

Smt. Dipo

Vs

Wassan Singh and Others

Civil Appeal No. 1938 (N) of 1970

(D. A. Desai, O. Chinnappa Reddy JJ)

05.05.1983

JUDGMENT

CHINNAPPA REDDY, J.-

1. Smt. Dipo, plaintiff in Suit No. 8 of 1962 in the court of the Subordinate Judge 1st Class, Amritsar is the appellant in this appeal by special leave. She sued to recover possession of the properties which belonged to her brother, Bua Singh, who died in 1952. She claimed to be the nearest heir of Bua Singh. The suit was filed in forma pauperis. The suit was contested by the defendants who are the sons of Ganda Singh, paternal uncle of Bua Singh. The grounds of contest were that Smt. Dipo was not the sister of Bua Singh and that even if she was the sister, the defendants were preferential heirs according to custom, as the whole of the land was preferential heirs according to custom, as the whole of the land was ancestral in the hands of Bua Singh. The learned Subordinate Judge held that the plaintiff, Smt. Dipo was the sister of Bua Singh. He Found that most of the suit properties were ancestral properties in the hands of Bua Singh, while a few were not ancestral. Proceeding on the basis that according to the custom, the sister was excluded by collaterals in the case of ancestral property while she was entitled to succeed to non-ancestral property, the learned Subordinate Judge granted a decree in favour of the plaintiff for a 2959/34836 share of the plaint Alaf schedule. The plaintiff preferred an appeal to the District Judge, Amritsar. The appeal was purported to be filed in forma pauperis. It was dismissed on the ground that the plaintiff did not present the appeal in person as required by order 33, Rule 3. The defendants also preferred an appeal, but that was also dismissed. There was a second appeal to the High Court of Punjab & Haryana by the plaintiff. The Second appeal was dismissed as barred by limitation. It appears that a copy of the trial court's judgment was not filed along with the memorandum of second appeal. Though the memorandum of second appeal was filed within time, the copy of the decree was filed after the expiry of the period of limitation and it was on that ground that the second appeal was dismissed.

2. We do not think that the High Court was justified in dismissing the second appeal on the ground of limitation. The defect was technical as the second appeal itself had been presented in time. It was only a copy of the trial court's judgment that was filed after the expiry of the period of limitation. The delay in filing a copy of the trial court's judgment should have been condoned and the second appeal should have been entertained and disposed of on merits. We are also satisfied that the learned District Judge was in error in dismissing the appeal on the ground that the appellant-plaintiff had not herself presented the memorandum of appeal. The appeal had been admitted by the District Judge earlier and there was no point in dismissing it thereafter on the ground that the memorandum of appeal had not been presented by the party herself. Rules of procedure are meant to advance the cause of justice and not to short-circuit decision on merits. We have no option, but to set aside the

judgments of the District Judge and the High Court. Instead of sending the case back to the District Judge for disposal on merits, we have ourselves heard the appeal on merits. The finding that Smt. Dipo is the sister of Bua Singh is a concurrent finding and we accept it. We also proceed on the basis that according to the prevailing custom of the area, collaterals and not the sister are preferential heirs to ancestral property in the hands of a propositus, while the sister and not the collateral is a preferential heir in regard to non-ancestral property. We must add here that we are not quite satisfied that the custom has been properly established, but for the purpose of the present case, we proceed on the basis that the custom has been established. But that is not the end of the problem before us. No doubt the properties in the hands of Bua Singh are properties which originally belonged to Bua Singh's ancestors. But Bua Singh was the last male issue. There was no surviving member of a joint family, be it a descendant or otherwise, who could take the property by survivorship. Property inherited from paternal ancestors is, of course, 'ancestral property' as regards the male issue of the propositus, but it is his absolute property and not ancestral property as regards other relations. In Mulla's Principles of Hindu Law (15th Edition), it is stated at page 289 :

....if A inherits property, whether movable or immovable, from his father or father's father, or father's father's father, it ancestral property as regards his male issue. If A has no son, Son's son, or son's son's son in existence at the time when he inherits the property, he holds the property as absolute owner thereof, and he can deal with it as he pleases....

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A person inheriting property from his three immediate paternal ancestors holds it, and must hold it, in coparcenary with his sons, sons' sons and sons' sons' sons, but as regards other relations he holds it, and is entitled to hold it, as his absolute property.

Again at page 291, it is stated :

The share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue. They take an interest in it by birth, whether they are in existence at time of partition or are born subsequently. Such share, however, is ancestral property only as regards his male issue. As regards other relation, it is separate property, and if the coparcener dies without leaving male issue, it passes to his heirs by succession.

3. We are, therefore, of the view that the lower courts were wrong in refusing to grant a decree in favour of the plaintiffs as regards property described by them as 'ancestral property'. The defendants were collaterals of Bua Singh and as regards them the property was not 'ancestral property' and hence the plaintiffs was the preferential heir. The plaintiffs was entitled to a decree in respect of all the plaintiff properties. The judgments and decrees of the learned Sub-ordinate Judge, District Judge and High Court are set aside and there will be a decree in favour of the plaintiff for all the plaintiff properties. The plaintiff is also entitled to get her costs throughout from the defendants. The defendants will pay the court-fee due to the Government in the suit, second appeal and the appeal to this court.

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