Mara and Others

Vs

Nikko and Others

Civil Appeal No. 490 of 1962

(M. Hidayatullah, N. Rajgopala Ayyangar JJ)

24.03.1964

JUDGMENT

HIDAYATULLAH, J. –

This is a defendants' appeal by special leave against the order of the High Court of Punjab dated October 20, 1959 dismissing summarily second appeal filed by the appellants. The suit was filed by the respondents for possession of a plot, a house and a Taur and half share in certain lands as preferential heirs of one Pohla after the death of Pohla's widow Punjab widow Punjab Kaur on February 7, 1952. The plaintiffs are Smt. Nikko, sister of Pohla and Jarnail Singh, son of Smt. Har Kaur who was another sister of Pohla. The first appellant Mara is a collateral of 4th degree of Pohla and the other two appellants are Mara's sons. The following genealogy gives the relationship of the parties :-

Sultani | | ---------- | | | | Sohela Baghaila | | | | Pir Bux ---------- | | | | | | Jaimal Sunder Mara | died sonless defendant No. 1 | and wifeless | | | | ---------- ---------- | | | | | | | | |Mohinder Singh Major Singh Pohla Mst. Har Kaur Mst. Nikku defendant defendant (son) (daughter) alia Punjab No. 2 No. 3 | | Kaur (daughter) | | wife of Santa Shrimati Jarnail son of Singh Jat, Punjab Arjan Singh resident of Kaur Plaintiff Ayali Kalan, widow No. 2 Plaintiff No. 1.##

The parties are Jhalli Jats of village Chomon, Tehsil and District Ludhiana. The plaintiffs claimed that the property was non-ancestral and according to the Riwaj applicable to the family, sisters excluded collaterals in respect of both ancestral and non-ancestral properties. It appears that after the death of Punjab Kaur, Mara got one of the fields mutated in his own name and thereafter took possession of the whole property. He made gifts to his sons of some of the properties and that is why they were joined in the suit. Mara and his elder son Mohinder Singh filed a joint written statement in which they raised many pleas the details whereof need not be given here. They claimed that according to the custom applicable to the family, sister and sister's sons were excluded from inheritance in respect of properties whether ancestral or non-ancestral. They, however claimed that the property was ancestral and denied the genealogy.

The Subordinate Judge, Second Class, Ludhiana framed six issues of which issues No. 2, 3 and 4 alone are important in this appeal. Those issues are :-

"2. Whether the property is ancestral qua Pohla and Mara ?"

"3. Whether the question of the nature of the property is material for the decision of

this case ?"

"4. Whether the plaintiffs are preferential heirs to the estate of Smt. Panjabo widow of Pohla ?"

The parties led voluminous oral evidence in the case but the Subordinate Judge did not rely upon it. We have not been referred to any portion of this evidence in this appeal. The learned Subordinate Judge held that the suit lands were not ancestral and further that no evidence was produced to prove that the other properties were ancestral. On the third issue he referred to question No. 52 from the Riwaji-i-am relating to the settlements of 1882 and 1909 - 1910 (Exts. D-1 and D-2) in which it is stated that among the Jhalli Jats of Tehsil Ludhiana sisters or sisters' sons never succeed. He, however, held on the authority of Ahmad v. Mohammad and others [A.I.R. 1936 Lah. 809] that since question refers only to ancestral property and that the nature of the property was thus material. On the fourth issue he held on the strength of the answer to question No. 52 that sisters and their sons were excluded from ancestral property but as the answer was not applicable to non-ancestral property the personal law would apply unless special custom was proved. He therefore placed the burden on the defendants relying upon Harnam Singh v. Mst. Gurdev Kaur [1957 P.L.R. 609], Mst. Sukhwant Kaur v. S. Balwant Singh and others [A.I.R. 1951 Simla 242] and Mst. Jeo v. Ujagar Singh. [1953 P.L.R. 1] As he had already rejected the oral evidence and there was no other proof that the property was ancestral, he decreed the suit.

On appeal the District Judge, Ludhiana remitted there issues to the trial Judge and they were as follows :-

"Issue No. 4 :-

Whether there is any custom by which the parties are governed according to which the plaintiffs are entitled to succeed to the ancestral as well as non-ancestral left by the Pohla in preference to Mara defendant ?"

"Issue No. 4A :-

Whether under the custom by which parties are governed the defendant Mara is a preferential heir to the plaintiffs in respect of the ancestral as well as non-ancestral property of Pohla deceased ?"

"Issue No. 4B :-

If the custom set out by the parties is not proved, whether the plaintiffs are preferential heirs to Mara defendant under personal law applicable to the parties ?"

On these issues the report of the Subordinate Judge, First Class, Ludhiana was against the contention of the defendants. The learned District Judge held, in agreement with the Sub-ordinate Judge, that the lands in suit were not ancestral and he held also that there was no evidence to show that among the Jhalli Jats of Ludhiana collaterals excluded sisters and sisters' sons in respect of non-ancestral property. He referred to Exts. 9, 10, 12 and 13 which were judgments in other cases as evidencing the contrary. He accordingly dismissed the appeal. The Second appeal filed thereafter was dismissed summarily by the High Court.

The first question to decide is whether these lands are ancestral or non-ancestral. The concurrent

finding of the two courts below is that none of the properties in dispute is ancestral. The High Court prima facie saw no reason to differ from any of the conclusions of the courts below. It is contended on the strength of a Kafiat of Thulla Malla prepared at the settlement of 1882 that this land came into possession of one Sekhu who was admittedly a common ancestor in the family and the property, which is now in dispute, must be regarded as ancestral. It is contended that the finding is vitiated because the two courts below did not read this Kafiat along with the extracts from the Records of rights of the years 1882 and 1909-1910 in which the names of Jaimal and Sunder, sons of Baghela, and of Pir Bux son of Sohila are shown as persons in enjoyment of half shares in these lands. It is argued that the lands in suit are thus proved to be ancestral as they belonged to Sekhu the common ancestor and the Riwaj-i-am as disclosed in question No. 52 applies to the case. It appears, however, from the Kafiat as well as the Record of Rights that these lands were once abandoned and when people came back Sekhu got possession of some lands but in addition to these Sekhu's descendants had acquired the share of one Dalpat in the Thulla and subsequently the entire estate of another holder, namely, Maidas was purchased by Jaimal, Sunder and Sohila. This shows that the lands in dispute are not entirely ancestral but are made up of lands which may be described as ancestral and non-ancestral.

Now, it has been ruled in the Punjab consistently that where lands are so mixed up that the ancestral and non-ancestral, portions cannot be separated they must be regarded as non-ancestral, unless it is shown which are ancestral and which are not. This was laid down by the Privy Council in Avtar Singh v. Thakar Singh [35 I.A. 206]. It was held by Mr. Justice Kapur (as he then was) in Indar Singh v. Gulzara Singh and others [A.I.R. 1951 Pb. 345] basing himself upon Saif-ul-Rahman v. Mohammand Ali Khan [I.L.R. 9 Lah. 95] and Jagtar Singh v. Raghbir Singh [I.L.R. 13 Lah. 165] that land ceases to be ancestral if it comes into the hands of an owner otherwise than by descent. Once these conclusions are reached, it is quit obvious that the decision of the District Judge not to apply the answer to question No. 52 to non-ancestral land was right. It may be mentioned that the answers to questions refer to ancestral property only and this is now firmly established. In fact, it was not denied at the hearing.

It is, however, contended that there are decisions to show that the right of the collaterals was recognised in respect of even non-ancestral land to the exclusion of sisters and their sons. No ruling from the Law Reports has been brought to our notice. Some cases from the Ambala and Amritsar Districts are cited but those obviously cannot be any authority, because, as is well-known, custom in the Punjab changes from district to district, tehsil to tehsil and pargana to pargana. It has been rules in this Court that paragraph 24 of Rattingan's Digest which excludes sisters from inheritance from non-ancestral property is too widely stated. (See Ujagar Singh v. Mst. Jeo [(1959) Supp. 2 S.C.R. 781] and (Waryam Singh and Others v. Smt. Sukhi and another) (Civil Appeal No. 452 of 1961 decided on April 23, 1963). The learned District Judge cited some instances in which the sisters and sisters' sons were allowed to succeed in preference to collaterals. One of the documents filed by the defendants in the suit (Ext. D-6) also supports the contention of the respondents. In this view of the matter it cannot be said that the application of the personal law to the family by the courts below was erroneous. It is contended lastly that the rulings only show that collaterals of 5th degree are excluded and there is no case showing that a collateral of 4th degree was excluded. If personal law applies, as it does, a collateral of the 4th degree is also excluded.

In our judgment this appeal must fail and is accordingly dismissed with costs.

Appeal dismissed.

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