Smt. Sitabai and Another

Vs

Ramchandra

Civil Appeal No. 856 of 1966

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

20.08.1969

JUDGMENT

RAMASWAMI, J. -

1. This appeal is brought by special leave from the judgment of the Madhya Pradesh High Court, dated September 7, 1965 in Second Appeal No. 275 of 1962.

2. Dulichand and Bhagirath were brothers and the properties concerned are, according to the written statement of the defendant himself, ancestral. Plaintiff Sitabai is the widow of Bhagirath, who predeceased Dulichand, his elder brother sometime in 1930. It is the admitted case of both the parties that after Bhagirath died, the plaintiff Sitabai was living with Dulichand as a result of which connection an illegitimate child defendant Ramchandra was born in 1935. Dulichand died on March 13, 1958. Sometime before his death Sitabai adopted plaintiff No. 2, Suresh Chandra and an adoption deed was executed on March 4, 1958. After the death of Dulichand Ramchandra took possession of the joint family properties. The plaintiff therefore brought the present suit for ejectment of the defendant Ramchandra, the illegitimate son of Dulichand from the disputed properties. The suit was contested by the defendant on the ground that Dulichand had in his life-time surrendered the lands to the Jagirdar who made re-settlement of the same with the defendant. As regards the house the contention of the defendant was that Dulichand had executed a will before his death making a bequest of his house entirely to him. The trial court decided all the issues in favour of the plaintiff and granted the plaintiffs a decree for possession with regard to the land and the house. The defendant took the matter in appeal to the District Judge who modified the decree. The District Judge took the view that the will executed by Dulichand was valid so far as half of his share in the house was concerned and, therefore, defendant was entitled to claim half the share of the house in dispute. The defendant preferred a second appeal before the Madhya Pradesh High Court which reversed the decree of the lower courts and held that the plaintiff was not entitled to any relief and the suit should be dismissed in its entirety. The High Court held that plaintiff No. 2 became the son of plaintiff No. 1 in 1958 from the date of adoption and did not obtain any coparcenery interest in the joint family properties. The High Court thought that on the date of adoption Dulichand was the sole coparcener and there was no body else to take a share of his property and Plaintiff No. 2 had no concern with the coparcenery property in the hands of Dulichand.

3. The first question to be considered in this appeal is whether the High Court was right in holding that plaintiff No. 2 Suresh Chandra at the time of his adoption by Plaintiff No. 1 did not become a coparcener of Dulichand in the joint family properties. It is the admitted case of both the parties that the properties consisted of agricultural land and a house jointly held by Bhagirath and Dulichand.

After the death of Bhagirath, Dulichand became the sole surviving coparcener of the joint family. At the time when Plaintiff No. 2, Suresh Chandra was adopted the joint family still continued to exist and the disputed properties retained their character of coparcenery properties. It has been pointed out in Gowli Buddanna v. Commissioner of Income-tax, Mysore (60 ITR 293) that under the Hindu system law a joint family may consist of a single male member and widows of deceased male members and that the property of a joint family did not cease to belong to a joint family merely because the family is represented by a single coparcener who possesses rights which an absolute owner of property may possess. In that case, one Buddanna, his wife, his two unmarried daughters and his unmarried son, Buddanna, were members of a Hindu undivided family. Buddanna died and after his death the question arose whether the income of the properties held by Buddanna as the sole surviving coparcener was assessable as the individual income of Buddanna or as the income of the Hindu undivided family. It was held by this Court that since the property which came into the hands of Buddanna as the sole surviving coparcener was originally joint family property, it did not cease to belong to the joint family and income from it was assessable in the hands of Buddanna as income of the Hindu undivided family. As pointed out by the Judicial Committee in Attorney-General of Ceylon v. A. R. Arunachalam Chettiar (1957 AC 540) it is only by analysing the nature of the rights of the members of the undivided family, both those in being and those yet to be born, that it can be determined whether the family property can properly be described as 'joint property' of the undivided family. In that case one Arunachalam Chettiar and his son constituted a joint family governed by the Mitakshara school of Hindu law. The father and son were domiciled in India and had trading and other interests in India, Ceylon and Far Eastern countries. The undivided son dies in 1934 and Arunachalam became the sole surviving coparcener in the Hindu undivided family to which a number of female members belonged. Arunachalam died in 1938, shortly after the Estate Ordinance No. 1 of 1938 came into operation in Ceylon. By Section 73 of the Ordinance it was provided that property passing on the death of a member of the Hindu undivided family was exempt from payment of estate duty. On a claim to estate duty in respect of Arunachalam's estate in Ceylon, the Judicial Committee held that Arunachalam was at his death a member of the Hindu undivided family, the same undivided family of which his son, when alive, was a member and of which the continuity was preserved after Arunachalam's death by adoption made by the widows of the family and since the undivided family continued to persist, the property in the hands of Arunachalam as a single coparcener was a property of the Hindu undivided family. The Judicial Committee observed at p. 543 of the report :

> "..... though it may be correct to speak of him as the 'owner', yet it is still correct to describe that which he owns as the joint family property. For his ownership is such that upon the adoption of a son it assumes a different quality; it is such, too, that female members of the family (whose members may increase) have a right to maintenance out of it and in some circumstances to a charge for maintenance upon it. And these are incidents which arise, notwithstanding his so called ownership, just because the property has been and has not ceased to be joint family property. Once again their Lordships quote from the judgment of Gratiaen, J. : 'To my mind it would make a mockery of the undivided family system if this temporary reduction of the coparcenery unit to a single individual were to convert what was previously joint property belonging to an undivided family into the separate property of the surviving coparcener'. To this it may be added that it would not appear reasonable to impart to the legislature the intention to discriminate, so long as the family itself subsists, between property in the hands of a single coparcener and that in the hands of two or more coparceners."

The basis of the decision was that the property which was the joint family property of the Hindu undivided family did not cease to be so because of the "temporary reduction of the coparcenery unit to a single individual". The character of the property, viz : that it was the joint property of a Hindu undivided family, remained the same. Applying the principle to the present case, after the death of Bhagirath the joint family property continued to retain its character in the hands of Dulichand as the widow of Bhagirath was still alive and continued to enjoy the right of maintenance out of the joint family properties.

4. The question next arises whether Suresh Chandra, plaintiff No. 2, when he was adopted by Bhagirath's widow became a coparcener of Dulichand in the Hindu joint family properties. The High Court has taken the view that Suresh Chandra became the son of plaintiff No. 1 with effect from 1958 and plaintiff No. 2 would not become the adopted son of Bhagirath in view of the provisions of the Hindu Adoptions and Maintenance Act, 1956 (Act No. 78 of 1956). It was argued on behalf of the appellant that the High Court was in error in holding that the necessary consequence of a widow adopting a son under the provisions of Act 78 of 1956 was that the adoptee would be the adopted son of the widow and not of her deceased husband. In our view the argument put forward on behalf of the appellant is well-founded and must be accepted as correct. Section 5(1) of Act 78 of 1956 states :

> "(1) No adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provisions contained in this chapter,....."

Section 6 deals with the requisites of a valid adoption and provides :

> "No adoption shall be valid unless -
>
> (i) the person adopting has the capacity, and also the right, to take in adoption;
>
> (ii) the person giving in adoption has the capacity to do so;
>
> (iii) the person adopted is capable of being taken in adoption; and
>
> (iv) the adoption is made in compliance with the other conditions mentioned in this Chapter."

Sections 7 and 8 relate to the capacity of a male Hindu and a female Hindu to take in adoption. Under Section 7 any male Hindu who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption. If he is married, he requires the consent of his wife in connection with the adoption. A person having more than one wife is required to have the consent of all his wives. Under Section 8, any female Hindu, who is of sound mind and not a minor is stated to have capacity to take a son or a daughter in adoption. The language of this section shows that all females except a wife have capacity to adopt a son or a daughter. Thus, an unmarried female or a divorcee or a widow has the legal capacity to take a son or a daughter in adoption. Section 11 relates to "other conditions for a valid adoption".

Clause (vi) of Section 11 states :

> "(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth to the family of its adoption :"

Section 12 enacts :

> "An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family :
>
> Provided that -
>
> #(a) ....(b) ....(c) the adopted child shall not divest any person of any estatewhich vested in him or her before the adoption."##

Section 14 provides :

> "(1) Where a Hindu who has a wife living adopts a child, she shall be deemed to be the adoptive mother.
>
> (2) Where an adoption has been made with the consent of more than one wife, the senior-most in marriage among them shall be deemed to be the adoptive mother and the others to be step-mothers.
>
> (3) Where a widower or a bachelor adopts a child, any wife whom he subsequently marries shall be deemed to be the step-mother of the adopted child.
>
> (4) Where a widow or an unmarried woman adopts a child, any husband whom she marries subsequently shall be deemed to be the step-father of the adopted child."

5. It is clear on a reading of the main part of Section 12 and sub-section (vi) of Section 11 that the effect of adoption under the Act is that it brings about severance of all ties of the child given in adoption in the family of his or her birth. The child altogether ceases to have any ties with the family of his birth. Correspondingly, these very ties are automatically replaced by those created by the adoption in the adoptive family. The legal effect of giving the child in adoption must therefore be to transfer the child from the family of its birth to the family of its adoption. The result is, as mentioned in Section 14(1) namely where a wife is living, adoption by the husband results in the adoption of the child by both these spouses; the child is not only the child of the adoptive father but also of the adoptive mother. In case of there being two wives, the child becomes the adoptive child of the senior-most wife in marriage, the junior wife becoming the step-mother of the adopted child. Even when a widower or a bachelor adopts a child, and he gets married subsequent to the adoption, his wife becomes the step-mother of the adopted child. When a widow or an unmarried woman adopts a child, any husband she marries subsequent to adoption becomes the step-father of the adopted child. The scheme of Section 11 and 12, therefore, is that in the case of adoption by a widow the adopted child becomes absorbed in the adoptive family to which the widow belonged. In other words the child adopted is tied with the relationship of sonship with the deceased husband of the widow. The other collateral relations of the husband would be connected with the child through that deceased husband of the widow. For instance, the husband's brother would necessarily be the uncle of the adopted child. The daughter of the adoptive mother (and father) would necessarily be the sister of the adopted son, and in this way, the adopted son would become a member of the widow's family, with the ties of relationship with the deceased husband of the widow as his adoptive father. It is true that Section 14 of the Act does not expressly state that the child adopted by the widow becomes the adopted son of the husband of the widow. But it is a necessary implication of

Sections 12 and 14 of the Act that a son adopted by the widow becomes a son not only of the widow but also of the deceased husband. It is for this reason that we find in sub-section (4) of Section 14 a provision that where a widow adopts a child and subsequently marries a husband, the husband becomes the "step-father" of the adopted child. The true effect and interpretation of Sections 11 and 12 of Act No. 78 of 1956 therefore is that when either of the spouses adopts a child, all the ties of the child in the family of his or her birth become completely severed and these are all replaced by those created by the adoption in the adoptive family. In other words the result of adoption by either spouse is that the adoptive child becomes the child of both the spouses. This view is borne out by the decision of the Bombay High Court in Anukushi Narayan v. Janabai Rama Sawat. (67 BLR 864). It follows that in the present case Plaintiff No. 2 Suresh Chandra, when he was adopted by Bhagirath's widow, became the adopted son of both the widow and her deceased husband Bhagirath and, therefore, became a coparcener with Dulichand in the joint family properties. After the death of Dulichand, Plaintiff No. 2 became the sole surviving coparcener and was entitled to the possession of all joint family properties. The Additional District Judge was, therefore, right in granting a decree in favour of the Plaintiff No. 2 declaring his title to the agricultural lands in the village Palasia and half share of the house situated in the village.

6. It is contended on behalf of the respondent that the rights of the Inamdar's tenants were not heritable under the Madhya Bharat Land Revenue and Tenancy Act, 1950 (Act No. 66 of 1950), and therefore the plaintiffs could not claim to become the Inamdar's tenants after the death of Dulichand in the absence of a contract between the Inamdar and themselves. Reference was made to Sections 63 to 88 dealing with the rights of pakka tenants and it was argued that there was no provision in the Act dealing with the rights of an ordinary tenant. Section 87 states :

> "An ordinary tenant is entitled to hold the land let to him in accordance with such terms as may be agreed upon with the person from whom he holds, provided that they are not inconsistent with the provisions of this Act."

Section 89 deals with the rights of sub-tenant and reads :

> "(1) A sub-tenant is entitled to hold the land let to him in accordance with such terms as may be agreed upon with the person from whom he holds, subject to his compliance with the general conditions of tenancy as laid down in Section 55, provided that he shall, in no circumstances, lease out the land to any person.
>
> # X X X X"##

It is not possible to accept the argument advanced on behalf of the respondent that under the scheme of Act 66 of 1950 the rights of ordinary tenant are not heritable. It is true that there are special provisions with regard to heritability as regards pakka tenant. But in the absence of any special statutory provision, the heritability of ordinary tenancies must be governed by the personal law of the tenants concerned. Section 86 of the Act contains provisions with regard to mutation of names. Sub-section (1) of Section 86 states :

> "When a holder of land, other than an assignee of proprietary rights, loses his rights, in any land in a village by death or by surrender or abandonment of the land or by transfer of his rights to any other person, or by dispossession or otherwise, the Patwari of the village in which the land is situated shall forthwith report the fact to the Tehsildar intimating the name of the new holder and the grounds on which the

> latter claims to succeed to the title of the former holder. Any person claiming to succeed to the title of the former holder may also apply to the Tehsildar for the mutation of his name within a period of two years from the date of the last holder loses his rights."

The section applies to all classes of tenants and contemplates heritability and transferability of the rights of a tenant or a sub-tenant. We accordingly reject the argument of the respondent that the rights of Dulichand were not heritable.

7. It is also urged on behalf of the respondents that the jurisdiction of the Civil Court was barred by the provisions of the Madhya Bharat Land Revenue Administration and Ryotwari Land Revenue and Tenancy Act, 1950 (Act No. 66 of 1950). This issue was decided against the respondent in the trial court and also in the first appellate court. The decision of the lower courts on this point was not challenged in the High Court and it is not permissible for the respondent to raise this question at this stage.

8. For the reasons already given we hold that the judgment and decree of the High Court of Madhya Pradesh, dated September 7, 1965 in Second Appeal No. 275 of 1962 should be set aside and the judgment and decree of the Additional District Judge, Indore, dated April 21, 1962 in First Appeal No. 26 of 1961 should be restored. This appeal is accordingly allowed with costs.

</html