand for the possession of the land in suit on payment of Rs. 80 to Hira Lal, Kundan Lal, Harbhagwan and Arjan Das.

5. Mt. Sohavi appealed against the decree passed in civil suit No. 127 of 1945, but the appeal failed and was dismissed with costs.

6. From the decree passed in civil suit No. 59 of 1946, Hira Lal, Kundan Lal, Harbhagwan and Arjan Das appealed in the Court of the District Judge, Ferozepore, but that appeal failed and was dismissed with costs.

7. In cross objections Raunqi Ram, Manohar Lal and Mehr Chand maintained that the trial Court was in error in holding that consideration and necessity for the sale in suit had been established to the extent of Rs. 80 but the cross-objections failed and in the result the decree passed in Civil Suit No. 59 of 1946 decreeing possession of the land in suit in favour of Raunqi Ram, Manohar Lal and Mehr Chand on payment of Rs. 80 was maintained.

8. Hira Lal, Kundan Lal, Harbhagwan and Arjan Das have come up in further appeal to this Court from the decree passed by the Additional District Judge, Ferozepore, on 16-6-1947 in Civil Appeal No. 171 of 1946.

9. As stated above, Mr. Daya Krishan Mahajan urges in these proceedings that the Courts below were wrong in holding that Mt. Ram Rakhi had a widow's estate in the land in suit.

10. On the point mentioned in the preceding paragraph *Lajwanti v. Safa Chand*, 5 Lah. 192 : AIR 1924 P.C. 121 *Lachhan Kunwar v. Anant Singh* 22 Cal. 445 : 22 I.A. 25 P.C. and *Suraj Balli Singh v. Tilakdhari Singh* 7 Pat. 163 : AIR 1928 Pat. 220 may be seen.

11. In deciding *Lajwanti v. Safa Chand* 5 Lah. 192 : AIR 1924 P.C. 121 Lord Dunedin said:

The Hindu widow, as often pointed out, is not a life renter but has a widow's

estate that is to say, a widow's estate in her deceased husband's estate. If possessing as widow she possesses adversely to anyone as to certain parcels, she does not acquire the parcels as stridhan but she makes them good to her husband's estate.

12. Explaining the scope of the rule laid down in *Lajwanti v. Safa Chand* 5 Lah. 192 : AIR 1924 P.C. 121, *Kulwant Sahay J.* (Macpherson J. concurring) said in *Suraj Balli Singh v. Tilakdhari Singh* 7 Pat. 163 : AIR 1928 Pat. 220.

Now what their Lordships meant by this passage was that if the Widow as representing her husband's estate, and she for certain purposes fully represents her husband's estate, encroaches on certain property in her capacity as a widow and as representing her husband's estate, then the interest that she would acquire by adverse possession of such parcel of land would be an accretion to her husband's estate. Their Lordships did not say that the widow could not under any circumstance acquire any property for herself while holding her husband's estate.

In deciding *Lachhan Kunwar v. Anant Singh* 22 Cal. 445 : 22 I.A. 25 P.C. Sir R. Couch said:

The question in these appeals really is in what capacity she took possession. If she took possession absolutely and, without any qualification, her possession would be a bar to the title of all persons who could claim as succeeding to the property on the death of Mangal. There is no direct evidence of any statement by Jit Kunwar at the time she took possession, or subsequently, that she took it as a Hindu widow but it is sought to be inferred from various documents and statements that she must have taken it in that capacity.

13. From what I have said above it appears that the law on the point is that if a widow as representing her husband's estate comes in possession of property in her capacity of a widow and as representing her husband's estate, then the interest that she acquires in such property is an accretion to her husband's estate but when a widow comes in possession of any property by adverse possession without any reference to her husband's estate then that property becomes her stridhan.

14. In these proceedings the question that arises for decision is whether Mt. Ram Rakhi took possession of the land in suit as an heir to Karman Mal, being the widow of his predeceased son, or that she took possession of the land in suit absolutely and without any reference to the estate of her deceased husband. On this point the lower appellate Court has found:

It was never asserted by the Defendants that after the death of her father-in-law, Mt. Ram Rakhi obtained possession of the property as full owner. On the other hand in the written statement, Hira Lal and others admitted that Mt. Ram Rakhi succeeded to the property as an heir which obviously means a limited heir and the deceased had no other heir and the same position was taken up by their

Counsel in his statement dated 28-8-1945 before the issues were struck in case No. 127 of 1945. Even at the time of the mutation Mt. Ram Rakhi came forward to claim the property as an heir of Karman Mal and not in any other capacity.

15. Exhibit P-3 is a certified copy of mutation No. 364 of village Makho, Tehsil Zira, district Ferozepore, sanctioned on 18-5-1903. The orders sanctioning mutation of the land left by Karman Mal alias Karam Chand in the name of Mt. Ram Rakhi reads:

Mt. Ram Rakhi, who is a widow of a son of Karam Chand and is identified by Sikandar Lambardar, states that her father-in-law Karam Chand has died issueless and that she being the widow of a son of Karam Chand is the heir of Karam Chand. That being so, mutation of the land is sanctioned in favour of Mt. Ram Rakhi. The lambardars also verified this fact.

16. From Ex. P-3 it is clear that on the death of Karman Mal mutation of the land in suit was sanctioned in favour of Mt. Ram Rakhi, for she claimed the land in suit as the sole heir to the estate of Karman Mal.

17. In para. 2 of the written statement in Civil Suit No. 59 of 1946, Hira Lal, Kundan Lal, Harbhagwan and Arjan Das, Defendants 1 to 4, stated:

The land in suit was owned by Karman Mal. We do not know when he died, but it is correct that on his death Mt. Rant Rakhi became the owner of the land for Karman Mal had no other heir.

18. In para. 1 of the written statement filed in civil Suit No. 127 of 1945, Hira Lal, Kundan Lal, Harbhagwan and Arjan Das stated:

Defendants admit that Mt. Ram Rakhi was a widow of Lachha Mal, son of Karman Mal. Lachha Mal predeceased his father Karman Mal. On the death of Karman Mal, Ham Rakhi was the sole owner of the property in suit, for Kirman Mal had no other heir.

19. On 28-8-1945, before the settlement of issues, Counsel for the Defendants-Appellants stated:

It is admitted that Karman Mal was the owner of the land in suit and that Mt. Ram Rakhi succeeded to the land in suit on the death of Karman Mal, being the widow of Karman Mal's son.

20. Clearly, on the death of Karman Mal in 1905, Mt. Ram Rakhi succeeded to the land in suit as an heir of Karman Mal and applying the rule of law stated above I have no doubt that Mt. Ram Rakhi had a widow's estate in the land in suit.

21. For the foregoing reasons, I find that the Courts below were right in holding that, Mt. Ram Rakhi had a widow's estate in the land sold by her to Imam Din and Pir Bakhsh on 12-11-1037.

22. No other point was raised in these proceedings.

23. In the result I affirm the judgment and decree of the lower appellate Court passed in civil Appeal No. 171 of 1946 and dismiss the appeal with costs.