

Shiv Dass and Others

Vs

Devki (Smt.) (Dead) By Lrs. and Others

Civil Appeal No. 606 of 1978

(K. Ramaswamy, B. L. Hansaria JJ)

07.03.1995

ORDER

1. This appeal by special leave arises from the judgment of the Single Judge of the Punjab and Haryana High Court made in RSA No. 295 of 1968 dated 14-2-1978. The property belongs to one Mela Ram who left behind him his mother, Radha. The suit property consists of :

(a) One pucca 2 and 3 storeyed house bounded on the North : Shop of Abanshi Ram previously of Vir Bhar, on the South : Khola of Nanak Singh and others, on East : House of Nanak Singh, on the West : Kucha Sarbasta and house of Harnam Singh and others as shown in the plan filed herewith by letters ABCDEFG, situated in Village Kahnuwan, Tehsil and District Gurdaspur.

(b) One pucca shop with verandha and Thara bounded as follows :

North : Thoroughfare, South : Shop of Sohan Lal previously of Lal Singh, East : Shop of Shri Mulk Raj previously of Mohan Lal, West : Shop of Hukum Chand previously of Shri Durga Dass shown in the map filed herewith by letters ABCD situated in Village Kahnuwan, Tehsil and District Gurdaspur.

(c) One pucca shop bounded on the North : Thara building on the South : Thoroughfare. On the East : Shop of Chajju Ram previously of Nand Lal, West : Shop of Sat Pal previously of Bishan Dass situated in Village Kahnuwan, Tehsil and District Gurdaspur.

(d) Land measuring 123 kanals 15 marlas situated in Village Chak Yaqub as given in the Jamabandi for 1959-60 which copy is filed herewith; Khata Nos. 1, 2, 13, 19, 16, 3, 4, 8, 7, 18, 11, 12, 119, 120, 122, 111, 125, 124, 123, 116, 117, Khatoni Nos. 1, 2, 14, 20, 19, 4, 5, 9, 8, 19, 12, 13, 124, 125, 127, 116, 130, 129, 128, 121, 122, Rect. 19 Killa No. 20/2 Rect. No. 40 Killa No. 20 Rect. Nil Killa No. 3/3 Rect. No. 4, Killa Nos. 17, 24, 25, Rect. No. 20 Killa Nos. 9/2, 12 Rect. No. 31 Killa Nos. 11/2, 12/1, 19/2, Rect. Nos. 40 Killa Nos. 22/2, 23/1, Rect. No. 42 Killa No. 3/1 Rect. No. 30 Killa No. 1/4 Rect. No. 20 Killa No. 15/3, Rect. No. 30 Killa No. 1/3 Rect. No. 19 Killa No. 11/1, Rect. No. 20 Killa No. 15/4 Rect. No. 30 Killa Nos. 1/2, 11/2, 1/2.3 Rect. No. 17 Killa No. 4/2, Rect. No. 24, Killa No. 2/1 Rect. No. 40 Killa Nos. 19/3, 22/3, 42/2, Rect. No. 41 Killa No. 6/2, Rect. No. 20, Killa Nos. 13/2, 14/1, 17/4, 18/4, Rect. No. 20 Killa No. 13/1, Khasra Nos. 118, 1015, 430, 743, 881, situated in Village Chak Yaqub, Tehsil Gurdaspur as entered in Jamabandi 1959-60.

(e) Land measuring 27 kanals 9 marlas Khata Nos. 6, 18, Khatauni Nos. 12, 39 Rect. No. 24 Killas Nos. 15, 16, 5, 6, situated in Village Daowal, Tehsil and District Gurdaspur as entered in Jamabandi 1959-60.

2. Radha, by a deed of gift dated 28-2-1922, gifted the property Items 1, 2 and 3 to her grandson by name Shiv Dass, the appellant herein, son of Durga Devi, one of the two daughters of Radha. She also bequeathed Item 4 by a will, Ex. D-2. It would appear that the collaterals had challenged the gift which was the subject-matter of the decision of the Division Bench of the Lahore High Court in *Shib Das v. Nand Lal* (AIR 1932 Lah 361 : ILR 13 Lah 178). The High Court held that the grandson of Radha had a preferential claim over the collaterals as a reversioner and, therefore, by operation of Punjab Act 2 of 1929, gift of the property to him was held to be valid.

3. It would appear that mother of Shiv Dass died in 1924. Radha died on 21-12-1960. Devki Devi, other daughter of Radha, filed the suit for declaration on 12-3-1965, that the gift deed dated 28-2-1922 was invalid and inoperative; so were the alienations made by Shiv Dass, which did not bind her. The trial court decreed the suit in 1967. On appeal, the Additional District Judge, by judgment and decree dated 3-2-1968, affirmed the decree of the trial court and dismissed both the appeals of the appellant as also of Devki Devi. The second appeal was dismissed. Thus this appeal by special leave.

4. Shri S. M. Ashri, learned counsel appearing for the respondents, raised a preliminary objection that the suit had abated as against Devki Devi and, therefore, this appeal had stood dismissed on that ground. We find no force in the contention. It is now clear from the record that the High Court heard the second appeal on 4-1-1978 and delivered the judgment on 14-2-1978. In the meanwhile, Devki Devi died in January 1978. The special leave petition was filed in this Court on 13-3-1978. The only question would be whether the appeal was properly laid. It is now settled law that when one of the parties dies, after the appeal was heard but before the judgment was pronounced, the aggrieved person need not file an application in the High Court under Order 22, Rule 3 or Rule 4 CPC to bring on record the legal representatives of the deceased-appellant or respondent, as the case may be. It is enough that the legal representatives of the deceased party are impleaded *eo nomine* in the appeal filed against the judgment to represent the estate of the deceased respondent/appellant. Though the appellants did not implead in the appeal the legal representatives of Devki Devi as party respondents, since admittedly, the respondents did make an application in this Court to bring them on record as heirs of Devki Devi and on 6-4-1979, the application was allowed, whatever initial defect that crept in laying the appeal, the same got cured by an order of this Court at the instance of the respondents. In that view, the question of abatement does not arise. The appeal, therefore, was validly laid in the backdrop of the facts and circumstances of this case.

5. It is contended by Shri V. K. Mahajan, learned Senior Counsel, that since Radha died on 21-12-1960, by operation of Section 14 of Hindu Succession Act, 1956, (for short "the Act") she became absolute owner of the properties. She having died intestate after the Act came into force, appellant Shiv Dass has become class 'A' heir of his mother and that, therefore, he is entitled to half share in the property. This contention is not totally correct. It is seen that when the Act came into force, she was not in possession of the property. Therefore, Section 14(1) of the Act is not attracted and she did not become absolute owner. As she did not die intestate, Section 15 of the Act cannot be applied.

6. The crucial question is whether Devki Devi is entitled to challenge the gift and bequest by will made by Radha in favour of Shiv Dass. It is seen that Radha is only limited owner and is entitled

only to enjoy the properties during her lifetime. Therefore, any alienation or gift of the property or will made by Radha to anybody even to her grandson, are invalid, inoperative and do not bind the reversioners or the legal representatives of Mela Ram. The succession stood opened in 1923 when Mela Ram died. Durga Devi and Devki Devi are sisters of Mela Ram. Therefore, they are nearer in degree to Shiv Dass, the grandson of Radha. Though the rights of Shiv Dass qua collaterals were upheld in *Shib Das v. Nand Lal* (AIR 1932 Lah 361 : ILR 13 Lah 178) by the Division Bench, that does not have any bearing on the rights of Devki Devi, since Durga Devi and Devki Devi are entitled to the estate left by their brother Mela Ram. Then both of them are entitled to succeed the estate of Mela Ram in equal moiety. Devki Devi and her legal representatives are entitled to half the estate left by Mela Ram and any alienation made by either Radha by her will or gift or alienation by Shiv Dass or anybody by derivative title are invalid, inoperative and do not bind Devki Devi and the respondents in the appeal.

7. The decree of the trial court is accordingly confirmed and the same may be treated as a preliminary decree declaring the rights of the parties. On an application made to it, it would proceed further in the matter to pass final decree. If properties in excess of the half share of the respondents stood alienated, the respondents would be entitled to recover possession of the properties allotted to their share, from the purchasers with mesne profits. The alienated properties should, however, as far as possible, be allotted to the share of the appellant to the extent of their half share.

8. The appeal is accordingly disposed of. In the circumstances, parties are directed to bear their own costs.

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