

Shrimati Rani Bai

Vs

Shri Yadunandan Ram and Another

Civil Appeal No. 532 of 1966

(J.C. Shah, V. Ramaswami - I, A.N. Grover JJ)

19.02.1969

JUDGMENT

GROVER, J. -

1. This is an appeal in forma pauperis by special leave from a judgment of the Madhya Pradesh High Court at Jabalpur dismissing the suit of the appellant for a declaration that she was the owner of the suit properties and for possession thereof.

2. Jangi Jogi had inherited from his father properties consisting of some groves and a house in village Mukundpur which was in the erstwhile State of Rewa which later became a part of the State now called Madhya Pradesh. He had a son Laldas who is stated to have died in 1945 leaving the appellant, his widow, as his heir and legal representative. After the death of Laldas Jangi Jogi is alleged to have married Mst. Jugli Bai in the year 1948. Jangi Jogi himself died sometime in 1950. Respondent No. 1 is stated to have raised a claim to the properties of Jangi Jogi by virtue of a gift deed. On the basis of that deed he moved the criminal courts under Section 145, Criminal Procedure Code and on December 29, 1962, an order was made directing the possession of the properties to be delivered to the said respondent. The appellant, therefore, instituted a suit in the court of Civil Judge at Rewa for a declaration in respect of her rights and for possession of the properties mentioned in the plaint. The suit was instituted by the appellant along with Jugli Bai, the widow of Jangi Jogi. Respondent No. 1 who was the sole defendant in the suit put up several pleas claiming, inter alia, that he had been in continuous possession of the suit properties for more than twelve years and had become the owner. Alternatively it was pleaded if any one could have any interest it would be plaintiff No. 2 Jugli Bai but she had as a matter of fact not joined in in the suit and her thumb-impression on the plaint had been obtained by fraud. On the pleadings of the parties the trial court framed as many as 12 issues. During the pendency of the suit plaintiff No. 2 Jugli Bai entered into compromise with respondent No. 1 giving up all her claims.

3. The trial court found that the thumb-impression of plaintiff had not been obtained by fraud but that she had changed sides much to the disadvantage of the appellant. As regards the deed of gift set up by respondent No. 1, it was found that Jangi Jogi had never made such a gift. It was further found that the appellant was in possession until she had been dispossessed by respondent No. 1 by means of the proceedings under Section 145, Cr.P.C. According to the trial court the said respondent had illegally occupied the lands for some time and since the proceedings under Section 145, Cr.P.C., resulted in his favour he was put into possession through the process taken under those proceedings. So far as the title of respondent No. 1 was concerned it was found that his position was that of a mere trespasser. The trial court, however, non-suited the appellant on the ground that since her husband had died in the lifetime of Jangi Jogi the later's estate devolved on his widow Jugli Bai,

who would be his only heir and she had entered into a compromise with respondent No. 1. The appellant went up in appeal to the court of District Judge, Rewa. The learned District Judge examined the point whether the compromise entered into by one of the plaintiffs Jugli Bai with the defendant was valid and should have been given effect to by the trial court. According to him it could not be said that the appellant had no right or interest in the properties left by Jangi Jogi. He felt that the compromise which had been entered into by Jugli Bai and the defendant should not have been accepted as the appellant was not a party to that compromise. He was further of the view that the trial court had not decided all the matters which arose for decision. He, therefore, set aside the decree of the trial court and remanded the case with directions to readmit the suit under its original number and dispose it of in accordance with law. Respondent No. 1 filed a second appeal before the High Court. The High Court took the view that the present appellant could have no interest in the properties left by Jangi Jogi. She could not take advantage of the provision of Section 3(2) of the Hindu Women's Right to Property Act, 1937, which conferred certain rights on the widow of a pre-deceased son in view of the decision of Federal Court in *Umayal Achi v. Lakshmi Achi*. (1945 FCR 1) The aforesaid Act had been extended to Rewa State by the Part C (State Laws) Act, 1950, which came into force on April 16, 1950. It was urged, inter alia, before the High Court that the appellant could take a boy in adoption and as soon as such an adoption was made its effect would be that the adoptee would be the son not only of the widow but of her deceased husband as well and further that she had a claim for maintenance over the suit lands. The High Court disposed of this contention by saying :

"It is not possible to prejudge the results of an adoption which may, or may not, be made by Smt. Ranibai at all. Similarly, this is not a case in which the right of maintenance was sought to be enforced against Smt. Jugli Bai on the property which was inherited by her from the last male holder, Jangi Jogi. It may be possible to take up these questions in appropriate proceedings."

According to the High Court the compromise which had been entered into between Jugli Bai and respondent No. 1 did not adversely affect the right, title or interest of the appellant as she had no right, title or interest in the suit lands. It was contended on behalf of the appellant that she was in possession of the properties at the time respondent No. 1 dispossessed her by committing an act of trespass and, therefore, she was entitled to restoration of possession of those properties from the trespasser. The High Court disposed this of by saying that the rightful claimant on the death of Jangi Jogi was Jugli Bai alone and owing to the compromise entered into by her respondent No. 1 was clothed with the same rights which were possessed by her. It was further held by the High Court that the compromise had been properly and lawfully recorded and given effect to by the trial court under Order XXIII, Rule 3 of the Civil Procedure Code.

4. Now Jugli Bai had filed an application under Order XXIII, Rule 1, Civil Procedure Code on February 19, 1959, before the trial court saying, inter alia, that her signature or thumb-impression on the plaint had been obtained by misrepresentation by the appellant. The application stated that she was not interested in prosecuting the suit and therefore she was withdrawing the same. The following portion from that application may be reproduced :

"..... plaintiff No. 2 withdraws her plaint and the statement of claim made therein, and so far as she is concerned she withdraws the suit and prays that no claim be decreed in her favour nor any relief mentioned in plaint be granted in her favour. On the other hand, the plaint may be dismissed to the extent of her claim. She is also filing herewith a compromise to that effect arrived at with the defendant, which may be accepted ....."

An application was also filed under Order XXIII, Rule 3 of the Civil Procedure Code, which purported to bear the thumb-impression of Jugli Bai and was signed by respondent No. 1. All that was stated therein was that the suit of plaintiff No. 2 in respect of suit lands be dismissed and no relief be granted in accordance with the prayer made in the plaint. It is difficult to see how on the basis of these applications the suit of the appellant could be dismissed. It cannot be disputed that the appellant who is the widow of a pre-deceased son of Jangi Jogi was entitled to receive maintenance so long as she did not remarry out of the estate of her father-in-law. Although her claim for maintenance was not a charge upon the estate until it had been fixed and specifically charged thereupon her right was not liable to be defeated except by transfer to a bona fide purchaser for value without notice of a claim or even with notice of the claim unless the transfer was made with the intention of defeating her right. The courts in India have taken the view that where a widow is in possession of a specific property for the purpose of her maintenance a purchaser buying with notice of her claim is not entitled to possession of that property without first securing proper maintenance for her (vide *Rachawa and Others v. Shivayogappa*). (ILR 18 Bom 679) In *Yellawa and Others v. Bhimangavda*, (ILR 18 Bom 452) it was taken to be the settled practice of the Bombay High Court not to allow the heir to recover the family property from a widow entitled to be maintained out of it without first securing a proper maintenance for her out of the property or by such other means as might be deemed sufficient. It is clear from the provisions of the Explanation appearing in Section 14 of the Hindu Succession Act that a situation was contemplated where a female Hindu could be in possession of joint family properties in lieu of maintenance. It may be mentioned that after the enforcement of the Hindu Adoption and Maintenance Act, 1956, the rights of widowed daughter-in-law to maintenance are governed by Section 19 of that Act which, however, would not be applicable. In the present case it is difficult to understand how the appellant could be deprived of the possession of properties by a trespasser. Moreover she was presumably in possession of these properties in lieu of her right of maintenance and could not be deprived of them even by Jugli Bai without first securing proper maintenance for her out of the aforesaid properties.

5. The rights of the appellant who was in possession qua respondent No. 1 who was found by the trial court to be a trespasser have not been properly considered by the High Court. On this point reference may be made to a decision of the Privy Council in *Ismail Ariff v. Mohamed Ghouse*. (20 IA 99) In that case in a suit for a declaration that the plaintiff was absolute owner of the land in suit and for an injunction, the defence was that the land was subject to a wakf created by the plaintiff's predecessor in title and that the defendant was mutwali thereof. Both courts found in favour of the plaintiff's possession, and that the defendant was not the mutwali nor possessed of any interest in the land, but differed as to the dedication. It was held that the plaintiff was entitled to a declaration as against the defendant that he was lawfully entitled to possession and the relief consequent thereon. The following observation of Sir Richard Couch may be reproduced with advantage :

"It appears to their Lordships that there is here a misapprehension of the nature of the plaintiff's case upon the facts stated in the judgment. The possession of the plaintiff was sufficient evidence of title as owner against the defendant. By Section 9 of the Specific Relief Act (Act 1 of 1877), if the plaintiff had been dispossessed otherwise than in due course of law, he could, by a suit instituted within six months from the date of the dispossession, have recovered possession, notwithstanding any other title that might be set up in such suit. If he could thus recover possession from a person who might be able, to prove a title, it is certainly right and just that he should be able, against a person who had no title and is a mere wrongdoer, to obtain a declaration of title as owner, and an injunction to restrain the wrongdoer from interfering with his possession."

6. Keeping the above statement of law in view it must be held that the High Court was in error in considering that since Jugli Bai had entered into some compromise with respondent No. 1 the trial court was justified in dismissing the appellant's suit. It is somewhat difficult to understand the observation of the High Court that respondent No. 1 was "clothed with the very same rights which were possessed by Jugli Bai. If the finding of the trial court was right that respondent No. 1 was a mere trespasser, it is not possible to see how Jugli Bai could effect a transfer of all her rights by merely filing a petition to the effect that she did not wish to prosecute the suit as a co-plaintiff. As has been pointed out before the appellant had a possessory title and was entitled to restoration of possession in case it was found that respondent No. 1 had no right, title or interest whatsoever and was a mere trespasser. The appellant was further entitled to remain in possession if she could establish that she had entered into possession by virtue of her claim or right to maintenance until the person laying a claim to the estate of Jangi Jogi made some proper arrangement for the payment of maintenance to her. These are, however, matters on which no final opinion need be expressed as the District Judge was of the opinion that the trial court had not given a proper decision on all the issues and for that reason the suit had been remanded for a fresh decision on all the questions of fact and law. In the view that we have taken the decision of the High Court has to be reversed and that of the District Judge restored.

7. The appeal is thus allowed with costs here and in the High Court. The amount of court-fee shall be recovered by the Government from respondent No. 1 in accordance with Order XVII, Rule 8 of the Supreme Court Rules. Costs of appellant's Advocate to be taxed against respondent No. 1 and made recoverable from him.

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