
(1977) 01 MP CK 0029
In the Madhya Pradesh High Court
Case No : S.A. No. 798 of 1969

Rambati

APPELLANT

Vs

Bundkuwar Sav

RESPONDENT

Date of Decision : 04-01-1977

Acts Referred:

Constitution of India, 1950 — Article 61
Criminal Procedure Code, 1973 (CrPC) — Section 145, 151
Succession Act, 1925 — Section 90

Citation : (1980) ILR (MP) 764 : (1978) JLJ 391 : (1978) MPLJ 518

Hon'ble Judges : G.P. Singh, J

Bench : Single Bench

Advocate : A.R. Choubey, for the Appellant; N.S. Kale, for the Respondent

Final Decision : Allowed

Judgement

G.P. Singh, J.

The dispute in this appeal relates to land Khasra No. 479/2, area 2.13 situated in village Amarkot, tahsil Mahasamund, district Raipur. It is common ground that this land originally belonged to Moharsai. It is also not in dispute that on 25th June 1946 Moharsai executed a will by which he bequeathed all his movable and immovable property in favour of his daughter Rambati. It is further not in dispute that Moharsai died leaving two heirs, namely, his widow Bundkuwar and daughter Rambati. After the death of Moharsai, dispute arose between Bundkuwar and Rambati about possession of the said land which gave rise to proceedings u/s 145 of the Code of Criminal Procedure. By an order, dated 19th June 1967, the Sub-Divisional Magistrate, Mahasamund, decided Section 145 proceedings in favour of Rambati and confirmed her possession. The suit giving rise to this appeal was then instituted by Bundkuwar on 5th July 1967 for joint possession of half share in the land. Rambati and her husband Vedram were joined as Defendants in the suit. The Defendants relied upon the will left by Moharsai and also on adverse possession.

The trial Court as also the first appellate Court negatived the defence under the Will on the ground that in 1946 when the Will was executed, the suit land was occupancy tenancy of Moharsai and, as the law then stood, no will could be made in respect of land held in occupancy tenancy. It was further held that to decide whether the will was effective to convey the suit land, one will have to see the law as it stood on the date when the will was executed. The defence of adverse possession was also negatived on the finding that Moharsai died only 9 or 10 years before 1967 when the suit was instituted and the Defendants' possession was only for that period.

In this appeal, the learned Counsel for the Defendants-Appellants has submitted before me that the Courts below were wrong in assuming that in 1946 the suit land was held by Moharsai as occupancy tenant. It is further submitted that in any case the relevant law to be seen regarding the validity of the Will is that law which was in force at the time of Moharsai's death and not the law which was in force at the time when the Will was executed. It is also submitted that Moharsai died 9 or 10 years before 1967 as admitted by the Plaintiff and the law then in force was the Madhya Pradesh Land Revenue Code, 1954, under the provisions of which the Will was valid.

I will assume for purposes of this appeal that the land in suit was held in occupancy tenancy by Moharsai in 1946 when the Will was executed and that according to the law then in force no bequest could be made in respect of such a land. But, in my opinion, the learned Counsel for the Appellants is right in contending that the law to be seen is that law which was in force at the time when Moharsai died. In 1946 the law regulating the tenancy was contained in C.P. Tenancy Act, 1920. This Act was repealed by the Madhya Pradesh Land Revenue Code, 1954, from 1st October 1955. It is not in dispute before me that under the 1954-Code, the suit land became either Bhumiswami or Bhumidhari holding of Moharsai and that it could pass on his death by inheritance or bequest, as the case may be, u/s 151 of the Code. Therefore, if Moharsai died when the 1954-Code was in force and the relevant law was that as contained in this Code, the Will would be valid and Defendant Rambati would get the entire land to the exclusion of the Plaintiff. Under the English Law before the Wills Act, 1837, a Will spoke as regards personal estate from the death and as regards real estate from the date of the Will, unless the contrary intention was shown. Section 24 of the Wills Act, changed this law. The law under this section is that, unless a contrary intention appears, a Will must be construed with reference to the real estate and personal estate comprised in it to speak and take effect as if it had been executed immediately before the death of the testator [See Halsbury's Laws of England, Volume 39, pp. 1012-1013; and Jarman on Wills, Eighth Edition, Vol. 1, p. 419]. The rules enacted by Section 24 of the Wills Act have been incorporated in Section 90 of the Indian Succession Act which provides that the description contained in a Will of property, the subject of gift, shall, unless a contrary intention appears by the Will, be deemed to refer to and comprise the property answering that description at the death of the testator. The property existing at

the time of the testator's death and falling within the description of property bequeathed in the Will would pass under it although it was not in existence at the time when the Will was executed for the reason that the Will has the same effect as if it were executed at the time of the testator's death, Rangoo v. Harisa AIR 1932 Nag. 163. Further, the validity of a Will or provision thereof as regards, restrictions on the power of testamentary disposition is determined according to the law in effect at the time of the testator's death rather than that in force when the Will was executed See American Jurisprudence, Vol. 57, Article 61]. I am, therefore, clearly of opinion that both the Courts below were in error in relying upon the C.P. Tenancy Act, 1920, for holding that the Will was invalid. We have to see as to what was the law at the time when Moharsai died. As earlier stated, the C.P. Tenancy Act had been repealed from 1st October 1955 by the 1954-Code which did not provide for any restriction on the power of testamentary disposition in respect of the suit land. On the finding reached by the Courts below, Moharsai died 9 or 10 years before the institution of the suit, that is, sometime in 1957-58, when the 1954-Code was in force. As already stated, the entire movable and immovable property belonging to Moharsai was bequeathed under the Will to Defendant Rambati and, on the principles discussed earlier, the Will would be effective to convey the entire movable and immovable property of Moharsai existing at the time of his death. There was no restriction at that time for conveying the suit land by a Will and it is, therefore, clear that the suit land passed to Defendant Rambati under the Will on Moharsai's death.

The learned Counsel for the Plaintiff-Respondent has, however, contended that the question as to when Moharsai died was not directly put in issue and that opportunity should be given to the parties to lead evidence on that point. In this connection, it is pointed out that the 1954-Code was repealed by the M.P. Land Revenue Code, 1959, which came into force on 2nd October 1959 and that under the 1959-Code a bequest could not be made up to 8th December 1961, that is, before the Code was amended by Act No. 38 of 1961. It is true that there was no direct issue on the point about the time of death of Moharsai, but the same was covered by issue No. 1 relating to adverse possession. Indeed, the parties led evidence as to the time of death of Moharsai and no case for remand on that point is made out. The Plaintiff in paragraph 3 of her plaint, which was presented on 5th July 1967, alleged that Moharsai died 9 years before. In her evidence taken on 29th September 1967, the Plaintiff stated that Moharsai died 9 or 10 years before. The Defendant Rambati in her written statement as also in her evidence stated that Moharsai died 14 or 15 years before, but her evidence was not believed by either of the Courts below on the ground that in an affidavit filed in Section 145 proceedings she had stated that Moharsai had died 10 years before. It is clear from the evidence produced that Moharsai died sometime in 1957-58 after the coming into force of the 1954-Code and before its repeal by the 1959-Code.

As a result of the above discussion, it is clear that the suit land in its entirety passed to Defendant Rambati under the Will of Moharsai and that the Plaintiff did

not inherit any interest in it. The appeal is allowed. The judgments and decrees passed by the Courts below are set aside and the Plaintiff-Respondent's suit is dismissed. Having regard to the close relationship between the parties, I direct that the parties shall bear their own costs throughout.