
(1996) 10 P&H CK 0112
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3071 of 1980

Smt. Shobha Rani and Another

APPELLANT

Vs

Shri Parshotam Dass and Others

RESPONDENT

Date of Decision : 08-10-1996

Acts Referred:

Hindu Succession Act, 1956 — Section 22(1)

Citation : (1997) 115 PLR 576 : (1997) 2 RCR(Civil) 300

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : M.S. Jain, for the Appellant; Y.K. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Anand, J.—This is a civil revision and has been directed against the order dated 10.11.1980 passed by the Court of Senior Sub Judge, Karnal who dismissed the application of the petitioners Smt. Sobha Rani and Smt. Pushpa Rani daughters of Sh. Pran Nath, Advocate, u/s 22 of the Hindu Succession Act, 1956. The pleadings of the parties can be summarised in the following manner :-

Both the petitioner Smt. Shobha Rani and Smt. Pushpa Rani are the daughters of Shri Pran Nath, Advocate, deceased. Smt. Shila Wanti, respondent No. 2 is the widow, while Sarvshri Balraj and Ranbir Singh are the sons of Pran Nath, Advocate, who died on 20.2.1971 intestate. The subject-matter of the dispute is the residential property situated at Subhash Colony, Karnal, which was held by the deceased at the time of his death. After his death, the property has been sold by Smt. Shila Wanti, respondent No. 2 i.e. the widow of deceased as per registered sale deed dated 2.6.1978 in favour of Parshotam Dass, respondent No. 1 since deceased now represented by his legal representatives. The sale was executed for a sum of Rs. 12,000/- and Smt. Shila Wanti respondent No. 2 represented herself to be the sole owner of the said property. The petitioners alleged that the sale to the extent of their 2/5th share in the property was void ab initio as their mother Smt. Shila Wanti, respondent No. 2 had only 1/5th

share. It was also asserted by the petitioners that in view of the statutory right conferred upon them u/s 22 of the Hindu Succession Act, they have got a preferential right to acquire 3/5th share in that property belonging to respondents No. 2 to 4. With the above averments, the petitioners prayed for the award of a decree for acquiring the interest of respondents No. 2 to 4 to the extent of 3/5th share on payment of proportional price and for declaration that the sale with regard to the remaining 2/5th share belonging to them was a nullity.

The above petition was resisted by respondent No. 1 Purshotam Dass who raised certain legal objections as to the maintainability of the action. It was also pleaded that the application was not maintainable in the present form as the petitioner was required to file a civil suit, the court of Senior Sub Judge at Karnal, had no jurisdiction to entertain the application.

3. From the above pleadings of the parties the trial Court framed the following issues :-

1) Whether this court is competent to entertain petition u/s 22 of the Hindu Succession Act, 1956? OPA.

2) Whether the petition is maintainable in the present form ? OPA.

3) Relief.

4. On the conclusion of the proceedings, issue No. 1 was decided in favour of the petitioners and against the respondents. However, issue No. 2 was decided against the petitioners and it was held that their petition u/s 22 of the Hindu Succession Act was not maintainable. They were required to file a regular suit for possession. Resultantly, the application was dismissed vide order dated 10.11.1980. Aggrieved by the said order the present revision which is being disposed of with the assistance of Shri M.S. Jain, Advocate, appearing on behalf of the petitioners and Shri Y.K. Sharma, Advocate, who gave appearance on behalf of respondents, and with their assistance I have gone through the record of this case.

5. Section 22 of the Hindu Succession Act reads as follows :-

22) Preferential right to acquire property in certain cases :

1) Where, after the commencement of this Act an interest in any immovable property of an intestate or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest in the property right to acquire the interest proposed to be transferred.

2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this

behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.

3) If there are two or more heirs specified in class I of the schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

Explanation.- In this section, "Court" means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the official Gazette, specify in this behalf."

6. Learned counsel for the petitioners submitted that the impugned order dated 10.11.1980 is liable to be set aside. He submitted that the court of Senior Sub Judge, Karnal, erred in holding that the application u/s 22 of the Hindu Succession Act is not maintainable. In the alternative, it was pleaded that if the trial Court had held that the application u/s 22 of the Hindu Succession Act was not maintainable, it was obligatory on the part of the trial Court to give the opportunity to the petitioner to amend the application so as to convert it intestate for possession. On the contrary it was submitted by the learned counsel for the respondents that the remedy availed u/s 22 of the Act was totally misconceived. The second prayer of the learned counsel for the petitioners also has no legs to stand in view of the specific objection taken up by the respondents. At no point of time, the petitioners ever made a request to the court for the conversion of the application into a regular suit and in these circumstances, the prayer at this stage cannot be allowed. After considering the rival contentions of the parties I am of the considered opinion that this petition is devoid of any merit and is liable to be dismissed. In Valliyil Sreedevi Amma Vs. Subhadra Devi and Others, , it was held that where one of the co-heirs transfer his interest in violation of section 22(1) of the Hindu Succession Act, the remedy of the other co-heirs to enforce their transfer interest is by way of a suit and the application u/s 22(1) of the Act is not maintainable. The Hon'ble Bench of Kerala High Court after interpreting the provisions of Section 22 came to the conclusion that the object of sub-section (1) of said Section was that in cases where by virtue of intestate succession under the Act any interest in immovable property has devolved upon two or more heirs specified in Class I of the Schedule and any one of such heirs proposes to transfer his interest in the property the other heirs should have a preferential right to acquire the interest which is so proposed to be transferred. It was also held that the said intention of Parliament can be effectuated only if we consider the section as conferring an enforceable right on the heirs other than the one who proposes to transfer his interest. So far as the remedy is concerned it was held that it lies in the filing of regular civil suit before the competent authority. This view of the Kerala High Court has again been followed in Tarak Das Ghosh Vs. Sunil Kumar Ghosh, , where it was held that application disposed of u/s 22 of the Hindu Succession Act is not a decree and

was not. appealable. Order on such application was not one of the kinds of orders which are specifically made appealable by C.P.C. u/s 104 and Order 43 Rule 1 C.P.C. The Calcutta High Court further held that in cases where any statute creates a right without specifying the procedure for enforcement of such right, the person intending to enforce such right shall have to resort to the procedure contained in the Civil P.C. for enforcement of his right. Accordingly the right conferred by Section 22 can be enforced only by the institution of a regular suit. The above view of mine also finds support from 1970 P.L.J. 587, Jaswant and Ors. v. Smt. Basanti Devi, a Division Bench authority of this Court where it was held that Section 22 of the Hindu Succession Act merely gives a sort of right of pre-emption. If the right u/s 22 is treated analogous to the right of pre-emption then the suit was maintainable and the application under, section 22 of the Hindu Succession Act on the part of the present petitioners was misconceived.

7. Faced with the above situation, the learned counsel for the petitioners relied upon an authority of Calcutta High Court reported as Promode Kumar Ghosh and Others Vs. The Calcutta Electric Supply Corporation Ltd. and Others, , and AIR 1981 Madhya Pradesh 250, Ghewarwala Jain v. Hanuman Parsad and Anr., and the contention was raised by Shri Jain that it was obligatory on the part of the trial Court to afford an opportunity to the petitioners asking them to amend the application and to convert it into a suit. The contention is devoid of any merit. It was specifically pleaded that the contesting respondent No. 1 in his reply that the remedy availed by the petitioners was not tenable. The citations of Calcutta and Madhya Pradesh High Court are totally alien to the controversy in hand. In the Madhya Pradesh citation the application was moved by the petitioners for amendment of the application which was allowed by the Court itself. In the present case, no such application was ever moved by the petitioner before the trial Court and it will be not proper at this stage to allow the prayer made by Shri Jain. The citation of Promode Kumar Ghosh and Others Vs. The Calcutta Electric Supply Corporation Ltd. and Others, has been rightly distinguished by the trial Court in para No. 12 of the order.

8. In the light of above discussion, I do not see any infirmity or error of jurisdiction in the well considered order passed by the court of Senior Sub Judge, Karnal and seeing no merit in this revision dismiss the same, leaving the parties to bear their own costs.