

Mohindero

Vs

Kartar Singh and others

Civil Appeal No. 790 of 1981

(Kuldip Singh, S.C. Agarwal JJ)

30.10.1990

JUDGMENT

KULDIP SINGH J

1. Kissi was the sister of two brothers named Kisso and Ditto. Santi married these two brothers one after the other. She first married Kisso from whom she gave birth to a son named Buta. After the death of Kisso she remarried the other brother Ditto. Ditto also died issueless. Buta who was born out of the wedlock of Kisso and Santi also died leaving a daughter named Mohindero.

2. On the death of Ditto the mutation of his estate was sanctioned in the name of Santi being his widow. She was, thus, in possession of the land-holding of Ditto as a life-estate. Santi executed a gift-deed dated December 27, 1955, of the said land, in favour of Mohindero daughter of her son Buta. The Hindu Succession Act, 1956 (hereinafter called 'the Act') came into force with effect from June 17, 1956. Santi died on October 6, 1956.

3. Kissi filed a suit for possession on the ground that under the law she was a preferential heir and the suit property had been illegally mutated in the name of Mohindero. The suit was dismissed by the trial court on May 27, 1963. It was held that without challenging the gift in favour of Mohindero, the suit for possession was not competent. Meanwhile Kissi died and her heirs went up in appeal before the District Judge. An application for permission to amend the plaint, so as to challenge the validity of the gift was also filed before the District Judge. The appeal was allowed and the judgment of the trial Court was set aside. The District Judge also allowed amendment of the plaint and remanded the case for fresh trial. While holding the gift to be invalid, the Trial Court dismissed the suit on the ground of Limitation. The District Judge affirmed the finding of the trial Court on the issue of limitation and dismissed the appeal. The plaintiff, thereafter, filed Regular Second Appeal before the High Court. A Learned single Judge of the High Court reversed the findings of the Courts below on the issue of limitation, set aside the judgment and decree of the Lower Courts and decreed the suit. The Letters Patent Appeal against the judgment of the learned single Judge was dismissed by the Division Bench of the High Court on May 6, 1980. This appeal by the defendant Mohindero via special leave petition is against the judgment of the High Court.

4. Mr. M. R, Sharma, Learned Senior Advocate appearing for the appellant has not challenged before us the correctness of the findings reached by the High Court. He proceeds on the assumption that the suit was within Limitation and the gift in favour of Mohindero was invalid. He, however, contends that on October 6, 1956 when Santi died she had become absolute owner of the property

and Mohindero being the daughter of a predeceased son was the preferential heir to Santi.

5. The Act came into force on June 17, 1956 and thereafter on October 6, 1956 Santi died. If the gift in favour of Mohindero was invalid as has been held by the High Court then Santi continued to be limited owner up to June 17, 1956 when the Act came into force and thereafter by virtue of the provisions of the said Act she became full owner of the property. Mr. Sharma contends that on Oct. 6, 1956 when Santi died succession to her property was to be governed by S. 15 of the Act and the appellant Mohindero being daughter of a predeceased son of Santi was the preferential heir under Section 15(1)(a) of the Act and was entitled to succeed to the property owned by Santi.

6. Mr. R. S. Sodhi, learned counsel appearing for the respondents does not challenge the legal position as argued by Mr. Sharma but he contends that there is no material on the record to show that Santi gave birth to Buta. Mr. Sodhi contends that unless it is factually proved that Buta was the son of Santi the appellant Mohindero cannot get the benefit of the provisions of Section 15 of the Act. We do not agree with Mr. Sodhi. We find sufficient material on the record to show that Buta was born out of the wedlock of Kisso and Santi. Written statement dated Dec. 29, 1963 filed by Mohindero is on the record of this appeal. Para 2 of the written statement is as under:

"2 . That, in reply to para No. 2 it is submitted that it is not denied that Kissi is the sister of Ditto. After the death of Ditto the estate left by him was inherited by Mst. Santi (his widow) as full and absolute owner. The said Mst. Santi was previously the widow of Kisso and Buta Singh (father of Defendant No. 1 and husband of defendant No. 3) was the son of Kisso through Mst. Santi. The rest of this para is denied. It is incorrect that Mst. Santi has a limited estate." (Emphasis supplied)

7. The gift deed dated December 27, 1955 which was admittedly part of the trial Court record and copy of which was placed before us recites as under:

"I, Santi widow of late Sri Ditto r/ o village Ghazi Nangal, Nangal, Tehsil Batala, Distt. Gurdaspur, Punjab whose thumb impression is marked below have no sons and daughters neither next of kin because my only son Buta Singh had expired 8 years earlier. Buta Singh had no sons but he had one daughter named Mahindero r/ o Sardar Bhangara Singh r/ o village Tehhore Tehsil Patiala Distt. Gurdaspur. "

(Emphasis supplied)

8. The above averments remained uncontroverted. Buta was, therefore, son of Santi born out of the wedlock of Kisso and Santi. There is no dispute that appellant Mohindero is the daughter of Buta.

9. Santi held the property as limited owner till the coming into force of the Act . She became full owner thereafter. When she died on October 6, 1956 succession to her property was to be governed by the Act. Santi having died intestate, succession to her property was to be governed by Section 15 read with Section 16 of the Act. Mohindero being daughter of a predeceased son of Santi she had the first preference to succeed under Section 15(1)(a) of the Act. We, therefore, agree with the precise point raised by Mr. Sharma.

10. We accept the appeal and set aside the judgment of the High Court and dismiss the suit filed by the respondents plaintiffs. We hold that the appellant Mohindero was entitled to succeed to the property of Santi in preference to the respondents-plaintiffs. There shall be no order as to costs.

Appeal allowed.

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