Radha Rani Bhargava

Vs

Hanuman Prasad Bhargava

Civil Appeal No. 579 of 1961

(R. S. Bachawat, A. K. Sarkar, J. R. Mudholkar JJ)

20.04.1965

JUDGMENT

BACHAWAT, J. –

One Kalyan Singh died sonless in the year 1918 leaving him surviving his window, Mst. Bhagwati and two daughters, Mst. Indrawati and Mst. Radha Rani. By a deed, dated October 10, 1919, Mst. Bhagwati alienated her husband's estate in favour of certain alienees. On October 23, 1931, Mst. Indrawati suing in a representative capacity on behalf of the reversioners to the estate of Kalyan Singh, instituted the sit in the Court of the Additional Civil Judge of Mathura, out of which this appeal arises, impleading the alienees as also Mst. Bhagwati and Mst. Radha Rani as defendants and claiming a declaration that the alienation was null and void against the subsequent heirs of Kalyan Singh and that on the death of Mst. Bhagwati, his next heirs would be entitled to get possession of the alienated properties. On August 12, 1941, the trial Judge decreed the suit and granted a declaration that the alienation "is void beyond the lifetime of Mst. Bhagwati and does not bind the reversioners, who would be enti

On the merits, the respondents have very little to say. The High Court took the view that the effect of ss. 14, 15 and 16 of the Hindu Succession Act, 1956, was that after the coming into force of the Act, there are no reversioners and no reversionary rights. The Patna High Court in some of its earlier decisions took the same view, but other High Courts took the view that s. 14 did not apply to properties in the possession of alienees under an alienation made by the Hindu female before the Act came into force, and in respect of such properties, ss. 14, 15 and 16 of the Act did not abolish the reversioners and reversionary rights. In Gummalapura Taggina Matada Kotturuswami v. Serta Veerayya and others (1) (1959) Supp. 1 S. C. R. 968, 975-976, this Court approved of the latter view, and this opinion was followed by this Court in Brahmadeo Singh and another v. Deomani Missir and others (2) Civil Appeal No. 130 of 196 decided on October 15, 1962. In the last case, the trial Court had decreed a suit by the revers

But the contesting respondents raise certain preliminary objections, and they contend that the appeal should be dismissed.

The first preliminary objection is that the three sons of Mst. Indrawati and the two sons of Mst. Radha Rani are improperly joined as respondents Nos. 8 to 12 in the petition of appeal. Respondents Nos. 8 to 12 were not parties to the appeal before the High Court, nor was any order obtained permitting their joinder in the appeal to this Court. The contesting respondents, therefore, pray that the names of respondents Nos. 8 to 12 be struck off from the record. The appellant does not object to this prayer. We direct accordingly that the names of respondents Nos. 8 to 12 be struck off from

the record.

The next preliminary objection is that the petition of appeal is a nullity as Mst. Bhagwati, a dead person was impleaded as a party respondent therein. As Mst. Bhagwati was dead on the date of the filing of the petition of appeal, she could not be shown as a respondent in this appeal. But the appeal may proceed against the other respondents on the footing that Mst. Bhagwati is not party to the appeal.

The next preliminary objection is that the appeal is defectively constituted and is not maintainable in the absence of the heirs of Mst. Bhagwati. The heirs of Mst. Bhagwati are Mst. Radha Rani and the sons and daughters of Mst. Indrawati. The appellant did not obtain any order of Court substituting the heirs of Mst. Bhagwati in her place. Besides the three sons of Mst. Indrawati who are shown as respondents Nos. 10, 11 and 12 in the petition of appeal, Mst. Indrawati left another son, Lallu also known as Ram Prasad and two daughters, Ram Dulari and Vimala. Lallu, Ram Dulari and Vimala are not parties to the appeal. Respondents Nos. 10, 11 and 12 were improperly added as parties in the petition of appeal and their names must be struck off. The result is that none of the sons and daughters of Mst. Indrawati are parties to the appeal. It follows that all the heirs of Mst. Bhagwati are not parties to the appeal, and the question is whether the appeal is defectively constituted in their absence.

In this connection, it is necessary to consider whether the heirs of the widow were necessary parties to a suit against the alienee either for a declaration that the alienation is void beyond her lifetime or for possession of the alienated property. In the case of an alienation by a Hindu widow, without legal necessity, the reversioners were not bound to institute a declaratory suit during the lifetime of the window. They could wait until her death and then sue the alienee for possession of the alienated property treating the alienation as an nullity without the intervention of any Court. See Bijoy Gopal Mukherji v. Krishna Mahish Debi (1) (1907) I. L. R. 34 Cal. 329, 333 P. C. To such a suit by the reversioners for possession of the property after the death of the window, the heirs of the widow were not necessary parties. The reversioners could claim no relief against the heirs of the widow and could effectively obtain the relief claimed against the alienee in their absence. Instead of waiting until her dea

As the reversioners were not entitled to the possession of the property at the time of the institution of the suit, the next reversioner could then sue for a bare declaration and the proviso to s. 42 of the Specific Relief Act, 1877 did not constitute a bar to the suit. The declaratory suit does not become defective because during the pendency of the suit, the reversioners become entitled to further relief. The next reversioner is entitled to continue the declaratory suit; but in the absence of an amendment of the plaint, a decree for possession of the property cannot be passed in the suit, and if the reversioners are to get any real benefit, they must institute a suit for possession of the property within the period of limitation.

Had Mst. Bhagwati died during the pendency of the suit, her heirs would not have been necessary parties to the suit. The position is not altered because the suit has been dismissed on appeal by a decree of the High Court, and during the pendency of the further appeal to this Court, Mst. Bhagwati died, and the appeal against her has abated. The appeal against the surviving respondents has not abated, and we think that the appeal is not defectively constituted in the absence of the heirs of Mst. Bhagwati. In the appeal to this Court, Mst. Radha Rani asks for the identical relief which the original plaintiff sought in the suit. She can get effective relief in the appeal in the absence of the heirs of Mst. Bhagwati just as the original plaintiff could obtain the relief in the suit in their

absence. The fact that the suit was dismissed by the High Court in the presence of Mst. Bhagwati makes no difference. In the suit, the plaintiff asked for the necessary relief against the alienees; Mst. Bhagwati was joined as

We hold that the appeal is not defective on account of the non-joinder of necessary parties. Civil Miscellaneous Petition No. 2219 of 1964 is dismissed, save that we direct that the names of respondents Nos. 8 to 12 be struck off from the record.

In the result, the appeal is allowed, the judgment and decree, dated September 25, 1957, of the High Court are set aside, and First Appeal No. 232 of 1942 must now be heard on the merits by the High Court. The contesting respondents must pay to the appellant the costs in this Court.

Appeal allowed.

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