

Gopal Singh and Another

Vs

Dile Ram (Dead) By Lrs and Others

Civil Appeal No. 1686 of 1978

(Sabyasachi Mukharji, G. L. Oza JJ)

06.10.1987

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. This appeal by special leave is from the judgment and order of the High Court of Himachal Pradesh dated April 27, 1978.

2. In order to appreciate the controversy it is relevant to refer to a few facts. Prior to 1943 Mst. Sheru alias Bhushehari was having life interest in the properties mentioned in paragraph 1 of the plaint in Civil Case No. 159 dated July 19, 1963. She executed a deed of gift in favour of Shri Dhari, predecessor-in-interest of the appellant in respect of 43-14 bighas of land and a building mentioned in Clause 1(f) of the plaint. On November 26, 1948 Shri Hari Ram filed a Civil Suit No. 63 of 1948 in the Court of Senior Subordinate Judge, Mandi for possession of the property in terms of the alleged compromise pursuant to which the gift was made to Shri Dhari or in the alternative to get a declaration that the deed of gift should be cancelled on the ground of non-fulfilment of the condition of the compromise deed. Shri Hari Ram, since deceased, the father of the respondents herein and Shri Dhari, since deceased, father of the appellants herein were cousin brothers. Late Rattan and late Keshav had another brother, Shri Thalia, since deceased. Mst. Sheru alias Bhushehari, since deceased, was the widow of Shri Thalia who had no issue. On May 31, 1950 the Senior Subordinate Judge, Mandi, decreed the suit in favour of the respondents herein, and ordered that the gift is not binding on the respondent-plaintiffs and made a declaration that the gift of the land in suit in favour of Shri Dhari made by Mst. Sheru alias Bhushehari shall be ineffective against the reversionary rights of the plaintiffs (respondents herein) after the lifetime of Mst. Sheru alias Bhushehari, both since deceased, filed Civil Appeal No. 26 of 1950 against the judgment and decree of the Senior Subordinate Judge, Mandi in Civil Suit No. 63 of 1948.

3. On July 27, 1950 the appeal was compromised in terms of a compromise deed, a compromise decree was passed allowing the appeal of the appellants (Shri Dhari and Mst. Sheru alias Bhushehari, both since deceased) and modified the judgment of the trial court to the extent that the gift deed made in respect of the land measuring 21-15-17 bighas comprising Khata Khatauni No. 3/16-27 and Rauda Kheratar Khata Khatauni 13/46-17 measuring 21-15-17 bighas situated in village Barsu Ballah was rejected and declared ineffective. It was declared ineffective. It was declared that the aforesaid land would be divided in equal shares after the death of Mst. Sheru alias Bhushehari and Shri Dhari would himself give due share to Shri Hari Ram in accordance with the aforementioned order. The one-storeyed slate roof house was to remain with Shri Dhari.

4. In 1956, the Hindu Succession Act, 1956 came into force w.e.f. June 17, 1956. With the coming

into force of the said Act Mst. Sheru alias Bhushehari became absolute owner in respect of all her properties including those which were the subject matter of the said Civil Suit No. 63 of 1948.

5. On March 9, 1959 Mst. Sheru alias Bhushehari executed a will in respect of all her properties in favour of Shri Gopal Singh, Shri Jagdish, Shri Bhup Singh and Shri Kirat Ram all sons of Shri Dhari. Shri Hari Ram died during the lifetime of Mst. Sheru alias Bhushehari. Mst. Sheru died on March 20, 1960. Shri Dhari died on June 26, 1963. The plaintiffs filed the present suit on July 8, 1963 (respondents herein). On July 21, 1967 the suit was dismissed by the Additional Subordinate Judge, Mandi. On May 3, 1969 the District Judge, Mandi, dismissed the first appeal against the judgment and decree in the suit. On April 27, 1978 the High Court allowed the appeal and altered the decree passed by the learned District Judge holding that the plaintiffs (respondents herein) were found entitled to claim the possession of half of the share in 43-14 bighas of land situated at village Barsu Ballah and gifted away by Mst. Sheru alias Bhushehari to Shri Dhari in the year 1943.

6. It is pertinent to note that the compromise decree reads as follows : I allow the appeal of the appellants and modify the judgment of the trial court to the extent that gift deed in respect of the land measuring 21-15-17 bighas comprising Khata Khatauni No. 3/16 to 27 bighas situated in village Barsu Ballah is hereby rejected and declared ineffective. The aforesaid land along with the other land shall be divided in equal shares after the death of Sheru alias Bhushehari and Dhari shall himself give due share to Hari Ram in accordance with the aforementioned order.

7. The effect of the aforesaid was that the gift was ineffective and Smt. Bhushehari continued to enjoy the right and benefit she had during her limited ownership until 1956. In the premises and in the facts and circumstances of the case, the High Court was not justified in construing or interpreting the compromise decree in Suit No. 63 of 1948 in the manner it did and in holding that the suit was one in which Hari Ram did not challenge the gift till the lifetime of Bhushehari and that he filed the said suit only for the purpose of avoiding operation of the gift after the lifetime of Bhushehari. The compromise decree should be construed as that the parties agreed that the properties would be enjoyed by Bhushehari till her lifetime and the gift made by her in favour of Dhari would remain operative till the lifetime of Bhushehari but not beyond that. When Bhushehari inherited the properties from her husband in 1942 she had only life interest in the said properties. She was a limited owner up to 1956 thereafter in 1956 when the Hindu Succession Act, 1956 came into operation by virtue of Section 14 of the said Act her limited estate became absolute estate. The position therefore was that if she had gifted away her properties when she was limited owner Smt. Bhushehari would not have become absolute owner after coming into operation of the 1956 Act and would not have been competent to bequeath the properties by will. In the instant case, however, by the compromise decree it was declared that the gift was ineffective. The effect of that declaration was that she continued to be the limited owner of the properties thereafter until 1956. The effect of the Hindu Succession Act, 1956, was that a female Hindu can transfer her property by will. Since the will was subsequent to this period she had absolute estate and full capacity to make the will.

8. It has been held by the courts of facts that the will was genuine and properly executed. If that is so, then the claim of the appellants who are the legatees under the will cannot be disputed. We are, therefore, unable to sustain the views of the High Court. Our attention was drawn to a decision of the Himachal Pradesh High Court in the case of Lachhman v. Thunia (AIR 1972 HP 69), where it was held that where a Hindu widow makes a gift of the property belonging to her deceased husband before the passing of the Hindu Succession Act and the reversioners obtain a declaratory decree that their rights are intact despite the alienation by the widow, the declaratory decree does recognise the rights of the reversioners to the property after the death of the limited owner though the right to

enjoy for a limited period remains in the donee. Section 14(1) of the Hindu Succession Act, 1956, had no application to the property. It was held that it was not in the possession of the widow at the time of the death. We are of the opinion that the ratio of the said decision cannot be made applicable to the facts of this case. Since in this case after the purported gift, it was held that the gift was (sic not) legally valid, Mst. Bhushehari remained the owner of the property in question, (sic and) therefore, was competent to dispose it of when she made the will.

9. In that view of the matter and in the facts and circumstances of this case the appeal must be allowed. The judgment and order of the High Court are set aside. In the facts and circumstances of the case the parties will pay their own costs.

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