Mst. Sheo Kuer

Vs

Nathuni Prasad Singh and Others

Civil Appeal No. 1815 of 1969

(Y. V. Chandrachud, R. S. Sarkaria, A. C. Gupta JJ)

12.12.1975

JUDGMENT

CHANDRACHUD, J. -

1. One Trilok Prasad Singh, who was the last male holder in his line, died on May 12, 1948 leaving behind his widow Kachnar Kuer and his stepmother Sheo Kuer. On February 12, 1956 Kachnar Kuer executed two registered deeds. By one of these she adopted a son to her deceased husband and by the other, which is described as a deed of arpan-nama, she created a religious endowment in the name of Sri Gopalji and appointed her mother-in-law Sheo Kuer as a shebait.

2. Respondents Nos. 1 and 2, claiming to be reversioners, filed Suit No. 16 of 1956 in the court of the First Subordinate Judge, Gaya, for a declaration that the two deeds were void and illegal and were not binding on their reversionary interest. Kachnar Kuer was defendant No. 1, the adopted son was defendant No. 2 and Sheo Kuer was defendant No. 3 to the suit.

3. During the suit, the defendants were evidently of one mind and they contended by their written statements that the impugned deeds were executed under the authority given by the deceased Trilok Prasad Singh and that respondents Nos. 1 and 2 had no right to bring the suit after June 17, 1956 when the Hindu Succession Act, 1956 came into force.

4. The trial Court dismissed the suit holding that Trilok Prasad Singh had given authority to Kachnar Kuer to make an adoption and to create an endowment and therefore both the deeds were valid.

5. Against the dismissal of their suit, respondents Nos. 1 and 2 filed First Appeal No. 152 of 1959 in the High Court of Patna. By its judgment dated October 3, 1964 the High Court allowed the appeal and decreed the suit holding that Trilok Prasad Singh had not given authority to Kachnar Kuer to take a son in adoption and under the Banaras School of Hindu Law by which the parties were governed, and adoption made by a widow without the authority of her husband was invalid. The High Court also held that Trilok Prasad Singh had not authorised Kachnar Kuer to create a religious endowment over any part of his property and since by the arpan-nama a large piece of property was dedicated to the deity, the dedication was void. On the question whether, after the coming into force of the Hindu Succession Act, respondents No. 1 and 2 as reversioners could maintain the suit, the High Court held that on the material date Kachnar Kuer was not in possession of the property and therefore her limited estate could not ripen into an absolute estate under the Hindu Succession Act.

6. Kachnar Kuer made an application to the High Court for a certificate of fitness to this Court and

the High Court by its order dated May 10, 1965 granted a certificate of fitness under Article 133(1)(b) of the Constitution. But after the petition of appeal was lodged in this Court, Kachnar Kuer joined hands with respondents Nos. 1 and 2 and purported to enter into a compromise dividing the property left by Trilok Prasad Singh between themselves. The appellant, Sheo Kuer, who was appointed as a shebait under the deed of arpan-nama has thereafter, obtained special leave to appeal to this Court from the judgment of the High Court. We are, in this judgment, concerned with Sheo Kuer's appeal, not with the appeal filed by Kachnar Kuer by certificate.

7. The High Court has rejected the evidence led to show that Trilok Prasad Singh had given authority to Kachnar Kuer to make an adoption to him. The finding that the adoption is without the authority of the husband and therefore void is not challenged before us either by Kachnar Kuer or by the adopted son and that finding must therefore be confirmed.

8. Since the evidence on the other question as to whether Trilok Prasad Singh had given authority to Kachnar Kuer to create a religious endowment was closely linked with the question regarding the authority to adopt and since the pattern of evidence on both the question is identical, the High Court held that Kachnar Kuer did not either have the authority of her husband to instal the deity or dedicate any property to the deity. This finding is not challenged before us by Sheo Kuer, the shebait appointed under the arpan-nama, and therefore we must proceed on the basis that the dedication was created by Kachnar Kuer without the authority of her husband.

9. The point involved for determination in the appeal thus relates to the powers of a Hindu female on whom property has devolved upon the death of her husband, to alienate the property for religious purposes. This question has been the subject-matter of several decisions of the Indian High Courts as also of the Judicial Committee. These decisions, beginning with one of the earliest pronouncements on the subject in Collector of Masulipatan v. Cavaly Vencata ((1861) 8 MIA 529), upto the decision of this Court in Kamala Devi v. Bachu Lal Gupta (1957 SCR 452 : AIR 1957 SC 434) have been discussed with fullness and clarity by Mr. Justice Bijan Kumar Mukherjea in his Tagore Law Lectures on the Hindu Law of Religious and Charitable Trust (Ed. 1962, pp. 81 to 87). It is unnecessary to analyse the various decisions which the learned author has considered because the true position on the subject is crystallised in the decision in Kamala Devi's case (supra). The law must now be taken as well-settled that a Hindu widow possessing a widow's estate cannot alienate the property which was devolved on her except for special purposes. To support an alienation for purely worldly purposes she must show necessity but she has a larger power of disposition for religious and charitable purposes or for those purposes which are supposed to conduce to the spiritual welfare of her husband. As pointed out by the Privy Council in Sardar Singh v. Kunj Behari (49 IA 383 : AIR 1922 PC 261 : 69 IC 36), the Hindu system recognises two sets of religious acts : those which are considered as essential for the salvation of the soul of the deceased and others which, though not essential or obligatory, are still pious observances which conduce to the bliss of the deceased's soul. The powers of Hindu female to alienate property are wider in respect of acts which conduce to the spiritual benefit of her deceased husband. The widow is entitled to sell the property, even the whole of it, if the income of the property is not sufficient to cover the expenses for such acts. In regard to alienations for pious observances, which are not essential or obligatory, her powers are limited to alienating only a small portion of the property.

10. Applying the principle accepted in Kamala Devi's case (supra) the simple question for decision, in view of the fact that the arpan-nama was executed for a merely pious and not for an essential or obligatory purpose, is whether the alienation effected by Kachnar Kuer in favour of the deity is of a reasonable portion of her husband's property. Respondents Nos. 1 and 2, in paragraph 7 of their

plaint, passingly mentioned that Kachnar Kuer had transferred "a considerable portion" of the properties left by her husband. In paragraph 13 of the written statement which Kachnar Kuer filed on behalf of herself and her adopted son, it was stated that in view of the fact that Trilok Prasad Singh had left about 150 bighas of land, the alienation of about 30 bighas in favour of the deity could not be said to be unreasonable or excessive. One hundred and fifty bighas are treated in the area as roughly equal to 90 acres so that 30 bighas come to about 18 acres. Whether the alienation for a pious purpose is of a reasonable portion of the property must necessarily depend the total extent of the property which has devolved upon the widow. The mere circumstance that a 100 acres are alienated by the widow for a pious purpose will not justify the setting aside of the alienation on the ground that 100 acres is large property. The High Court, without adverting to the fact that the widow had alienated only a one-fifth portion of the property which had devolved upon her, held that a dedication of a large part of the property, more than 18 acres of land, cannot be defended on the part of a holder of a widow's estate . . . .

This is all that the High Court has to say on the point and obviously, what it has said is not enough or relevant for invalidating the alienation.

11. Whether the alienation is of a reasonable portion of the property is not a matter to be decided on precedents because what is reasonable must depend upon the facts and circumstances of each case. But an alienation of a one-fifth portion cannot be said to be unreasonable and excessive. The finding of the High Court must therefore be set aside and along with it its judgment allowing the reversioner's appeal and decreeing their suit.

12. We, therefore, hold that the arpan-nama executed by Kachnar Kuer in favour of the deity is lawful and valid. In the result we allow the appeal, set aside the judgment of the High Court and direct that the suit filed by respondents Nos. 1 and 2 shall stand dismissed with costs, so far as the validity of the arpan-nama is concerned.

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