
(2011) 01 DEL CK 0092

In the Delhi High Court

Case No : Regular Second Appeal 138 of 2001

Ram Gopal

APPELLANT

Vs

Bhupinder Kumar and Another

RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Citation : (2011) 177 DLT 137 : (2011) 1 DMC 539

Hon'ble Judges : Mool Chand Garg, J

Bench : Single Bench

Advocate : Sindhu Sinha, for the Appellant; Pravir K. Jain, for the Respondent

Final Decision : Dismissed

Judgement

Mool Chand Garg, J.—This is a second appeal filed by the Appellant u/s 100 of the CPC assailing the judgment dated 30.05.2001 passed by the learned ADJ in RCA No. 393/2000 whereby the appeal filed by the Appellant against the order dated 06.02.1998 passed by the learned Civil Judge, Delhi in Suit No. 456/1994 has been dismissed.

2. Briefly stating, the facts giving rise to the filing of this case are that Late Smt. Usha, daughter of the Appellant was married to the Respondent at Delhi. She lived with her husband after her marriage. However, she died in unnatural circumstance within 7 years of her marriage. According to the Appellant, she was maltreated by her husband and his parents on account of bringing insufficient dowry in marriage. She used to be tortured for bringing more and more dowry. It is also the case of the Appellant that kerosene oil was put on her person on 08.06.1982 which led to her death. An FIR bearing No. 228/1982 was registered in respect of the aforesaid incident at the instance of the father of the Appellant at P.S. Vinay Nagar u/s 306/34 IPC. However, it is an admitted fact by the Appellant that the Respondent was discharged in that case. It is also informed by the Respondent that even the appeal filed against the said order before the Sessions Judge has been dismissed.

3. According to the Appellant, in these circumstances, the death of Late Smt. Usha having taken place within 7 years of marriage is also an unnatural circumstance, the belongings given to the deceased daughter is entitled to be reverted back to the Appellant, who is her father. A list of such goods has been mentioned in paragraph 6 of the appeal.

4. For recovery of the goods, the Appellant filed a suit for mandatory injunction thereby praying for a direction to the Respondents to return the goods and amounts presented to the deceased Smt. Usha at the time of her marriage. The claim was contested by the Respondents. In the said suit, following issues were framed:

i) Whether the suit in the present form is not maintainable? OPD

ii) Whether the Plaintiff has no locus standi to institute the present suit? OPD

iii) Whether the items referred to in para 6 of the plaint were presented/given to deceased Smt. Usha at the time of her marriage by the Plaintiff? OPP

iv) What relief is the Plaintiff entitled? OPD

5. After evidence was led by the parties, the learned Sub Judge dismissed the suit vide its judgment dated 06.02.1988 holding that the Appellant had no locus standi to institute the suit.

6. Aggrieved by the aforesaid order, the Appellant filed RCA No. 393/2000 before learned ADJ impugning the order of the learned Sub Judge. While dismissing the appeal, the learned ADJ has not accepted the contentions of the Appellant that Sub-Section 3 of the Section 6 of the Dowry Prohibition Act, 1961 (which provision has admittedly come into the statute book only w.e.f. 1986), the goods belonging to the deceased having no children should not have been reverted back to the Appellant. The relevant observations made by the learned ADJ in this regard is reproduced hereunder for sake of reference:

4. Foundation of the suit filed by the Appellant, being father of the deceased married daughter, proceeded on the premises that the Respondent No. 1- husband of the deceased daughter, was disqualified u/s 25 of the Hindu Succession Act, 1956 from inheriting the property of the deceased daughter on account of her alleged murder. No murder of Smt. Usha came to be proved on record. To the contrary it only came to be proved that the Respondents were charged for the offence u/s 306 IPC and have even been acquitted of the said charge. Section 25 of the Hindu Succession Act as such does not come to any aid to the Appellant and it was as also conceded to by the Id. Counsel for the Appellant. Id. Counsel for the Appellant then also conceded that in the given facts and circumstances, the case of the Appellant did not get covered even within Section 15(1)(c) of Hindu Succession Act. Contention of Id. Counsel for the Appellant, however, has been that the provision of law for seeking the reliefs prayed for was not well and correctly relied upon before the trial court and in fact the reliefs sought were covered u/s 6 of the Dowry Prohibition Act, 1961. In his

submission the case of the Appellant was covered within the proviso to Sub-Section 3 of Section 6 of the Dowry Prohibition Act, 1961 (hereafter called the said Act) which provided that where a woman dies within 7 years of her marriage otherwise than due to natural causes, property shall if she has no children be transferred to her parents and in the instant case the daughter of the Appellant died even within 7 months of marriage with the Respondent No. 1 in otherwise than due to natural causes and, therefore, the Appellant was entitled to maintain the suit and seek the return of the property of his deceased daughter. In the submission of the Id. Counsel for the Appellant because of this proviso to Sub-Section 3 of Section 3 of the said Act, it could be said that the Appellant had the locus standi to institute the suit and the issue No. 2 got to be decided in favour of the Plaintiff and against the Defendant and since the suit came to be dismissed only on account of issue No. 2 having been decided against the Appellant, the finding on the issue No. 2 required reversal and the suit be decreed. The contention so raised by Id. Counsel for the Appellant I find to be meritless. The provision of law relied upon by Id. Counsel for the Appellant came into being and effect consequent upon the amendments made to the said Act on 19.11.1986, it has not been shown in any manner if the said provision of law relied upon has any retrospective effect. Incident subject matter of the suit is of the year 1982. I am, therefore, of the considered view that the reliance placed upon by Id. Counsel for the Appellant on the said provision is misconceived.

7. It is this order, the Appellant has challenged before this Court by filing this second appeal u/s 100 of the CPC.

8. According to the Appellant, the appeal raises following substantial questions of law:

- i. Whether the case of the Appellant was covered under Sub-Section 3 of Section 6 of the Dowry Prohibition Act, 1961 which provides that where a woman dies within 7 years of a marriage otherwise than due to natural causes, property shall, if she has no children, be transferred to her parents?
- ii. Whether the amended provisions of Dowry Prohibition Act, 1961 could be applied to an incident which occurred in the year 1982?
- iii. Whether the amendment dated 19.11.1986 of the Dowry Prohibition Act, 1961 was retrospective in nature?
- iv. Whether in spite of holding that the Appellant was competent to file the suit and also the items referred to in para 6 of the plaint were given to the deceased daughter of the Appellant at the time of her marriage, the learned trial court as well as the appellate court were justified in dismissing the suit as well as appeal of the Appellant?

9. The Appellant has also filed written submissions and have relied upon the following judgments:

(i) Zile Singh Vs. State of Haryana and Others, .

(ii) Moiliakiriath Abbas Vs. Meeyanathu Kunhipathu and Another,

10. Before, proceeding further in this matter, it would be appropriate to take note of the Dowry Prohibition (Amendment) Act, 1986 and as per the notification issued by the President of India, the amendment received the ascent of the President on 08.09.1986. It would be relevant to take note of the various provisions of the said amendment, in particular, the Section which relates to the coming into force of this Act. Section 1 of the Act becomes relevant, which reads as under:

1. Short title and commencement.-(1) This Act may be called the Dowry Prohibition (Amendment) Act, 1986. (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

11. In view of the aforesaid, this amendment would come into statute book with effect from the date of the notification whereby the President of India has given the ascent for proclamation of the amendment in the Dowry Prohibition Act which is dated 09.09.1986.

12. By the aforesaid amendment, Section 6 of the Dowry Prohibition Act has been amended by addition of Sub-clause 3 which reads as under:

6. Dowry to be for the benefit of the wife or her heirs.-(1) Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman-

(a) if the dowry was received before marriage, within [three months] after the date of marriage; or

(b) if the dowry was received at the time of or after the marriage, within[three months] after the date of its receipt; or

(c) if the dowry was received when the woman was a minor, within[three months] after she has attained the age of eighteen years; and pending such transfer, shall hold it in trust for the benefit of the woman.

(2) If any person fails to transfer any property as required by Sub-section (1) within the time limit specified therefore, or as required by Sub-section

(3)] he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years or with fine which shall not be less than five thousand rupees, but which may extend to ten thousand rupees] or with both. (3) Where the woman entitled to any property under Sub-section (1) dies before receiving it, the heirs of the woman shall be entitled to claim it from the person holding it for the time being:

Provided that where such woman dies within seven years of her marriage, otherwise than due to natural causes, such property shall,--

(a) if she has no children, be transferred to her parents; or

(b) if she has children, be transferred to such children and pending such transfer, be held in trust for such children.

13. It may be observed here that in the said amendment, there is no provision that the amended portion of the Act would be applicable retrospectively.

14. In view of the aforesaid, it is submitted by the Respondents that the orders passed by the Civil Judge and ADJ having dismissed the suit filed by the Respondent for the reason that in view of the existing provisions u/s 6 of the Dowry Prohibition Act as it stood before the amendment, despite death of the deceased Usha who died within 7 years of her marriage without leaving any children would go back to her heirs and for that purpose reference will have to be made to Section 15 of the Hindu Succession Act which reads as under:

15. General rules of succession in the case of female Hindus.- (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 husband;

(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 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 husband

15. Since, the husband falls in Class-I legal heirs of the deceased wife, he alone is entitled to receive/retain the goods left by the deceased even if those goods were given to the deceased wife in dowry for her benefit. It is submitted that only after the amendment, right of the parents of the deceased accrues. In this case, the death of deceased having taken place prior to the amendment having come into force, the benefit of the said amendment cannot be taken by the parents.

16. The Respondent has relied upon the judgment delivered in the case of Chaman Lal Vs. Mohan Lall and Others, . In the said judgment, it has been held:

11. u/s 8 of the Hindu Succession Act the property of a male Hindu dying intestate first devolves upon the heirs, being the relatives specified in class I of the Schedule. Widow is one such heir in class 1. There is no condition mentioned in the Hindu Succession Act for her exclusion from inheritance on her husband's death except a general provision in Section 25 of the Act whereby a person who commits murder or abets the commission of murder shall be disqualified from inheriting the property in furtherance of the succession to which he or she committed or abetted the commission of the murder. This general disqualification provided in Section 25 is applicable to all persons to the extent it is applicable to them but is not limited merely to a widow. In the present case, admittedly, Smt. Shakuntala, Devi has been acquitted. That acquittal is final for the purpose of Hindu Succession Act. It is not the scheme of the Succession Act that civil court should again examine the charge of hold an enquiry or trial acquittal from There is no other restriction on the heir once he or she is entitled to succeed u/s 8. If there is any law like pare, 96 of Mulla's Hindu Law then this law is positively inconsistent with the provisions of the Hindu Succession Act, particularly inconsistent to Section 8 and would to the extent of inconsistency cease to apply to Hindus. Even if for the sake of argument the general allegation of the Petitioner that Smt. Shakuntala Devi was unchaste be accepted that does not disqualify her from being a heir and legal representative of her husband. She was, therefore, rightly substituted as legal representative in place of her deceased husband.

17. In view of the aforesaid, the Respondent-husband of the deceased though prosecuted for offences u/s 306/34 IPC but having been acquitted by the Sessions Court and the appeal filed by the Appellant having been dismissed by this Court, the husband is entitled to succeed to the estates of the deceased wife. The substantial questions of law raised by the Appellant are thus answered as under:

Since the amendment incorporated in Section 6 of the Dowry Prohibition Act, 1961 is not retrospective, it would come into force after the same became effective i.e. as on the date of notification after the assent of the President of India on 8.9.1986. Consequently, the Respondent being the husband of the deceased-wife being a legal heir in Class I is entitled to succeed to her estate despite she had not left any children in view of the provisions contained u/s 15 of the Hindu Succession Act.

18. The Appellant has laid emphasis that in this case the amendment of Dowry Prohibition Act should be treated having retrospective option. He has relied upon a judgment of the Apex Court in the case of Zile Singh (supra), however, for the reasons stated above, when the operation of the Act has been specifically made prospective in terms of the provisions contained in the preamble of the Act as quoted above in paragraph 10, the submission of the Appellant that the

amendment in the Dowry Prohibition Act should be given a retrospective effect, cannot be accepted. As far as the other judgments cited by the Appellant are concerned, they are of no consequence and are not applicable to the facts of this case.

19. In view of the above, even though the Appellant was competent to file the suit, but the Civil Judge has rightly dismissed the same and the Appellate Court has rightly upheld the judgment of the Civil Judge. Accordingly, the appeal filed by the Appellant is dismissed but there shall be no orders as to costs. TCR be sent back forthwith along with a copy of this order.

20. Pending applications, if any, shall also stand disposed of.