
(1996) 02 AHC CK 0026
In the Allahabad High Court
Case No : Second Appeal No. 3283 of 1980

Mst. Dulamai	Vs	APPELLANT
Kedar and Others		RESPONDENT

Date of Decision : 28-02-1996

Acts Referred:

Hindu Succession Act, 1956 — Section 14, 14(1), 15, 15(1), 15(2)

Citation : (1996) 02 AHC CK 0026

Hon'ble Judges : S.K. Phaujdar, J

Bench : Single Bench

Advocate : S.K. Verma, for the Appellant; Shahid Masood, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Phaujdar, J.—Heard Sri S. K. Verma and Sri Shahid Masood, the learned counsel for the Appellant and the Respondents respectively. The only question that arises for determination in this appeal is as follows : Whether Dulamai alone, being the heir of Jokhu, was entitled to the property in dispute.

2. The confirmed facts behind this appeal may be stated in brief. Admittedly, Jokhu was the owner of the disputed property. Somaroo was son of Jokhu through his first wife. Jokhu married for a second time and this wife Gangia had a son named Algoo through her first husband Tukur. At the time of the death of Jokhu, Somaroo (his son) and Gangia (his second wife) were alive. Subsequently, Somaroo died leaving behind his widow Dulamai, the Plaintiff-Appellant. Gangia also died leaving Algoo, one of the Defendants. The other Defendants are the sons of Algoo.

3. Dulamai filed the present suit for an injunction for restraining Algoo and his sons not to disturb her possession over the suit property. The Defendants laid a claim that Algoo was a son of Jokhu, but the two courts below consistently found that Algoo was born to Gangia, not through Jokhu. The fact remains that Algoo was a son of Gangia.

4. The lower appellate court found that Gangia, being a widow of Jokhu, inherited to his property along with Somaroo (son of Jokhu) and on the death of Gangia her son Algoo inherited to her share in the suit property and the suit for injunction was, accordingly, not maintainable. The lower appellate court also found on facts that the Plaintiff Algoo was in possession on a portion of the suit property and made a construction over the same which could not be demolished under the law.

5. The learned counsel for the Appellant read out the provisions of Sections 14 and 15 of the Hindu Succession Act before me and had relied on a decision of the Madras High Court in the case of Ayi Ammal Vs. Subramania Asari and Another, . It was contended by him that in view of the provisions of Section 14 of the Hindu Succession Act a female Hindu became an absolute owner of the property inherited by her and Section 15(1) elaborately gave the line of succession on her death. It was contended that the purpose of law was not to bifurcate a family property and as such Section 15(2) was enacted in the Hindu Succession Act so that the property of a woman received from the husband remains in the family of the husband and one received from her father is retained by that family only. The learned counsel for the other side pointed out that the case law cited has no application in the present set: of facts as it was a property of a female Hindu obtained on the strength of gift and it was not a property obtained on succession.

6. Here was a case where a lady K was gifted certain property by her father. She sold certain Jewels and the cash so obtained was lent for interest. On her death as a childless widow her sister A prayed for issuance of a succession certificate. The court of first instance refused to grant a succession certificate to the sister A and held the heirs of the husband of the deceased as successors to K. The High Court was approached in a revision and the Court interpreted the term "inherited" and stated that K, having obtained the property by gift from her father, did not "inherit" to the father and the sister A, being an heir to her father, could not lay her hand on the property left by K. It may be reiterated that K had died as a childless widow.

7. In the case at our hands, however, Gangia, through whom the Defendants claim, did not die as a childless widow. Rather it is a confirmed fact that Gangia had inherited to her husband Jokhu and had left behind son Algoo. The learned counsel for the Appellant proposed to interpret the term "deceased" as used in Section 15(2)(b) of the Hindu Succession Act as referring to the deceased husband to the female Hindu spoken of in this section. The whole of Section 15 may be quoted here:

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16,-

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husbands;

- (c) thirdly, upon the mother and father;
- (d) fourthly, upon the heirs of the father; and
- (e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in Sub-section (1),-

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in Sub-section (1) in the order specified therein but upon the heirs of the father: and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in Sub-section (1) in the order specified therein, but upon the heirs of the husband.

8. It appears from a reading of Section 14(1) that a female Hindu becomes an absolute owner of the property possessed by her whether acquired before or after the commencement of the Hindu Succession Act. Gangia obtained the property on the death of Jokhu and was an absolute owner, along with the son of the co-widow, for the suit property. Section 15 speaks of devolution in two distinctly separate cases. While Section 15(1) speaks of the normal course of devolution when a female Hindu died intestate, Sub-section (2) gives an exception. This exception must be read alongwith the text of Section 15(1) which refers to the death of the female Hindu for opening the succession. Use of the term "deceased" in Sub-section (2) cannot have a different meaning and cannot refer to the father or husband of the female Hindu spoken of under this Section. Moreover, the provisions of Sub-section (2) would apply only when the female Hindu dies without any son or daughter (including the children of any predeceased son or daughter). If the female Hindu leaves a son or a daughter, this sub-section would not have application. In the present case admittedly Gangia, at the time of her death, left the son Algoo and so the question of the property reverting to the line of her late husband does not arise at all.

9. In the light of the above discussion, it must be held that Dulamai was not the lone heir to Jokhu and the decision on this point given by the first appellate court was a right one. The appeal accordingly falls and Is dismissed. The judgment and decree of the lower appellate court stands confirmed. The parties are to bear their own costs.