

(1953) 04 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : Second Appeal No. 9 of 1952

Mt. Santokhu and Another

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 01-04-1953

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 2
Mandi Land Revenue Regulation, 1975 — Section 19

Citation : AIR 1953 HP 82

Hon'ble Judges : Chowdhry, J.C.

Bench : Single Bench

Advocate : K.L. Mehra, for the Appellant; D.N. Vaidya, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Chowdhry, J.—This is a plaintiff's appeal from the judgment and decree of the learned District Judge of Mandi dated 27-11-1951 allowing the appeal of the defendant, the State of Himachal Pradesh, and dismissing the suit of the plaintiffs for possession of certain land.

2. The land in suit originally belonged to one Fattu and on his death his widow Mt. RBonku succeeded to it with a life interest. Mt. Ronku died on 20th Katik 2001 B. (corresponding roughly 1944 A. D.). On 14-10-1948 the Deputy Commissioner of Mandi passed an order escheating the land to the Government. The present suit was thereupon filed on 9-6-1951 by the three daughters of Mt. Ronku by Pattu for the aforesaid relief.

3. The trial Court decreed the suit. While holding that the plaintiffs were the daughters of Fattu, and that as such they were not entitled to succeed to the property of their father Pattu under the then State laws, it decreed their suit on the finding that under the present law there was no bar against the rights of succession of daughters.

4. On an appeal by the defendant State, the learned District Judge reversed the decision of the trial Court on the finding that the new laws, which came into force on 25-12-1948, were not applicable in the present case, and that under the old law which was applicable daughters had no right to succeed. The lower appellate Court was clearly in error in holding that there was any new law which came into force on 25-12-1948 governing the facts of the present case. That was the date on which the Himachal Pradesh (Application of Laws) Order came into force. A Schedule was appended to this Order containing certain Central and Punjab Acts. By Section 3 of the Order those enactments were applied to Himachal Pradesh. Section 7 laid down that all laws previously in force in Himachal Pradesh corresponding to the said enactments stood repealed. The only enactment which the learned counsel for the defendant-respondent could point out was Section 19 of the Mandi Land Revenue Regulation No. VIII of 1975. If that provision, be applicable, there is no doubt that it stood repealed since 25-12-1948 because of the enforcement in Himachal Pradesh of the corresponding law as contained in the Punjab Land Revenue Act. The learned Government Advocate however conceded that Section 19 of the said Regulation laid down a rule of succession applicable only in the case of collaterals but not in the case of lineal descendants of the last male holder, as for example a son or daughter. It is manifest therefore that by the passing of the Application of Laws Order there was no old law prevalent in the former State of Mandi which stood repealed. The disposal of the present case by the learned District Judge therefore on the ground of the repeal or otherwise of any old law on 25-12-1948 was erroneous.

5. On merits I heard learned counsel for the parties twice. At first I was of the opinion that as the custom excluding daughters from inheritance pleaded by the defendant was admitted by the plaintiffs' own witnesses the present appeal should fail. After dictating a judgment to that effect it struck me whether the custom set up by the defendant was not void due to inconsistency with any of the provisions of the Constitution. The appeal was accordingly reheard. When the appeal was reheard the learned counsel for the plaintiffs-appellants argued not only with reference to the provisions of the Constitution but also with reference to the question which had already been argued before. The learned counsel for the defendant-respondent replied to him with reference to both, and he raised no objection that the learned counsel for the plaintiffs-appellants was not entitled to argue the appeal with reference to the provisions of the Constitution because he had not done so previously. He did not also raise any objection as to the rehearing of the appeal on points argued before. Indeed, he could not have validly done so for it is certainly open to a Court to suggest a point of law and hear learned counsel for the parties even though the law in question may not have been pleaded before, provided only that it be a point that could be raised at that stage without prejudice to any party. It was also open to this Court to rehear the appeal on points on which the Court may have already expressed its opinion one way or the other, provided that that opinion had not been transformed into a judgment signed and delivered. The question of Constitution did not prejudice

any party even though raised at the said stage, and the previous opinion of this Court in favour of the defendant-respondent had not been transformed into a judgment signed and delivered.

I proceed now to dispose of both the aforesaid matters. So far as the Constitution is concerned, the question whether the custom set up by the defendant-respondent was, or was not, inconsistent with any provision of the Constitution cannot be gone into for I agree with the learned counsel for the respondent that the Constitution is wholly prospective and not retrospective in its operation. In the present case Mt. Ronku died in 2001 B. (corresponding to 1944 A. D.), and the order of escheat was passed on 14-10-1948. On neither of these dates had any of the fundamental rights pleaded by the learned counsel for the plaintiffs-appellants come into existence, for the Constitution came into force on 26-1-1950. *Raja Harmahendra Singh Vs. The Punjab State and Another, and--"Chamba Valley Transport Ltd. v. State of Himachal Pradesh"* AIR 1953 Him 8 . I therefore hold that the plaintiffs are not entitled to challenge the custom under the Constitution.

6. On merits the plaintiffs are however entitled to succeed. The relevant issue framed by the trial Court was whether daughters could succeed to their fathers according to the Mandi State laws, placing the onus upon the plaintiffs. It held that according to the State laws male reversioners upto a certain degree only could succeed but daughters were quite out of the picture. What those State laws were was not cleared either in the issue framed by that Court or in the finding recorded by it. Again, the District Judge held that the case was not governed by the new laws which came into force on 25-12-1948 since the order of the Deputy Commissioner had already been passed on 14-10-1948. He further held that the case was governed by the law in force at the time of the death of Mt. Ronku. I have already held that the disposal of the present case by the learned District Judge on the ground of repeal of any old law was erroneous. The question however still remains as to what the old law was which was referred to by the learned District Judge. Like the trial Court he also did not clear the point.

7. It has been noticed however that the trial Court stated in its judgment that according to the old State laws male reversioners upto a certain degree only could succeed and that daughters were quite out of the picture. This has clearly a reference to Section 19, Mandi Land Revenue Regulation No 8 of 1975, which lays down a rule of succession relating to collaterals where there was no mention of lineal descendants. Indeed, the learned counsel for the respondent conceded as much, as adverted to above. The same appears to have been the view of the District Judge because he stated that the new laws came into force on 25-12-1948. This could only refer to the said Regulation because it was replaced by the Punjab Land Revenue Act, on the passing of the Himachal Pradesh (Application of Laws) Order on 25-1-1948. It is manifest therefore that both the Courts decided the rights of the plaintiffs with, reference to the said Regulation and not with reference to any custom. No custom was referred to in

the judgments of the two Courts below or in the said issue. It is noteworthy that in the grounds of appeal filed on behalf of the present defendant-respondent before the District Judge it was not pleaded that the trial Court had not framed any issue regarding the custom pleaded by the defendant or decided that point. In the circumstance, it must be taken that the defendant-respondent gave up the plea of custom and was content with the decision of the case merely on the application of the provisions of the said Regulation. That being so, any statement which the plaintiffs' witnesses may have made in the trial Court on the question of custom was wholly irrelevant and should not be looked into for purposes of disposal of the present appeal.

8. So far as the provisions of the aforesaid Regulation are concerned, they have no application whatsoever to the facts of the present case. Section 19 of that Regulation lays down a rule of succession applicable only in the case of collaterals. It does not lay down any rule with regard to succession of lineal descendants like a daughter. In other words, that section is applicable only where the question of succession of collaterals arises by reason of absence of lineal descendants. The plaintiffs being daughters of the last male holder, their rights cannot be determined by the provisions of Section 19 of the Regulation. The result is that the plaintiffs being entitled to succeed to the property of the last male holder Fattu as his daughters, & the custom pleaded by the defendant-respondent having been waived by it, to say nothing of its having been proved, the present suit should have been decreed. The learned District Judge was wholly in error in holding that according to the old law, i.e., the said provisions of said Regulation, daughters could not be regarded as legal heirs of the deceased and the property in suit had therefore escheated to the Government.

9. The appeal is allowed, the judgment and decree of the lower appellate Court are set aside and the plaintiffs-appellants' suit is decreed with costs throughout.