

Smt. Naraini Devi

Vs

Smt. Ramo Devi and Others

Civil Appeal No. 824 of 1968

(R. S. Sarkaria, Syed M. Fazal Ali JJ)

18.12.1975

JUDGMENT

SARKARIA, J. -

1. The following pedigree table illustrates the relationship of the parties :

Hira Lal-Smt. Naraini Devi (plaintiff) (died in 1925) | |-----|-----
-----|Kapoor Chand Nemi Chand Chandra Bhan(died in 1954) (Judgment-
(died in 1930)Smt. Ramo Devi debtor) (extinct)(Respondent No. 1)(Decree-
holder)##

2. Smt. Ramo Devi, widow of Kapoor Chand (shown in the above pedigree table) obtained a money decree against her husband's brother Nemi table. In execution of her decree she got attached one half-share in the double-storeyed house No. 4416, situated at Agra representing it to be of the judgment-debtor. Smt. Naraini Devi, widow of Hira Lal, filed an objection-petition under Order 21, Rule 58, Code of Civil Procedure against that attachment claiming the house to be her property. That objection was dismissed by the executing court in on July 16, 1962. Thereafter, she filed a suit under Order 21, Rule 63, Code of Civil Procedure to establish her claim. The suit was decreed by the trial Court. On appeal, the District Judge reversed the judgment and dismissed the suit. Naraini Devi's second appeal was summarily dismissed by the High Court. She filed a review petition which was rejected by the High Court on August 23, 1967.

3. Hence, this appeal by special leave.

4. It is common ground between the parties that under a registered award, dated, January 4, 1946, the plaintiff Smt. Naraini Devi was given a life interest in the house in dispute. The appellant's contention is that her limited interest in the house was enlarged into that of a full owner by the operation of sub-section (1) of Section 14 of the Hindu Succession Act. As against this, the respondents maintain that her case falls under sub-section (2) of Section 14. The question thus turns on a construction of the award, Ex. 2.

5. We have examined an English rendering of this document filed by the appellant, the correctness of which is not disputed by the respondent. This award states in clear, unmistakable terms that the (Naraini Devi) would be entitled to the rent of this house in lieu of maintenance for her lifetime, and after he death, her sons, Kapoor Chand and Nemi Chand will be owners of half share each of this house. This award further partitions this house between Kapoor Chand and Nemi Chand and allots specific portions thereof to the two brothers. A part of this house was in the occupation of a tenant

at Rs. 32 per month. Naraini Devi was given a right to get that rent. A part of it was in the personal occupation of Kapoor Chand. The award protects and assures his right of remaining in possession of the same. A reading of this document as a whole, leaves little doubt that the only interest in this house created in favour of the widow was that she would be entitled to its rent - and no more - for her lifetime. Thus the award confers on her only a restricted estate in the house within the meaning of sub-section (2) of Section 14 which says :

Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

6. Mr. Goyal however, submits that her case would fall within this Court's ruling in (Seth) Badri Prasad v. Smt. Kanso Devi ((1970) 2 SCR 96 : (1969) 2 SCC 586), according to which, if the widow has a pre-existing right in the property, then the case will fall under sub-section (1) and sub-section (2) which is in the nature of a proviso to sub-section (1) of Section 14, will not be attracted. The rule in Badri Prasad's case (supra) is not applicable here. In that case the widow had acquired a share in the property by virtue of the Hindu Women's Right to Property Act, 1937, on the death of her husband, which took place after the coming into operation of that Act. In the present case. Smt. Naraini Devi's husband died in 1925. In the presence of her sons, the widow did not get any share or interest in the house left by her husband under the Hindu Law as then applicable. In short, she had no pre-existing right or interest in the house in question. It was the award dated January 4, 1946, that created a restricted estate for her in the house in question. Her case thus falls squarely within the ambit of sub-section (2) of Section 14 of the Hindu Succession Act. Her interest therefore, came to an end on her death which took place during the pendency of these proceedings.

7. For reasons aforesaid the appeal fails and is dismissed with no order as to costs.

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