

(2017) 07 CHH CK 0018
In the Chhattisgarh High Court
Case No : 282 of 2003

Suldeep (Dead) Through Lrs: Smt. Pramila	APPELLANT
Vs	
Hira Lal (Dead) Through Lrs: Smt. Malti Devi, & Ors.	RESPONDENT

Date of Decision : 26-07-2017

Acts Referred:

Code of Civil Procedure, 1908, Section 100, Section 96 - Second appeal - Appeal from original decree Hindu Succession Act, 1956, Section 14, Section 15(2), Section 15, Section 15(1), Section 15(2)(b) - Property of a female Hindu to be her absolute property - General rules of succession in the case of female Hindus - General rules of succession in the case of female Hindus - General rules of succession in the case of female Hindus - General rules of succession in the case of female Hindus

Citation : (2017) 07 CHH CK 0018

Hon'ble Judges : Sanjay Agrawal

Bench : Single Bench

Advocate : Manoj Paranjpe, Vikram Dixit, Sunil Tripathi, R.K.Jaiswal

Final Decision : Dismissed

Judgement

1. This is defendant's Second Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "Code of 1908" in short) against the judgment and decree dated 28.02.2003 passed in Civil Appeal No. 39-A/2002 by the 2nd Additional District Judge, Ambikapur, District Surguja, whereby the lower appellate Court, while affirming and modifying the judgment and decree dated 16.04.1983 passed in Civil Suit No.167-A/1978 by the 1st Civil Judge, Class-II, Ambikapur, has dismissed the appeal.

2. The undisputed facts of the case are that the plaintiff Heeralal instituted a suit for declaration of title and vacant possession of the suit property (house and hotel) by submitting, inter alia, that his father Ramnaresh was the owner of it and after his death, it was inherited by him. It is pleaded that defendant No.1 Jhumri Bai (since deceased, now represented by her legal representatives) was

his father's servant as she was working as such in his hotel business and used to take care of him whenever he fell ill. It was pleaded in the plaint that defendant No.1 was put in possession over the suit property only for its proper care where she was residing with her son Budhram, the defendant No.2, who has thrown his bag and baggage from the suit property. Therefore, the plaintiff has been constrained in filing the suit in the instant nature.

3. Defendant No.1 Jhumri Bai has contested the aforesaid claim by submitting that she was the legally wedded wife of his deceased father Ramnaresh as he had married with her after the death of his first wife and, has thus become the owner of the suit property after his (Ramnaresh) death.

4. In support, the plaintiff has examined as many as three witnesses while the defendants have also examined three witnesses.

5. The trial Court, after considering the evidence led by the parties, has come to the conclusion that the said Ramnaresh was the owner of the suit property and the plaintiff Heeralal was his son. It held further that defendant No.1 Jhumri Bai was not his legally wedded wife and was, therefore, not entitled to inherit the suit property. As a consequence, the trial Court has decreed the plaintiff's claim.

6. Being aggrieved with the aforesaid findings of the trial Court, the defendant No.1 Jhumri Bai has preferred an appeal under Section 96 of the Code of 1908. The appellate Court, in turn, upon examining the findings of the trial Court and that by considering the documentary evidence, like voter list and sale deed, has arrived at a conclusion that the original defendant Jhumri Bai was the legally wedded wife of said Ramnaresh, the owner of the suit property and has thus also become the owner of the suit property upon his death along with the plaintiff. The findings of the trial Court in this regard have, thus, been reversed. It held further by relying upon the statement of Jhumri Bai, as she herself has categorically admitted in her evidence that defendant No.2 Budhram, Lakshmi and Prabhu were her sons as they were born from her first husband, namely, Putul and not from her wedlock with the said Ramnaresh. In consequence, it was held by the appellate Court that after the death of defendant Jhumri Bai, the entire suit property would devolve upon the surviving heirs of Ramnaresh, that is the plaintiff Heeralal and his sister as she (Jhumri Bai) expired intestate after obtaining the suit property from Ramnaresh.

7. Being aggrieved, the appellant Suldeep, who was impleaded during pendency of first appeal upon death of original defendant Jhumri Bai, has preferred this appeal. Mr. Manoj Paranjpe, learned counsel for the appellant submits that since the original defendant Jhumri Bai, who had inherited the suit property along with the plaintiff Heeralal upon the death of Ramnaresh, had become the absolute owner of the suit property by virtue of Section 14 of the Hindu Succession Act, 1956 (for short "the Act of 1956"), therefore, the appellant Suldeep being her grandson (Lakshmi's son) would inherit the suit property left by her and would not devolve upon her husband's (Ramnaresh) heir. He, therefore, submits that

by misinterpreting the provisions prescribed under Section 15 of the Act of 1956, the appellate Court has committed a gross illegality in holding that the suit property would devolve only upon her husband's surviving heirs, i.e., plaintiff Heeralal and his sister.

8. I have considered the submissions of learned counsel for the appellant and perused the entire record carefully.

9. The plaintiff's father Ramnaresh was the owner of the suit property as held by the Courts below. It is not in dispute that after the death of Ramnaresh, the plaintiff Heeralal and Jhumri Bai (original defendant No.1) inherited the suit property upon the sad demise of Ramnaresh. It is also not in dispute that defendant Jhumri Bai, upon coming into force of the Act of 1956, has become the absolute owner thereof to the extent of her share by virtue of the provisions prescribed under Section 14 of the said Act of 1956. Upto this, there is no quarrel about this legal proposition, however, quarrel starts when Jhumri Bai expired intestate.

10. In view of this factual scenario, the general rules of succession as defined under Section 15 of the Act of 1956 would come into play. The said provision is relevant for the purpose is reproduced herein 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 predeceased 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."

11. A close scrutiny of sub-section (1) of above provision would show that, it propounds a scheme of succession to the property of a female Hindu, who dies intestate after the enforcement of the Act of 1956. Sub-section (1) of this provision prescribes the heirs of a female Hindu into five categories as described in Entries (a) to (e) thereof, however, it is not a complete statement of the law. This provision prescribes further that if the female dies without leaving any issue, then the property, which was inherited by her from her father or mother, would devolve not in accordance with the order as laid down in the said five Entries, but would devolve only upon the heirs of the father by virtue of clause (a) of subsection (2) of the aforesaid provision. Likewise, if she inherits the property from her husband or father-in-law, then that property would devolve upon the heirs of the husband as prescribed by clause (b) of sub-section (2) of the aforesaid provision and would certainly not devolve according to the order laid down in the said five Entries of sub-section (1) of the said provision.

12. The aforesaid analysis would be clarified further by virtue of sub-section (2) of the said provision which starts from its non obstante clause and which states that in a case where a female Hindu inherits the property from some other mode, such as, from her father or mother or from her husband or from her father-in-law, then sub-section (1) of Section 15 of the Act of 1956 would not be attracted. Meaning thereby, the basis of inheritance of a female Hindu's property, who dies intestate, would thus be the "Source" from which such female Hindu acquires and came into possession of the property and the manner of inheritance, that is, the source by which she acquired the property, would decide the manner of devolution.

13. Examination of the aforesaid provision would, therefore, show that if the property is the self-acquired property of a female Hindu, then it would devolve by virtue of sub-section (1) of Section 15 alone and Section 15(2) would have no application in that condition. However, if the property is not the self-acquired property of a female Hindu, then it would devolve either by way of clause (a) or (b) of sub-section (2) of Section 15 of the Act of 1956 as the case may be.

14. The Gauhati High Court in a similar situation analysed the aforesaid provision in the matter of Smt. Dhanistha Kalita v. Ramakanta Kalita and others, reported in AIR 2003 Gauhati 92 while relying upon the principles laid down in Bhagat Ram v. Teja Singh, AIR 2002 SC 1 and held at para 20 as under:-

"20. Since the object of S. 15(2) is to ensure that the property left by a Hindu female does not lose the real source from where the deceased female had inherited the property, one has no option but to hold that son or daughter (including the children of any predeceased son or daughter) of such a Hindu female will mean the son or daughter begotten by the Hindu female from the husband, whose property she had inherited, and not the son or daughter whom she had begotten from a husband other than the one, whose property she had inherited. If such property is allowed to be drifted away from the source through which the deceased female has actually inherited the property, the object of S.

15 (2) will be defeated. In other words, if such a property is allowed to be inherited by a son or daughter, whom the deceased female had begotten not through her husband, whose property it was, but from some other husband (whose property it was not), then, S. 15(2)(b) will become meaningless and redundant. Notwithstanding, therefore, the fact that a female Hindu becomes a full-fledged owner of the property inherited by her from her husband, the property, on her death, will pass over to, and devolve upon, only those sons and daughters, whom she had begotten from her husband, whose property she had inherited and if there is no such issue or if such issue is not alive, then, the property, instead of devolving upon the sons or daughters whom she might have begotten from another person as husband, will devolve upon the heirs of her deceased husband, whose property she had inherited. Viewed from this angle, it becomes clear that since Jagat Kalita was not born to Maheswari out of her wedlock with Shyamrai Jagat Kalita, on Maheswari's death, did not become entitled to the property and, thus, when Jagat Kalita was not entitled to the property, question of the appellant, Dhanistha, succeeding to the property did not arise at all. The property, therefore, on the death of Maheswari, devolved upon the heirs of Shyamrai and when looked from this angle, the plaintiffs became the owners of the suit land as great grand children of Shyamrai. However, since there is no cross objection against the decrees granted by the learned Courts below, I am not inclined to disturb the findings and or the decree impugned in this appeal."

15. The Apex Court in the above referred Bhagat Ram's case has clarified the position in following words:-

"The source from which she inherits the property is always important and that would govern the situation. Otherwise persons who are not even remotely related to the person who originally held the property would acquire rights to inherit that property. That would defeat the intent and purpose of sub-section (2) of Section 15, which gives a special pattern of succession.

(Emphasis supplied).

16. Similar is the view taken further by the Apex Court in the matter of V. Dandapani Chettiar v. Balasubramanian Chettiar, reported in (2003) 6 SCC 633, followed recently in Durga Prasad v. Narayan Ram Chandaani, reported in (2017) 5 SCC 69. Paragraph 10 of the said V. Dandapani Chettiar's case is relevant, which reads as under:-

"10. Sub-section (2) of Section 15 carves out an exception in case of a female dying intestate without leaving son, daughter or children of a predeceased son or daughter. In such a case, the rule prescribed is to find out the source from which she has inherited the property. If it is inherited from her father or mother, it would devolve as prescribed under Section 15(2)(a). If it is inherited by her from her husband or father-in-law, it would devolve upon the heirs of her husband under Section 15(2)(b). The clause enacts that in a case where the property is

inherited by a female from her father or mother, it would devolve not upon the other heirs, but upon the heirs of her father. This would mean that if there is no son or daughter including the children of any predeceased son or daughter, then the property would devolve upon the heirs of her father. Result would - if the property is inherited by a female from her father or her mother, neither her husband nor his heirs would get such property, but it would revert back to the heirs of her father."

17. In view of the aforesaid principles, it is now settled that for applying the general rules of succession of the property of a Hindu female, who dies intestate, the "source" of acquisition of her property is first required to be determined in order to apply the general rules of succession as defined under Section 15 of the Act of 1956 and that "source," as analysed, would be the decisive factor for its proper applicability.

18. Reverting back to the facts involved in the present case would reveal that the defendant Jhumri Bai had acquired the suit property with regard to her interest by way of inheritance under the Act of 1956 from said Ramnaresh and by coming into force of the said Act of 1956 has become the absolute owner of the suit property by virtue of Section 14 of the said Act of 1956. So, the "source" by which she acquired the property was from her husband Ramnaresh, the plaintiff Heeralal's father. Facts of the case would reveal further that defendant No.2 Budhram and present appellant Suldeep, who was substituted upon death of defendant No.1 Jhumri Bai as her son's son, are admittedly not born from the wedlock of the said Jhumri Bai and Ramnaresh as his (Suldeep) father Lakshmi was born from her first husband, namely, Putul. In such a situation, the interest of defendant Jhumri Bai, who expired intestate, shall be reverted to her husband Ramnaresh's heir by virtue of clause (b) of sub-section (2) of Section 15 of the Act of 1956. The property in question is admittedly not the self-acquired property of the said defendant Jhumri Bai, therefore, the general rules of succession defined in sub-section (1) of Section 15 of the Act of 1956 would not be attracted. Consequently, her interest would be devolved upon her husband Ramnaresh's heirs, i.e., the plaintiff Heeralal and his sister and, not from heirs of her first husband Putul, i.e., the present appellant Suldeep, as per the provisions prescribed under Section 15(2)(b) of the Act of 1956.

19. In view of the foregoing discussions based on the principles laid down in the above mentioned cases, I do not find any substance in this appeal as no question of law, much less, the substantial questions of law arise for determination in this appeal. Accordingly, the appeal, being devoid of merit, is hereby dismissed at admission stage itself. There shall be no order as to costs.