

(1981) 08 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : Civil Regular Second Appeal No. 1342 of 1970

Nathu Ram and Others

APPELLANT

Vs

Jug Lal (Died) and represented by his L.R.S. Atma Ram

RESPONDENT

Date of Decision : 13-08-1981

Acts Referred:

Citation : (1981) 08 P&H CK 0041

Hon'ble Judges : G.C. Mital, J

Bench : Single Bench

Advocate : B.N. Aggarwal, for the Appellant; V.K. Jain, for the Respondent

Final Decision : Allowed

Judgement

Gokal Chand Mital, J.—For better understanding of the case, the following pedigree table would be of help:-

The estate of Raja Ram is in dispute, who died somewhere towards the end of 1965. Mutation of his inheritance was sanctioned, half in favour of Jug Lal and the other half in favour of the four sons of Parsanna. Parsanna had pre-deceased Raja Ram. On 12th January, 1967, the present suit was filed by Jug Lal to claim the entire estate left by Raja Ram on the ground that under the Hindu Succession Act (hereinafter called the Act), he, as a brother, was a preferential heir as compared to brother's sons and, therefore, the mutation was wrongly entered. Amar Nath, one of the sons of Parsanna, was claiming inheritance to the estate left by Raja Ram on the basis of a will which was not duly executed and since the parties were governed by custom, therefore, the will was invalid and could not affect the plaintiff's rights in the land in dispute which was ancestral. The suit was contested by all the defendants and their stand was that Raja Ram had duly executed the will dated 25th January, 1965, in favour of Amar Nath and, therefore, Amar Nath was entitled to succeed to the entire estate. It was further pleaded that the parties were not governed by custom; Raja Ram was living with them and they were serving him and due to that he had executed the will in

favour of Amar Nath and such a will could not be held to be invalid. The trial Court found that the will was duly executed but found that the property was ancestral and the parties were governed by custom and there was no custom of making a will of ancestral property and, therefore, the will was invalid. It further found that regarding succession the parties were governed by the Act under which Jug Lal Plaintiff was entitled to the entire estate being the only brother of the deceased. Accordingly, the suit of the plaintiff for the remaining half share, which was mutated in favour of the four sons of Parsanna, was also decreed. The aforesaid findings and the decision was upheld by the learned lower appellate Court. The defendants have come to this Court in second appeal.

2. The sole point for consideration is whether it is proved in the case that a sonless proprietor cannot alienate his property in favour of his near relation either for love and affection or for services. The general custom with regard to alienations is contained in Para 59 of the Rattigan's Digest, which reads as follows:-

59. Ancestral immovable property is ordinarily inalienable (especially amongst "Jats" residing in the central districts of the Punjab), except for necessity or with the consent of male descendants, or, in the case of a sonless proprietor, of his male collaterals, "Provided" that a proprietor can alienate ancestral immovable property at pleasure if there is at the date of such alienation neither a male descendant nor a male collateral in existence.

By a large string of authorities, Exception 3 to Para 59 has come into being, which is to the following effect:

Alienations in favour of relations between whom and the alienor there is some special tie, as by their having been brought up by him or by their being associated with him or by their assisting him in cultivation or rendering him services in the management of the land when he was himself incapable of doing so, are very generally recognised by custom.

The general agricultural custom of the Punjab allows gifts in favour of relations who have rendered services to the donor;.....gift by sonless proprietor of a portion of his ancestral property in favour of his daughter in return for services..... Where the donee is an agnate with a special association with the donor and the gift is in lieu of services, the custom of allowing such a gift is frequently recognized;....." gift in favour of one nephew to the exclusion of the other nephew.....

Therefore, it transpires from the above that Raja Ram who was a sonless proprietor could make a gift of the land in dispute to Amar Nath or any of his other nephews for love and affection or for services rendered by him. In the present case, it was specifically pleaded by the defendant that Raja Ram was living with him and he had been looking after and serving him which plea was duly proved during evidence. Accordingly, I proceed on the assumption that Amar Nath rendered services to Raja Ram and, therefore, Raja Ram could make

a gift in his favour who was also one of his near agnates.

3. It is then urged on behalf of Tug Lal that the parties are governed by special custom as contained in the Riwaj-e-am of Ambala district because the parties belong to Tahsil Thanesar, which at one would govern the parties. My attention has been invited to Question No. 69 of the Riwaj-e-am of Ambala district, which is as follows:-

If a proprietor by verbal or written direction disposes of his property after his death?

Ans. The replies given are as a rule curiously wide of the mark and are in themselves quite sufficient evidence of the fact that wills are never made, and that the nature of a will is not understood. If their recorded statements could be trusted, a majority of the tribes would agree that wills either oral or written could be made so as to defeat the rights of the heirs. It was abundantly clear at attestation that nothing was further from this intention. The only tribe having any custom on the point are the Sayyads. They agree that a will is legal whether oral or written but they only allow its limited application to special articles and a small portion of the property, and do not recognize its effect as regards immovable property so to defeat the heirs. A few other Muhammadans appear to understand what is meant by executing a will, but say that none ever is executed unless with the intention of making it quite sure that the property shall descend according to custom and not by Muhammadan Law. The Hindu tribes without exception agree that a will is unknown and all that they meant by their recorded replies was that where a man had assigned a part of his property to any particular heir during his lifetime, and where this assignment had been made publicly and with the consent of the collaterals, effect would be given to his wishes after his death. This practically amounts to a gift made during life, and the only proper answer to the question is that wills are entirely unknown.

1918. Wills and legacies are unknown as far as ancestral immovable property is concerned.

Then, my attention was invited to Question No. 70, which is with regard to gifts of ancestral property, the answer to which is that gifts were opposed to custom prevalent among Jats. The point for our consideration is not of gifts but gifts in respect of a sonless proprietor and no such special custom has been shown. Accordingly, Question No. 70 and the answer thereto would not have any bearing on the decision of this case. Therefore, we have to fall back upon the general custom which clearly makes a provision for a gift by a sonless proprietor to a near agnate for services rendered. In the present case, Amar Nath was a near agnate as also a person who had rendered services to Raja Ram and, therefore, Raja Ram could validly make a gift in his favour.

4. The next question which arises for consideration is whether the will can be equated to a gift because in the present case no gift was made. This matter has been recently considered by a Full Bench of this Court in *Ratti Ram v. Shiv*

Charan R.S.A. No. 140 of 1969, decided on 23rd July, 1981, wherein similar point came up for consideration. On the basis of the Supreme Court decision in Mst. Mali v. Ranbir Singh (1970) 2 U.J.S.C. 395, it was held that there is no difference between an alienation inter vivos and the one to take effect on the death of the transferor and, therefore, if it is found that Raja Ram could make a gift in favour of Amar Nath, the will executed by him would be on the same footing as it would amount to gift to take effect on his death. Therefore, it will have to be held in this case that Raja Ram could either make a gift to take effect during his lifetime or to make a will so that the alienation takes effect on his death in favour of a near agnate or for services rendered to him. After this conclusion is reached, the will in dispute made by him in favour of Amar Nath cannot be held to be invalid as opposed to any custom. Accordingly, the finding to the contrary recorded by both the Courts below is set aside.

5. It deserves mention that no argument was raised before me on behalf of the respondent that the execution of the will in favour of Amar Nath is not duly proved. Accordingly, the finding of the Courts below that Raja Ram had executed the will in favour of Amar Nath is upheld.

6. For the reasons recorded above, this appeal is allowed, the judgments and decrees of the both the Courts below are set aside and the plaintiff's suit is dismissed. Since the parties are near relations, there will be no order as to costs.