

Manohar Lal Ganeriwal and Others

Vs

Bhuri Bai and Others

Civil Appeal No. 618 of 1967

(CJI S. M. Sikri, J. M. Shelat, G. K. Mitter, I. D. Dua, H. R. Khanna JJ)

(K. S. Hegde, P. Jagmohan Reddy, D. G. Palekar JJ)

24.01.1972

JUDGMENT

HEGDE, J. -

1. Defendants 1 to 4 in the suit are the appellants in this appeal by special leave. Respondents 1 and 2 were the plaintiffs therein. The suit was one under Order 21, Rule 63. The only question that arises for decision in this appeal is whether the suit property is "separate property" within the meaning of Section 3(1) of the Hindu Women's Rights to Property Act, 1937 (to be hereinafter referred to as the Act). 2. The facts as found by the High Court, which are no more in dispute may now be stated. The plaintiffs obtained a decree against defendant No. 5 for possession of the suit properties. When they levied execution of the decree, Defendants 1 to 4 objected to the execution alleging that they were in possession of the suit premises in their own right and that they were not liable to be evicted. That objection was upheld by the execution court. Thereafter the plaintiffs instituted a statutory suit under Order 21, Rule 63, Code of Civil Procedure for a declaration of their title to the suit properties and for possession of the same. The suit was dismissed by the trial court and that decree was affirmed by the 1st appellate court. But the same was reversed by the High Court. 3. The suit property originally belonged to the Hindu joint family consisting of one Bhagwan Das and his son Rameshwar Lall . Rameshwar Lall died sometime in 1933 or 1934, leaving behind him his widow Jaidei, his two daughters, his father and mother. After the death of Rameshwar Lall , Bhagwan Das was the sole surviving coparcener in his family. Bhagwan Das died sometime in 1944 or 1945, leaving behind him his widow Mahadei, his daughter-in-law and two grand-daughters. Mahadei and one Satyanarayan who claimed to be the adopted son of Rameshwar Lall sold the suit property to the plaintiffs in 1952. Thereafter Jaidei and her two daughters sold the same property to the appellants, on January 16, 1960. The appellants have denied the adoption of Satyanarayan and the same has not been satisfactorily proved. But that question is irrelevant for deciding the appeal before us. The only question for decision is whether Jaidei obtained any right in the property under Section 3(1) of the Act. 4. The Act came into force in 1937. Rameshwar Lall died as seen earlier in 1933 or 1934. Section 4 of the Act makes it clear that the Act is not to operate retrospectively. Hence Jaidei cannot claim any right to the suit property through her husband who had died long before the Act came into force. But it is contended that she obtained a share in the property as one of the heirs of Bhagwan Das who died after the Act came into force. For this contention reliance is placed on Section 3(1) of the Act. Now we may read the relevant provisions of the Act. Section 2 lays down : "Notwithstanding any rule of Hindu Law or Custom to the contrary, the provisions of Section 3 shall apply where a Hindu dies intestate." 5. Section 3(1) provides : "(1) When a Hindu governed by the Dayabhag School of Hindu Law dies intestate leaving any property, and when a

Hindu governed by any other school of Hindu Law or by customary law dies intestate leaving separate property, his widow, or if there is more than one widow all his widows together, shall, subject to the provisions of sub-section (3) be entitled in respect of property in respect of which he dies intestate to the same share as a son : Provided that the widow of a predeceased son shall inherit in like manner as a son if there is no son surviving of such predeceased son, and shall inherit in like manner as a son's son if there is surviving a son or son's of such predeceased son : Provided further that the same provision shall apply mutatis mutandis to the widow of a predeceased son of a predeceased son." 6. Jaidei can have a share in the property only if the property is held to have been the "separate property" of Bhagwan Das. As seen earlier Bhagwan Das became the sole surviving coparcener in the family after the death of his son Rameshwar Lall ; but even then he did not become the absolute owner of the property though his rights in the property were enlarged to a large extent. It is not necessary to spell out the nature of the rights obtained by him after the death of his son Rameshwar Lall . But, suffice it to say that the joint Hindu family continued. It is now well settled that a property obtained by the sole surviving coparcener in a family does not become his "separate property" so long as there is a woman in the family who can bring into existence a new coparcener by adoption. At the time of the death of Bhagwan Das, his widow Mahadei and his daughter-in-law were alive. That being so, the joint family cannot be held to have been disrupted. The learned Counsel for the appellants very fairly conceded that if we are unable to hold that the suit property was the separate property of Bhagwan Das at the time of his death, the appeal has to fail. According to him on the death of Rameshwar Lall , the whole property became the separate property of Bhagwan Das. This contention has to be rejected without elaborate examination in view of the decision of Federal Court in Rm. Ar. Ar. Rm. Ar. Ar. Umayal Achi v. Lakshmi Achi and Others, ([1945] 7 FCR L : AIR 1945 FC 25) which decision was quoted with approval by this Court in Angurbala Mullick v. Debabrata Mullick. (1951 SCR 1125 : AIR 1951 SC 293). 7. The Federal Court in Umayal Achi's case (supra), held that the property held by a person as a sole surviving coparcener of a joint Hindu family is not his "separate property" within the meaning of Section 3(1) of the Act. The distinction between "separate property" and joint family property would be clear if we compare the provisions contained in Section 3(1) and Section 3(2). 8. In the result this appeal fails and the same is dismissed with costs.

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