

Shyama Devi

v.

Manju Shukla

(Supreme Court Of India)

HON'BLE MR. JUSTICE R.M. SAHAI HON'BLE MR. JUSTICE N.P. SINGH

Civil Appeal No. 5993-94 Of 1994 (Special Leave Petition (Civil) No. 9322-23 Of 1994) | 12-09-1994

N.P. Singh, J.

1. Leave granted.

2. This appeal has been filed on behalf of the appellants, for setting aside an order dated 21-4-1994, passed by the High Court of Rajasthan. By the aforesaid order, the revision petition of Respondent 1 was allowed and a direction was given to the Additional District Judge, to make afresh adjudication of the objections filed on behalf of the parties, to the report of the Commissioner. A further direction was given by the High Court that while doing so, the order dated 3-3-1992, passed by this Court, should be strictly followed.

3. A suit for partition was filed in the year 1965 by Dhanpat Rai. In the said suit a preliminary decree was passed on 24-1-1975 in respect of the properties in dispute. Jamuna Prasad and Ganga Prasad were defendants in the said suit. Jamuna Prasad and Ganga Prasad filed an appeal before the High Court against the said decree. It may be mentioned that in the present appeal, we are concerned with the branch of Jamuna Prasad, who had two sons and four daughters, apart from his wife, who is appellant 1 (hereinafter referred to as the 'appellant'). Mrs Manju Shukla, Respondent 1 (hereinafter referred to as the 'respondent') is one of the daughters of the aforesaid Jamuna Prasad. On 5.5.1980, a petition of compromise was filed on behalf of Dhanpat Rai, Jamuna Prasad and Ganga Prasad in the High Court. On 28-6-1982, the respondent made an application before the High Court, to be impleaded as a party being the daughter of Jamuna Prasad. That petition was rejected on 22-2-1983. On 1-9-1986, the appeal which had been filed before the High Court on behalf of

Jamuna Prasad and Ganga Prasad, was disposed of in terms of the petition of compromise. Jamuna Prasad died on 7-1-1987 leaving behind the appellant as his widow and two sons and four daughters including the respondent. During the preparation of the final decree on 6-5-1989 respondent filed a petition claiming 1/3 share in the properties. This application was entertained because after the death of Jamuna Prasad, respondent claimed to be his one of the legal heirs. The application filed by the said respondent was allowed by the Additional District Judge on 13-7-1990. The appellant being aggrieved by the said order filed a civil revision petition before the High Court. The High Court was of the opinion that the application dated 6-5-1989 filed on behalf of the respondent was maintainable but the trial court has to decide afresh as to what share she was entitled after hearing all the parties concerned. Against the said order of the High Court, Special Leave Petition (Civil) No. 15175 of 1991 was filed before this Court, on behalf of the respondent, which was disposed of on 3-3-1992. This Court gave the following direction :

"The appeal is, therefore, allowed and the trial court is directed to allot the shares of each legal representatives separately in respect of the share of Jamuna Prasad as per Hindu law without reference to any Will alleged to have been executed by Jamuna Prasad. However, we make it clear that this will not preclude the widow of Jamuna Prasad to file a separate suit claiming title on the basis of the Will. We further make it clear that on the ground that she has filed or is going to file any such suit the final decree proceedings should not be held up. The result of leaving open the truth and validity of the Will in question to a separate suit is that the allotment of the shares of Jamuna Prasad among the legal representatives would confer title on the legal representatives only subject to any defeasance at a later stage in case the Will was found to be true, genuine and valid."

4. It may be mentioned that, the appellant as widow of the aforesaid Jamuna Prasad, claimed in the proceedings pending before the trial court that Jamuna Prasad had executed a Will on 7-3-1986 bequeathing his property to the appellant. The aforesaid observation/direction of this Court was in connection with the said Will. The Additional District Judge on 7-12-1992 purporting to pass an order in the proceeding in terms of the order dated 3-3-1992 aforesaid passed by this Court, directed the Commissioner to divide the property as per

the decree and to submit his proposals before the court, after hearing the parties concerned. The Additional District Judge, however, made an observation that the question of family settlement alleged by the appellant was still open for adjudication. According to the appellant, after filing of the compromise petition aforesaid in the appeal pending before the High Court on 5-5-1980, there was a family settlement on 17-7-1981 and the trial court in its order aforesaid made reference to that family settlement.

5. The respondent being aggrieved by the aforesaid order dated 7-12-1992 filed a Civil Revision Petition No. 151 of 1993 before the High Court, which has been disposed of by the impugned order dated 21-4-1994. The High Court pointed out that by the order dated 3-3-1992, this Court had not directed to take any family settlement into consideration before adjudication of the objections raised by the parties and as such it was not open to the trial court to make any reference to the said family settlement. Having said so, the order dated 7-12-1992 was set aside and a direction was given for afresh adjudication of objections raised by the parties to the report of the Commissioner and while doing so the trial court was directed to strictly follow the direction given by this Court on 3-3-1992.

6. On behalf of the appellant, it was pointed out that in the order dated 3-3-1992, passed on the earlier special leave petition, filed on behalf of the respondent, the family settlement has not been rejected or held to be invalid and as such the same has to be taken into consideration for ascertaining the shares devolving on one or the other heirs of Jamuna Prasad after his death. According to us, in view of the direction dated 3-3-1992 given by this Court, which has become final, it was not open to the trial court to take into consideration any family settlement alleged to have been made by Jamuna Prasad, during his lifetime, in respect of the properties, which he got after partition from his other co-sharers. If any such direction is given, it will amount to modifying the order dated 3-3-1992. The High Court was justified in issuing a direction to the trial court to consider the objections to the report of the Commissioner in the light of the direction given in the earlier special leave petition on 3-3-1992. It need not be pointed that when this Court said, the trial court shall allot the shares of each of the legal representatives separately in respect of the properties of Jamuna Prasad as per the Hindu law, this Court meant in accordance with the Hindu Succession Act, 1956 (hereinafter referred to as 'the Act').

7. The learned counsel, appearing for the appellant, pointed out that if the shares of the legal representatives of Jamuna Prasad, in respect of the properties of Jamuna Prasad is to be worked out in accordance with the Act, there is no question of respondent getting 1/3 share, out of the properties left behind by Jamuna Prasad, because after death of Jamuna Prasad, his interest in the coparcenary property would devolve upon his widow the appellant, his two sons and four daughters.

8. The relevant part of Section 6 of the Act is as follows :-

"Sec. 6 When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act :

Provided that, if the deceased had left him surviving a female relative specified in Class 1 of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation 1. - For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before this death, irrespective of whether he was entitled to claim partition or not."

In view of the direction given by this Court on 3-3-1992, we have to proceed on the assumption that Jamuna Prasad at the time of his death had an interest in Mitakshara coparcenary property and as such the pre-conditions of Section 6 are satisfied. Under the main provision of Section 6, the interest of Jamuna Prasad in the coparcenary property would have devolved by survivorship upon the surviving members of the coparcenary and not in accordance with the provisions of the Act. But in the facts and circumstances of the case, the proviso

to Section 6 along with the Explanation 1 is attracted since the widow and daughters are amongst the family relatives specified in Class 1 of the Schedule to the Act. Proviso to Section 6 comes into operation, if the deceased leaves behind any female relative specified in Class 1 of the Schedule of the Act or a male relative, specified in that Class, who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property. Then in that event, it shall devolve by intestate succession under the provisions of the Act and not by survivorship. As Jamuna Prasad died leaving behind his widow the appellant and four daughters, who shall be deemed to be the family relatives specified in Class 1 of the Schedule to the Act, the proviso to Section 6 shall come into play and the interest of Jamuna Prasad shall devolve according to the said proviso by way of intestate succession under the Act. The claim of the execution of a Will made by the appellant is not to be taken into account at this stage in view of the earlier order dated 3-3-1992 passed by this Court. The Explanation 1 contains the formula for determining the share of the deceased and for that purpose a statutory fiction has been introduced saying that interest of the person dying intestate shall be deemed to be share in the property that would have been allotted to him, if the partition of the property had taken place immediately before his death. As such one has to imagine for purpose of ascertaining the interest of Jamuna Prasad in the coparcenary at the time of his death that a partition of the property had been effected a little prior to his death. The scope of Section 6 of the Act along with proviso and Explanation 1 has been examined in detail by this Court in the case of Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum, AIR 1978 SC 1239.

9. Mr. Gopal Subramaniam, Senior Advocate, appearing on behalf of the respondents, took a stand that Section 6 is attracted only when the dispute is in respect of interest in Mitakshara coparcenary property. As in the present case there was a partition, out of which the present dispute has arisen, it shall be deemed that there was no Mitakshara coparcenary property in existence when Jamuna Prasad died. It is an admitted position that the partition suit which had been filed in the year 1965 in which preliminary decree was passed on 24-1-1975, the partition sought for was by Dhanpat Rai, representing one of the three branches. It is nobody's case that at that stage or any time later there was inter se partition between Jamuna Prasad and his sons, who were members of coparcenary. As such it has to be assumed that on the date of death, Jamuna Prasad was a member of coparcenary, and Section 6 as well as Explanation 1 to the said section was applicable to the interest of Jamuna Prasad in the coparcenary properties at the time of his death.

10. Accordingly, the appeals are disposed of with a direction that the courts below shall adjudicate the shares of the legal representatives of Jamuna Prasad in accordance with the provisions of the Act, as directed by this Court in its order dated 3-3-1992. However, in the facts and circumstances of the case, there shall be no orders as to cost.