

Gurdip Singh and Another

Vs

Amar Singh and Others

Civil Appeal No. 2877 of 1977

(K. N. Saikia, M. M. Punchhi JJ)

14.02.1991

ORDER

1. Kehar Singh had two wives, Basant Kaur and Sahib Devi. Sahib Devi died during Kehar Singh's lifetime. Sahib Devi's son was Niranjn Singh who also died during Kehar Singh's lifetime. Niranjn Singh had four sons and one daughter. On April 26, 1947 Kehar Singh in lieu of maintenance made three oral gifts of properties situated in three different villages in favour of his wife Basant Kaur. The question which arose for consideration before the lower court was whether Basant Kaur got an absolute estate in the gifted properties as result of the passing of the Hindu Succession Act. In regard to the land in village Ballawal the lower courts have held that she got an absolute estate. The High Court was concerned in the second appeal with the lands in village Dhaipai and Chominda, and it held the gift having been without any power of alienation would fall under Section 14(2).

2. The Ex. D-1 was the report of the Patwari in connection with the mutation proceedings and it said :

"Today Kehar Singh owner of Khewat came along with Narain Singh Lambardar and stated that he had on April 14, 1947, made an oral gift of land-half of total land measuring 8 bighas pukhta, 3 biswas and 3 biswani, which is 4 bighas pukhta, 12 biswas and 1 biswani as detailed in favour of his wife Mst. Basant Kaur, and given possession of the same. I had only one son who is dead and he had four sons and no other male issue. There is no certainty of life. She served me. Lambardar attests so the mutation is entered."

On July 30, 1947, the Assistant Collector made the following orders :

"In the gathering, Kehar Singh donor and Basant Kaur donee, identified by Kishan Singh Lambardar are present. The change of possession of this case is admitted and verified by the donor and the donee. Donor stated that he has got no son. I had got two wives. My grandsons, it is possible may not gift maintenance to my wife. With this view I make the gift. Gift is for maintenance. After gift there would be no powers of mortgage or sale. After the death of Basant Kaur Malkiat Singh, Amar Singh, Gurdeep Singh and Mohan Singh, children would be heirs. This gift is of 1/2 share of Khasra No. 4658/2468 measuring 4 bighas 12 biswas 1 biswani, Khewat Nos. 324 to 326, which is attested in favour of Mst. Basant Kaur donee."

3. The High Court on interpretation of the Assistant Collector's report came to the conclusion that

Basant Kaur derived only a limited estate inasmuch as such a gift, according to the High Court, would fall directly under Section 14(2) of the Hindu Succession Act and as such the limited estate of Basant Kaur would not stand enlarged into an absolute estate. The challenge was to the gift made by Basant Kaur in favour of two step grandsons ignoring the other two.

4. There is no doubt that Basant Kaur had the right of maintenance and the gift was explicitly in lieu of maintenance. As such we are of the view that it was not a case of her acquiring any new property by virtue of the gift but it was a case of her right of maintenance being given to her by way of a gift. It was a property acquired by gift in lieu of maintenance. This acquisition on April 26, 1947 having been prior to the Hindu Succession Act, we are of the view that she having acquired this property by way of gift in lieu of her antecedent right to maintenance, it would fall under sub-section (1) and not under sub-section (2) of Section 14 of the Hindu Succession Act, 1956. In this view we are in consonance with the decisions *Bai Vajia (dead) by Lrs. v. Thakorbhai Chelabhai* ((1979) 3 SCC 300 : (1979) 3 SCR 291), *Gulwant Kaur v. Mohinder Singh* ((1987) 3 SCC 674 : (1989) 10 ATC 599), *Maharaja Pillai Lakshmi Ammal v. Maharaja Pillai Thillanayakom Pillai* ((1988) 1 SCC 99) and *Jaswant Kaur v. Major Harpal Singh* ((1989) 3 SCC 572). In view of the facts and circumstances, we are of the view that the decisions in *Mst. Karmi v. Amru* ((1972) 4 SCC 86) and *Kothi Satyanarayana v. Galla Sithayya* ((1986) 4 SCC 760) are distinguishable on facts.

5. In the result, the Judgment and decree of the High Court are set aside, this appeal is allowed and the suit is dismissed. However, under the facts and circumstance of the case, we make no orders as to costs.

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