
(1964) 07 P&H CK 0036
In the Punjab And Haryana At Chandigarh
Case No : Regular First Appeal No. 84 of 1959

Sada Nand Saraswati

APPELLANT

Vs

Shiv Nath and Others

RESPONDENT

Date of Decision : 23-07-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (1964) 07 P&H CK 0036

Hon'ble Judges : Dua, J;D.K. Mahajan, J

Bench : Division Bench

Advocate : H.L. Sibal and S.C. Sibal, for the Appellant; H.R. Mahajan and A.S. Mahajan, for the Respondent

Final Decision : Allowed

Judgement

D.K. Mahajan, J.—This appeal must succeed The Subordinate Judge seems to have no fundamental knowledge of the well settled rule that the inheritance never remains in abeyance. As soon as one owner of the property dies, the property vests in the next heir. The next heir may be a person who is related to the deceased and according to the law applicable to him would be next in the line of heirs or may be an heir by adoption or under a will. In case there is no heir, the property vests in the State by escheat. The fact of the matter, however, is that the property does not hang in the air. On the death of the last holder it automatically vests in the next heir whoever he is.

2. It is common ground that the property in this case is held by the receiver. The present suit was, therefore, filed for declaration by Sada Nand claiming himself to be the Chela of one Swami Vishudha Nand. The property in dispute was left by Swami Achutanand. The property comprises two houses in the town of Ludhiana and cash amount of Rs. 40,000/. lying in fixed deposit with the State Bank of India, Ludhiana.

3. According to the plaintiff, Swami Achutanand died at Ludhiana on the 30th

September, 1941. At the time of his death, he had two Chelas-Swami Vishundhanand and Swami Parkashanand. Swami Vishudhanand also died at Haridwar on the 8th April, 1955. The plaintiff claims to be a duly nominated Chela of Swami Vishudhanand. It is also claimed that Swami Parkashanand, another Chela of Swami Achutanand, died at Haridwar in 1939. It is contended that Swami Achutanand before his death had executed a will in favour of Swami Vishudhanand bequeathing all his movable and immovable properties to him. This will of Swami Achutanand however came into the possession of Swami Chidanand who is stated to be the Chela of Swami Parkashanand. It is, however, stated that Swami Vishudhanand had no knowledge of this will during his lifetime nor had the plaintiff any knowledge of the same because Swami Chidanand kept it as a secret from Swami Vishudhanand and the plaintiff. Swami Chidanand died shortly after the death of Swami Vishudhanand at Delhi and as the plaintiff was his Gurbhai, he searched his papers to find out if he had left any property. While searching the papers he discovered a will dated the 19th June, 1936, executed by Swami Achutanand in favour of Swami Vishudhanand. According to the plaintiff, the property vested in Swami Vishudhanand on the death of Swami Achutanand by virtue of this will and on the death of Swami Vishudhanand the plaintiff, who is the senior-most Chela, is entitled to succeed to that property as his heir. It is not necessary for our purposes to state that there were various claimants to this property but none of them has been able to establish his title to it as the next heir of Swami Achutanand. In one of these litigation, the property was made over to defendant 6 as interim receiver and administrator of the estate of Swami Achutanand. That is how defendant 6 is in possession of the property.

4. In the suit, defendants 1 to 5 are also made parties on the ground that they denied the plaintiff's title and have made an assertion that they are the blood relations of Swami Achutanand and are, as such, entitled to succeed to the property in suit. Defendants 2, 3 and 4 support the plaintiff's claim. But it is contested by the interim receiver, defendant 6, and defendant 1.

5. On the pleadings of the parties, as many as 14 issues were framed. The following three issues were tried as preliminary issues :

2. Is the suit maintainable in the present form ?

3. Was a notice u/s 80, Civil Procedure Code, essential ?

If so, its effect ?

4. Does the plaint disclose any cause of action ?

The trial Court found on issue No. 2 against the plaintiff. Issue No. 3 was not pressed and the decision on issue No. 4 went against the plaintiff in view of the decision on issue No. 2 with the result that the suit was dismissed.

6. While dealing with issue No. 2, the trial Court has observed as follows:

Plainly, therefore, Swami Vishudhanand never became owner of this property in

his lifetime nor did he claim ownership of the same till the died. In these circumstances Swami Vishudhanand cannot be considered as the last holder of this property. The plaintiff has claimed the ownership of the property in dispute as an heir of Swami Vishudhanand. If the latter had never become the owner of this property in his lifetime then evidently even if the plaintiff is proved to be the spiritual heir of Swami Vishudhanand he has nothing to inherit from him. Admittedly the very person whose inheritance is claimed by the plaintiff never held the property in dispute as owner, therefore, the plaintiff's claim for declaration to the effect that the property in dispute belongs to him is incompetent.

This reasoning is fallacious, as I have already indicated in the opening part of this judgment. It was put to the learned counsel for the respondents that in case a male holder dies leaving a son and a grandson; the son is away from the country when the father dies and never comes to know of the death of the father, himself dying in the foreign country and his grand son lays claim to the property on the ground that on the death of his grandfather the property vested in his father and he being the heir of his father is entitled to it, would the grandson fail because the father never came into possession of the property? The learned counsel for the respondents had to concede that the grandson could claim the property on this basis and would be entitled to succeed. It is a fundamental rule of Hindu Law that inheritance never remains in abeyance. As soon as a person dies his property vests in the next heir whether that heir is at law or is nominated by the last male-holder. It is immaterial whether the heir actually takes possession of the property or not. He is the lawful owner of the property and if any one else takes possession of the property he will only be able to perfect his title to it by adverse possession. The period of limitation will run against the heir who is entitled to the property on the death of the last male holder. If these considerations, which are basic and fundamental so far as the rule of succession under the Hindu Law is concerned, had been kept in view, the learned Judge would not have fallen into the error in which he fell. The learned Judge seems to think that only that property can be succeeded to by the next heir which was in possession of the last holder. This unqualified statement of law is unsustainable. The true owner will only lose right to possession of property by adverse possession against him but so long as no body else claims the property, the property remains the property of the next heir, whether or not the next heir chooses to take possession of it or not. It is the title in the property that vests in the next heir and unless that title is defeated by some process, the next heir remains the owner of the property. Its possession by the next heir is neither here nor there so far as the true legal position is concerned. The decision of the trial Court on issue No. 2 is, therefore, wholly erroneous and cannot be sustained either on principle or on the authority. We have gone through the plaint and it appears to us that the plaint does disclose a cause of action. The learned trial Court decided issue No 4 against the plaintiff because the decision on issue No. 2 went against the plaintiff and we have already held that the decision of the trial

Court on issue No. 2 is wholly erroneous. The plaintiff is, therefore, entitled to succeed in his appeal.

7. We may also point out that when the trial Judge came to the conclusion that the plaint did not disclose a cause of action the proper course for him was to reject the plaint under Order 7, rule 11 of the CPC and not to dismiss the suit.

8. For the reasons given above, this appeal succeeds, the decision of the trial Court is set aside and the case is remitted to it for a decision of the remaining issues. There will be no order as to costs of this appeal.

9. Parties are directed to appear in the trial Court on the 21st September, 1964 for further proceedings in the suit.

Dua, J.

10. I agree.