

Singhai Ajit Kumar & Another

Vs

Ujayarsingh and Others

Civil Appeal No. 462 of 1957

(K. Subha Rao, Raghuvar Dayal JJ)

16.03.1961

JUDGMENT

SUBHA RAO, J. –

This appeal by special leave is directed against the judgment and decree of the High of Judicature at Nagpur confirming the judgment of the 2nd Additional District Judge, Jabalpur, in Civil Suit No. 9-A of 1942, filed by respondents 2 to 7 here in claiming to be the reversioners of the estate of one Raja Ajitsingh. Ajit Singh was the Raja of Saliya Estate consisting of 73 villages and other property situate in Jabalpur and Saugor Districts. Ajit Singh died on January 2, 1910, leaving behind him two widows named Rani Khuman Kuar and Rani Anant Kuar and an illegitimate son named Ramraghuraj Singh. Rani Anant Kuar died in or about 1914 and Rani Khuman Kuar passed away on February 1, 1922. After the death of Raja Ajit Singh, the Estate was taken over by the Court of Wards on behalf of the widows in the year 1913 and remained in its possession till March 27, 1923. After the death of Rani Khuman Kuar, the local Government issued a notification recognizing Ramraghuraj Singh as the successor to the Estate; but, for one reason or other, the Court of Wards continued to manage the Estate on his behalf from September 23, 1923. Ramraghuraj Singh died on April 23, 1932, and on his death the first respondent, the son of Ramraghuraj Singh, was declared as the ward of the Court of Wards which continued to manage the Estate on his behalf. Respondents 2 to 6, claiming to be the reversioners to the Estate of Raja Ajit Singh, filed a suit on June 15, 1935, for recovery of possession of the Estate. Appellants 1 and 2 are alleged to be the assignees pendente lite of the interest of the alleged reversioners.

The plaintiffs averred that Ramraghuraj Singh was the son of one Jhutti by her husband one Sukhai and that as Raja Ajit Singh had no issue, he and the Ranies treated the boy as their son, that the Lodhi community to which Raja Ajit Singh belonged was not a sudra caste and that, therefore, even if Ramraghuraj Singh was the illegitimate son of Raja Ajit Singh, he was not entitled to a share, and that in any view half of the share of the widows in the Estate would devolve, on their death, on the reversioners to the exclusion of the illegitimate son. They further pleaded that the possession of the Court of Wards of the entire Estate from January, 2, 1910 to February 1, 1922, was adverse to the illegitimate son and, therefore, he lost his title, if any, to the said Estate. The case of the first respondent was that Raja Ajit Singh belonged to the sudra caste, that Ramraghuraj Singh was the son of the said Raja by a continuously and exclusively kept concubine named Raj Dulari, that the widows never questioned the right of Ramraghuraj Singh to a share in the property of Raja Ajit Singh, that therefore there was no scope for the plea of adverse possession, and that, after the death of the widows, the succession to the Estate of Raja Ajit Singh in respect of one half share opened out and the illegitimate son, he being the nearest heir, succeeded to that share also.

The trial court as well as the High Court concurrently gave the following findings : (1) Raja Ajit Singh belonged to the sudra caste; (2) Raja Raghuraj Singh was the son of Raja Ajit Singh by a continuously and exclusively kept concubine by name Raj Dulari, who had passed into the concubinage of Raja Ajit Singh after the death of her husband; (3) as the illegitimate son of Raja Ajit Singh, Ramraghuraj Singh succeeded to a moiety of the Estate of his putative father and the two widows of Raja Ajit Singh succeeded to the other moiety of his Estate; (4) as there was no daughter or daughter's son, after the death of the widows, Ramraghuraj Singh, being the sole surviving heir of his putative father, inherited a moiety of the Estate which was held by the widows during their lifetime; (5) Ramraghuraj Singh was all along in joint possession of the Estate with the widows, and, although the Court of Wards had assumed superintendence on behalf of the Ranies, he was not out of possession during their lifetime and as such his title could not be extinguished by adverse possession; (6) the plaintiffs' suit was barred under s. 26 of the Central Provinces Court of Wards Act; and (7) the plaintiffs' claim was barred by limitation.

While the trial court held that it had not been established that the plaintiffs were the reversioners of Raja Ajit Singh, the High Court held that it had been proved. In the result the trial court dismissed the suit and, on appeal, the High Court confirmed it.

The 2nd appellant died and his legal representatives were not brought on record and the appeal so far as the 2nd appellant is concerned has abated. The 1st appellant alone proceeded with the appeal.

It is the usual practice of this Court to accept the concurrent findings of the courts below. There are no exceptional circumstances in this case, at any rate none was brought to our notice, to compel us to depart from the usual practice. We, therefore, accept the concurrent findings, namely, that Raja Ajit Singh was a member of the sudra caste and that Ramraghuraj Singh was the son of Raja Ajit Singh by a continuously and exclusively kept concubine named Raj Dulari, who passed into his concubinage after the death of her husband.

The main question that arises in this appeal is whether an illegitimate son of a sudra vis-a-vis his self acquired property, after having succeeded to a half share of his putative father's estate, will be entitled to succeed to the other half share got by the widow, after the succession opened out to his putative father on the death of the said widow. The answer to the question depends upon the content of the right of an illegitimate son to succeed to the self-acquired property of his putative father. The source of his right is found in the relevant Hindu Law texts. Mitakshara in explanation of the texts of Manu and Yajnavalkya says in Chapter I, s. 12 in the following three verses thus :

"1. The author next delivers a special rule concerning the partition of a Sudra's goods. 'Even a son begotten by a Sudra on a female slave may take a share by the father's choice. But, if the father be dead, the brethren should make him partaker of the moiety of a share : and one, who has no brothers, may inherit the whole property, in default of daughter's sons'.

2. The son, begotten by a Sudra on a female slave, obtains a share by the father's choice, or at his pleasure. But, after the demise of the father, if there be sons of a wedded wife, let these brothers allow the son of the female slave to participate for half a share : that is, let them give him half as much as is the amount of one brother's allotment. However, should there be no sons of a wedded wife, the son of the female slave takes the whole estate, provided there be no daughters of a wife, nor sons of daughters. But, if there be such, the son of the female slave participates for half a

share only.

3. From the mention of a Sudra in this place it follows that the son begotten by a man of a regenerate tribe on a female slave, does not obtain a share even by the father's choice, nor the whole estate after his demise. But, if he be docile, he receives a simple maintenance."

No mention of a widow is found in the above verses, but in Duttaka Chandrika, the author says in V. 30, 31 thus :

"If any, even in the series of heirs down to the daughter's son, exist, the son by a female slave does not take the whole estate, but on the contrary shares equally with such heir."

The leading decision on the rights of an illegitimate son is that of the Judicial Committee in *Raja Jogendra Bhupati Hurri Chundun Mahapatra v. Nityanund Mansingh* [(1890) L.R. 17 I.A. 128.]. There, one Raja died leaving behind him a legitimate son and an illegitimate son. On the death of the legitimate son, who had succeeded to the Raja, it was held that the illegitimate son succeeded to him by survivorship. Sir Richard Couch cited two verses from *Mitakshara* Chapter I, section 12. We have already extracted the said verses. Commenting upon these verses, the learned Judge observed at p. 132 thus :

"Now it is observable that the first verse shews that during the lifetime of the father the law leaves the son to take a share by his father's choice, and it cannot be said that at his birth he acquires any right to share in the estate in the same way as a legitimate son would do. But the language there is very distinct, that "if the father be dead the brethren should make him partaker of the moiety of a share". So in the second verse the words are that the brothers are to allow him to participate for half a share, and later on there is the same expression : "The son of the female slave participates for half a share only"."

On that interpretation, he accepted the view of the Bombay High Court and held that an illegitimate son and a legitimate son, being members of an undivided Hindu family governed by *Mitakshara*, the illegitimate son becomes entitled to the whole of the immoveable property of the family if the legitimate son dies without any male issue. The Judicial Committee again considered the right of an illegitimate son in *Kamulammal v. Visvanathaswami Naicker* [(1922) L.R. 50 I.A. 32.]. There it was held that in a competition between a widow and an illegitimate son to the property of his putative father, the illegitimate son takes half of the property and the widow the other half. Sir Lawrence Jenkins observed at p. 37 thus :

"Here the contest is between the illegitimate son and the widow, and though the widow is not named in the text it is well settled that as a preferential heir to the daughter's son she is included among those who share with the illegitimate son, and it would serve no useful purpose to speculate why she was not mentioned in the text."

The status of the illegitimate son was subject of further scrutiny by the Privy Council in *Vellaiyappa Chetty v. Natarajan* [(1931) I.L.R. 55 Mad. 1.]. There the question arose in the context of an illegitimate son's right to maintenance from a joint family property after the death of his father who left no separate property. The Judicial Committee held that he was entitled as a member of the

family to maintenance out of the joint family property in the hands of the collaterals with whom the father was joint. In dealing with the question of status of an illegitimate son, Sir Dinshah Mulla, speaking for the Court, after considering the relevant Hindu Law texts and decisions, arrived at the following conclusion at p. 15 :

"On a consideration of the texts and the cases on the subject their Lordships are of opinion that the illegitimate son of a Sudra by a continuous concubine has the status of a son, and that he is a member of the family; that the share of inheritance given to him is not merely in lieu of maintenance, but in recognition of his status as a son;.....".

It is not necessary to multiply decisions. The law pertaining to the right of inheritance of an illegitimate son to his putative father's self-acquired property may be stated thus : An illegitimate son has the status of a son under the Hindu Law and he is a member of the family. But his rights are limited compared to those of a son born in wedlock. He has no right by birth and, therefore, he cannot demand partition during his father's lifetime. During the lifetime of his father, the law allows the illegitimate son to take only such share as his father may give him. But on his father's death, he takes his father's self-acquired property along with the legitimate son and in case the legitimate son dies, he takes the entire property by survivorship. Even if there is no legitimate son, the illegitimate son would be entitled to a moiety only of his father's estate when there is a widow, daughter or daughter's son of the last male holder. In the absence of any one of the three heirs, he succeeds to the entire estate of his father. From the premises it follows that an illegitimate son, except to the extent circumscribed by the Hindu Law texts, has the status of a son and is heir to the self-acquired property of his putative father. If that be his undoubted right under the Hindu Law, on what principle can he be deprived of his right of succession to the other moiety of his father's property after the death of the widow ? Under the Hindu Law, the death of the widow opens inheritance to the reversioners and the nearest heir at the time to the last full owner becomes entitled to possession. When the succession opens, in a competition between an illegitimate son and other reversioners, the illegitimate son is certainly a nearer heir to the last male holder than the other reversioners. If he was the nearest heir only yielding half a share to the widow at the time of the death of this putative father, how does he cease to be one by the intervention of the widow's estate ? As on the death of the widow the estate reverts back to the last male holder, the succession shall be traced to him, and, if so traced, the illegitimate son has a preferential claim over all other reversioners. In Mayne's Hindu Law, 11th edn., this position has been controverted in the following manner at p. 637 :

"The illegitimate son, though he inherits on the death of his putative father, along with or in default of male issue, widow or daughter, cannot come in as a reversionary heir on the death of the widow or daughter, as he is undoubtedly neither a sagotra nor a bhinnagotra sapinda of the last male-holder within the text of Manu."

We regret our inability to accept this proposition, for, if accepted, we would be speaking in two voices. Once it is established that for the purpose of succession an illegitimate son of a Sudra has the status of a son and that he is entitled to succeed to his putative father's entire self-acquired property in the absence of a son, widow, daughter or daughter's son and to a share along with them, we cannot see any escape from the consequential and logical position that he shall be entitled to succeed to the other half share when succession opens after the widow's death. The intervention of the widow only postpones the opening of succession to the extent of half share but it cannot divert the succession through a different channel, for she cannot constitute herself a new stock of descent. The opinion expressed in Mayne's Hindu Law is sought to be supported by the author by reference

to a decision of the Madras High Court in *Karuppayee Ammal v. Ramaswami* [(1932) I.L.R. 55 Mad. 856.]. But a reference to that judgment shows that no such proposition has been laid down therein. There the facts were that on the death of a sudra, the last male owner of an estate, his widow succeeded to a moiety thereof and his illegitimate son to the other moiety; the widow then died leaving behind her a son of the daughter of the last male owner and the illegitimate son above mentioned. The Madras High Court held that the daughter's son was entitled to the moiety that had vested in the widow and the illegitimate son was not entitled to any portion thereof. The reason for that conclusion is found at p. 868 and it is :

"The principle underlying the doctrine of reverter referred to is that the last male-holder's estate is inherited by females who have no free right of alienation and who hold a peculiar kind of estate called "woman's estate" and on whose death the then heir of the last male-holder succeeds to the last male-holder's estate. From its very nature, the doctrine could not apply legitimately to a case where the last male-holder's estate vested on his death not in a female heir but in a male heir also. In such a case, the doctrine as such would not strictly apply, nor has it been, so far as we are aware, applied to such a case."

The reason of the decision is there clear and that is when a daughter's son succeeds to an estate, there is no further scope for the application of the doctrine of reverter. The learned Judges expressly left open the present question when they said, "We are not now concerned with the question as to what would become of the property if the last of the daughters died without leaving a daughter's son, in such circumstances". This decision cannot, therefore, be invoked in support of the contention that in a case where the doctrine of reverter applies the illegitimate son is excluded from succession. On the other hand, the Nagpur High Court in *Bhagwantrao v. Punjaram* [I.L.R. 1938 Nag. 255.] rightly came to the conclusion that where on a partition between a legitimate and an illegitimate son, the widow was allotted a share, on her death the illegitimate son was entitled to a share in the property. We, therefore, hold that on death of the widow, the illegitimate son, the father of the first respondent herein, succeeded to the other half share of the estate of his putative father Raja Ajit Singh.

It is next contended that the widows acquired an absolute interest in the estate of Raja Ajit Singh by adverse possession and, therefore, the property would devolve not on Raja Ajit Singh's heirs but on the heirs of the widows. On the question of adverse possession also, both the courts below have held against the appellant. But learned counsel argued that in the circumstances of this case the said finding was a mixed question of fact and law. It was said that the courts below missed the point that the Court of Wards, representing the widows, held the Estate adversely to Ramraghuraj Singh in respect of his half share and, therefore, the fact that during its management the widows did not deny the title of Ramraghuraj Singh or the fact that they admitted his title could not affect the question of adverse possession. Assuming that learned counsel for the appellant was correct in his contention, we fail to see how the said legal position would advance the appellant's case, for the Court of Wards admittedly managed only the widows' limited estate and it is not the case of the appellant that the Court of Wards acquired on behalf of the widows an absolute interest in respect of the half share of Ramraghuraj Singh in the suit properties. The plaintiffs themselves claimed to be reversioners of Raja Ajit Singh on the ground that the succession to him opened out when the widows died; and if their contention be accepted, namely, that the widows acquired an absolute interest in half of the property, they would be non-suited in respect thereof on the simple ground that their suit was not to recover the property as the heirs of the widows. But, as we have pointed out, the widows would have acquired a title by a adverse possession in respect of the share of Ramraghuraj Singh only in

their capacity as owners of a limited estate i.e., in regard to their half share they held it as widow's estate and in respect of the other half-share of Ramraghuraj Singh they acquired a right by a adverse possession only a limited estate therein. The result would be, when the widows died the succession to the estate of Raja Ajit Singh would open out and the illegitimate son, as the nearest heir, would succeed to the entire estate. We, therefore, reject this contention.

In the result, the appeal fails and is dismissed. The respondent will not get any costs as the Advocate for the respondent is absent in the Court when the judgment is being delivered.

Appeal dismissed.

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