
(1973) 02 RAJ CK 0012
In the Rajasthan High Court
Case No : Second Appeal No. 348 of 1966

Thakur Chandra Singhji Istmradar

APPELLANT

Vs

Hamir Singh Raja Janak Singh

RESPONDENT

Date of Decision : 16-02-1973

Acts Referred:

Ajmer Abolition of Intermediaries and Land Reforms Act, 1955 — Section 12, 12(2)(3), 78, 78(1)
Civil Procedure Code, 1908 (CPC) — Section 9
Hindu Adoptions and Maintenance Act, 1956 — Section 4

Citation : AIR 1973 Raj 261 : (1973) WLN 219

Hon'ble Judges : Kan Singh, J

Bench : Single Bench

Advocate : Sayarchand Mehta, for the Appellant; M.L. Panwar, for N.K. Jain, for the Respondent

Final Decision : Dismissed

Judgement

Kan Singh, J.—The only question raised in this appeal is about the maintainability of the suit for the recovery of an amount of arrears of maintenance payable to the widow of a deceased landholder (Istmarardar) after the abolition of the Istmarari grant under the Ajmer Abolition of Intermediaries and Land Reforms Act (Act No. III of (1955)) hereinafter referred to as the Act.

2. The relevant facts are not in dispute. Late Rao Saheb Rameshwar Singh was the Istmrardar of the estate of Bandanwara in the Former Aimer State. He died some 30 years back and was issueless. He was succeeded by Thakur Chandra Singh, an heir, Thakurani Anop Kanwar was the widow of Rao Sahib Rameshwar Singh. She has been referred to in these proceedings as "Maji Chohan Ji". There was trouble between the Maji Chohanji and Thakur Chandra Singh, the new Istmarardar of Bandanwara. The Ajmer Administration had fixed a maintenance allowance of Rs. 300/- per month for Maji Chohanji and this was being paid by Thakur Chandra Singh. Whenever there was default in the payment of maintenance, the Ajmer Administration would intervene and then the arrears

would be paid by Thakur Chandra Singh to Maji Chohanji.

3. On 26-7-1956 Maji Chohanji executed a will in favour of her brother Hamir Singh authorising him to receive all her assets and properties. Maji Chohanji expired on 5-2-1957. Her obsequies were performed by Hamir Singh who had spent Rs. 1102/4/ over it.

4. On 13-1-1958 Hamir Singh filed a suit against Thakur Chandra Singh in the Court of Civil Judge, Ajmer for the recovery of (i) arrears of maintenance of late Maji Chohanji from 1-11-1954 to 5-2-1957 at the rate of Rs. 300/- per month, in all Rs. 8150/-, (ii) Rs. 1102/4- as expenses incurred, total Rs. 9252/4.

5. The defendant contested the suit on a number of grounds. After recording evidence the learned Civil Judge reached the conclusion that the maintenance had been paid to the deceased upto 31-12-1954 and accordingly he held that maintenance from 1-1-1955 to 5-2-1957 alone was due. Further learned Civil Judge held that the amount of Rs. 1102/4/ was spent by the plaintiff for the last rites of the late Maji Chohanji. The learned Civil Judge also held that the will by Maji Chohanji in favour of the plaintiff was proved. Consequently the learned Judge decreed the plaintiff's suit for an amount of Rs. 8642/4/. Aggrieved by the decree of the learned Civil Judge the defendant Thakur Chandra Singh went up in appeal to the Court of District Judge, Ajmer.

6. It was conceded before the learned District Judge that the Maji Chohanji was entitled to the arrears of maintenance from 1-1-1955 to 31-7-1955 i.e. for seven months. This amount came to Rs. 2100/-. It was, however, contended by the defendant appellant that as the estate stood abolished under the Act with effect from 1-8-1955 the suit in a Civil Court was not competent for the period subsequent to 1-8-1955. Section 78 of the Act was relied on.

7. The learned District Judge observed that inasmuch as the statement of claim filed by the defendant u/s 12 of the Act did not contain any details of the "Gujaredar" as required u/s 12 (2) (3) of the Act, the Compensation Commissioner was not in a position to determine the allowance payable to the Maji Chohanji. Consequently the learned District Judge came to the conclusion that the defendant could not escape his liability to pay the cash annuity to Maji Chohanji from out of the compensation that he had got in lieu of the abolition of the estate.

8. The second point argued before the learned District Judge was that the plaintiff was not entitled to recover from the defendant the funeral expenses. This was repelled by the learned District Judge observing that the funeral expenses of a widow are payable out of the estate of her husband. The learned District Judge fortified himself by referring to Section 566 of the Principles of Hindu Law by D. F. Mulla, 12th Edition. In the result he dismissed the appeal and affirmed the decree of the first Court.

9. The defendant then filed a review application before the learned District

Judge. In the review application it was contended that the suit was barred by the provisions of Section 25 of the Ajmer Land and Revenue Regulation, 1877. The learned District Judge did not entertain this plea. He observed that this was not the subject-matter of any issue nor was it argued before him on behalf of the defendant in the appeal. Consequently he dismissed the review application.

10. It is in these circumstances that the defendant has come in further appeal to this Court.

11. His learned counsel has argued only one point viz., that the suit was barred by the provisions of Section 78 of the Act. I may read this section:

"78. Bar of jurisdiction of civil courts.--(1) Save as otherwise provided in this Act, no Civil or Revenue Court shall have jurisdiction to settle, decide, or deal with any question which is, by or under this Act, required to be settled, decided or dealt with by the State Government, the Sub-Divisional Officer, the Collector, the Compensation Officer or the Compensation Commissioner.

(2) Except as otherwise provided in this Act no order of the State Government, a Sub-Divisional Officer, a Compensation Officer or the Compensation Commissioner under this Act shall be called in question in any Court." Sub-section (1) clearly contemplates that whenever any question is required to be settled, decided or dealt with by any of the authorities under the Act, then no civil or revenue Court shall have jurisdiction to settle, decide or deal with any such question save as otherwise provided in this Act.

11-A. Section 11 provides for maintenance allowance payable out of the compensation. Its relevant provision runs as follows:--

"11. Maintenance Allowance payable from Compensation:-- (1) Where under any law or custom having the force of law, a Guzaredar is entitled to receive at the date of vesting a Guzara out of the income of any estate, he shall be entitled to receive out of the compensation payable to the intermediary in respect of the estate such amount as the Compensation Commissioner may having regard to the matter specified in Subsection (2) determine."

Section 12 provides for submission of claims. It lays down that every intermediary whose estate has been acquired in this Act shall within two months from the date of vesting, file in the prescribed form a statement of Claim for compensation before the Compensation Officer. Sub-section (2) thereof lays down what the statement of claim has to contain. Clause (viii) thereof lays down that the statement has to contain the names of Guzaredars, if any, together with the details about the cash annuity or the area of land enjoyed by each, and the gross income from the said area.

12. The term "Guzara" has been defined, inter alia, to mean a fixed cash annuity granted by an intermediary for the maintenance of his relatives and dependents. The term "estate" has been defined to mean an Istamrari estate, Jagir, Bhoom, Muafi and land held by a Guzaredar.

13. Since no land was held by Maji Chohanji, what she was getting would be only a cash annuity and this was not an estate within the meaning of the Act. In Section 11 of the Act two things are provided. The first part of it is a declaratory provision. It lays down that what a Guzaredar was entitled to receive at the date of the vesting of the estate as Guzara out of the income of the estate, he shall be entitled to receive out of the compensation payable to the intermediary. The second part gives a discretion to the Compensation Commissioner who may determine what amount out of the compensation has to be determined having regard to the matters contained in Sub-section (2) of Section 11 of the Act.

14. Therefore, the right to receive maintenance by the Maji Chohanji was not a question required to be determined by the Compensation Commissioner. The section only vested the Compensation Commissioner with the discretion to fix the amount as may be considered necessary on account of the changed circumstances; because henceforward the intermediary was not to receive the income of his estate as such but a compensation and that, too, only for a certain fixed period. The discretion vested in the Compensation Commissioner to adjust this liability of the intermediary consequent to the loss of the estate. Now this discretion could be exercised by the Compensation Commissioner only if he were moved by any one to alter the amount of maintenance that the widow of former intermediary was getting. It is noteworthy that as observed by the learned District Judge the Istmrardar had not given the particulars of the Guzara of Maji Chohanji in the statement of claim. Consequently it cannot be held that the Compensation Commissioner was required to determine the amount of the maintenance payable to Mali Chohanji. Bar created by Sub-section (1) of Section 78 of the Act would apply only if it can be postulated in the facts and circumstances of the case that the Compensation Commissioner was required to settle, decide or deal with any question about the compensation of Maji Chohanji.

15. Apart from this before the death of Maji Chohanji Hindu Adoptions and Maintenance Act, 1956 had come into force. Section 4 of this Act gives an overriding effect to it. Section 22 lays down that the heirs of a deceased Hindu are bound to maintain the dependants of the deceased out of the estate inherited by them from the deceased. Thus Maji Chohanji being the widow of the previous Istmrardar, was entitled to receive maintenance from the heir of the husband of Maji Chohanji, namely, Thakur Chandar Singh.

16. Apart from that the Act of 1955 cannot bar enforcement of claims for maintenance from the properties of the deceased Istmrardar other than the Istmrari estate. Section 78 of the Act would not create any bar in respect of such private properties of the late Istmrardar.

17. In view of the above I do not find any force in this appeal which I hereby dismiss but the parties are left to bear their own costs.