

Balwant Singh & Anr. etc.

Vs.

Daulat Singh (dead) by Lrs.

(Dr. A.S. Anand, K. Venkataswami JJ)

07.07.1997

JUDGMENT

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K. Venkataswami, J.

1. Both these appeals are preferred against the judgment and decree of the Punjab and Haryana High Court in R.S.A.No.25 of 1976 dated 29-11-1983. The facts are given below.

2. The defendants in Suit No. 158 of 1973 on the file of the court of Sub-Judge, First Class, Gurdaspur, are the appellants in these two appeals. The Plaintiffs-contesting respondents herein preferred the said suit under the following circumstances.

3. One Khushal Singh was the owner of an extent of land measuring 270 kanals 9 marlas in village Gandhian, Tehsil & District Gurdaspur. The above-said land after consolidation was found measuring only 264 kanals and 7 marlas. The suit property is the said extent of 264 kanals and 7 marlas. The original owner, Khushal Singh, died issueless on 5.9.1950. Subsequently, the suit lands were mutated in the name of one Durga Devi widow of deceased Khushal Singh on 19.7.1952. The said Durga Devi purporting to fulfil her husband's desire of taking in adoption one Balwant Singh and Kartar Singh (both minors) expressed her desire to mutate the lands in favour of the said minors Balwant Singh and Kartar Singh. Accordingly, the mutation was effected on 19.7.1954 under Mutation No.1311.

4. One of the reversioners of Khushal Singh, namely, Chet Singh filed a suit bearing no. 194 of 1955 in the court of Senior Sub-Judge, Gurdaspur praying for a declaration that the mutation of 'gift-deed' dated 19.7.1954 would not affect the reversionary rights of the plaintiff after the death or after the re-marriage of Durga Devi. In the said suit the validity of the adoption of Balwant Singh and Kartar Singh was one of the issues and the trial court found that the alleged adoption was not proved and the mutation would not bind the reversionary rights of the plaintiff in that suit after the death of the widow Durga Devi or after her marriage according to Custom. The defendants in that suit, the Predecessors in title of the appellants herein (some of them), challenged the judgment and the decree of the trial court by filing Civil Appeal No. 88 of 1956 before the District Judge, Gurdaspur. That appeal was dismissed by the appellate court on 17.8.1957 by confirming the decree of the trial court. No second appeal was preferred against that appellate court's judgment. After the judgment of the appellate court, the suit lands were again mutated under Mutation No. 1348 in favour of Durga Devi.

5. After the latest Mutation No.1348 the said Durga Devi claiming to be the absolute owner of the suit property after the coming into force of the Hindu Succession Act, 1956, had executed four

separate gift-deeds in favour of the appellants/their predecessors in title. Those gift-deeds were executed on 1.8.70, 9.9.197 and 7.10.1970. Thereafter on 24.4.1973 the said Durga Devi died.

6. After the death of Durga Devi, the reversioners including the legal representatives of Chet Singh, (the plaintiff in O.S. No. 194 of 1955) filed the aforesaid suit bearing No. 158 of 1973 in the court of Senior Sub-judge, Gurdaspur, for recovery of possession of the suit lands, substantially on the basis of the decree in Suit No. 194 of 1955. It is stated that the earlier suit was filed as representative suit for the benefit of all the reversioners and as heirs of Khushal Singh who would be alive at the time of death of Durga Devi.

7. In the pleadings, it was stated that the mutation after the judgment of the appellate court in Civil Appeal No. 88 of 1956 (supra) reverting the land back to Durga Devi was of no consequence as the same was based on a misreading of the findings of the trial and appellate courts. Likewise, they also pleaded that the gift-deeds executed by Durga Devi asserting that she was the absolute owner of the property, will not confer any title on the donees beyond the life time of Durga Devi in view of the judgment in the earlier court proceedings. It was the contention of the plaintiffs, (the contesting respondents here in), that Durga Devi was not in possession and enjoyment of the suit lands in her own rights on the date of coming into force of Hindu Succession Act, which alone would enable her to make alienation as absolute owner. It was also the contention of the plaintiffs that the decision in the earlier court proceedings would operate as res-judicata against the defendants, appellants herein.

8. The defendants in the present suit, appellants herein, contesting the suit pleaded that in the earlier court proceedings the adoption having been found as not proved, the first mutation, namely, Mutation No. 1311 will have to be ignored and no title was passed on to the adoptees. In other words, it was pleaded that Durga Devi continued to be owner and in possession of the suit property notwithstanding Mutation No. 1311 dated 19.7.1954. In any case, it was further pleaded that by virtue of subsequent mutation bearing no. 1348, Durga Devi was put in possession and enjoyment of the suit lands and, therefore, she had every right to execute the gift-deeds challenged in the suit.

9. The trial court on the basis of the pleadings framed eleven issues and on the basis of the oral evidence and documents filed before it and on appreciation of pleadings found that in view of the decree in the earlier court proceedings the alienation by way of Mutation gift by Durga Devi would not be binding on the reversionary rights of the plaintiffs after her death. The decree in the earlier proceedings confirmed by the appellate court operates as res-judicata against the defendants in the suit. As a result of mutation on 19.7.1954 under Mutation No. 1311, Durga Devi was divested of her title to the suit property and consequentially divested of possession also. Therefore, on the date of coming into force of the Hindu Succession Act the widow was not in possession of suit lands to enable her to validly execute the deeds in question. The trial court also held that the subsequent mutation bearing No. 1348 was on misreading of the earlier court proceedings and, therefore, will not come to the aid of the defendants. On the basis of these findings, the trial court decreed the suit on 14.2.1975.

10. The defendants (appellants herein) preferred Civil Appeal No. 39/83 of 1975 in the court of Second Additional District Judge, Gurdaspur, who, by judgment dated 11.12.1975, dismissed the appeal confirming the decree of the trial court.

11. The High Court in Second Appeal No. 25 of 1976 considered only one question whether Durga Devi was in possession of the gifted land when the Hindu Succession Act, 1956 came into force and found that she was not in possession. Accordingly, the second appeal was dismissed.

12. It is under these circumstances these two appeals are filed against the said second appeal.

13. Mr. Sanyal, learned senior counsel appearing for the appellants in C.A. No. 293/84 before taking us into the merits of the case, prayed for orders in I.As. Nos.3-6/96. Straightaway, we can order I.A. No.6/96 for deleting respondent No. 14 as he, according to the counsel is not a contesting respondent. So far as I.A. No. 4/96 is concerned, it relates to setting aside the abatement of appeal as a result of death of one Makan Singh, Appellant No.4 in C.A. No. 293/84. There is an inordinate delay in filing the applications for bringing the legal representatives of the deceased, 4th appellant. Therefore, application for condonation of delay and for setting aside the abatement were filed for bringing on record the legal representatives of the deceased.

14. The learned counsel appearing for the contesting respondents, Mr.Markandeya, seriously opposed the application for bringing on record the legal representatives of the deceased-4th appellant and he further contended that in view of the death 4th appellant and the failure to bring the legal representatives on record in time, the whole appeal is abated and on that short ground both the appeals are liable to be dismissed as the suit was one.

15. In reply, Mr. Sanyal submitted that in the event of this court not willing to condone the delay and consequently set aside the abatement, the appeal as a whole will not stand abated, but only the Properties dealt with under the gift deed dated 9.9.70 executed in favour of Makan Singh alone will be affected and to that extent, the appeal may stand abated.

16. We have considered the rival submissions. We find from the facts that the deceased Makan Singh alone was the donee of specific items of properties under gift deed dated 9.9.70 and his possession and enjoyment of properties was independent of others. Therefore, his death would not abate the whole of the appeal. In our view, the decree is divisible being a decree in favour of several reversioners against several independent donees having specified shares in indentifiable properties. We are not satisfied with the reasons given for the inordinate delay of more than 25 Years and, therefore, the appeal stands abated in respect of properties given to the deceased-Makan Singh under the gift deed dated 9.9.70.

17. Now coming to the merits, though, Mr. Sanyal argued extensively concerning various points said to arise out of the judgments of the Trial Court, appellate court and High Court, we are of the view that since the High Court had considered and decided only one point viz. whether the widow, Durga Devi died, 'possessed by' the suit properties in her own rights when the Hindu Succession Act, 1956 came into force, that alone need be considered by us. If the answer to the question is in the affirmative, the appellants are entitled to succeed. Otherwise, the appeals are liable to be dismissed on merits.

18. On the point of possession, it is the argument of Mr. Sanyal, learned Senior Counsel for the appellants that all the three courts below went wrong in assuming that as a result of mutation bearing no. 1311 dated 19.7.54. Durga Devi divested herself of her title and possession to the suit property and from that date the title in the suit property and possession thereof vested with the persons in whose favour mutation was effected, namely, Balwant Singh and Kartar Singh. The legal effect of mutation, according to the learned counsel, has been clearly laid down by this court in a recent judgment in Smt.Swarni Vs. Smt. Inder Kaur & others (1996(7) JT SC 580). According to the learned counsel, mutation of the property in the revenue record will not extinguish title nor has it any presumptive value on title. Therefore, according to the learned counsel, by mutation No. 1311, the widow has not been divested of her title in the properties and consequently she continued to be

in possession and enjoyment of the property. She became absolute owner of the properties on the coming into force of the Hindu Succession Act, 1956. In any case, learned counsel further argues that after the decree in suit no. 194/55 as confirmed by the appellate court, there was a remutation in favour of the widow under mutation no. 1348. That re-mutation having been allowed to remain unchallenged, whatever the effect of mutation no. 1311, has been reversed by the latter mutation no. 1348. On the basis of these arguments learned counsel submitted that the appeals are to be allowed, if not in full, except to the extent the properties covered by the gift deed in favour of Makaan Singh.

19. Mr.R.S. Sodhi, learned counsel for appellants in C.A. No.2295/84, adopted Mr. Sanyal's arguments.

20. Mr. Markandeya, learned counsel appearing for the contesting respondents, submitted that the courts below were right in holding that the widow was divested of her possession and enjoyment from the date of first mutation viz. 19.7.54 and the second re-mutation was not legal and valid in law.

21. We have considered the rival submissions and we are of the view that Mr. Sanyal is right in his contention that the courts were not in assuming that as a result of mutation No. 1311 dated 19.7.54. Durga Devi lost her title from that date and possession also was given to the persons in whose favour mutation was effected. In Smt. Sawarni's case, Pattanaik J., speaking for the Bench has clearly held as follows:-

"Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. The learned Additional District judge was wholly in error in coming to a conclusion that mutation in favour of Inder Kaur conveys title in her favour. This erroneous conclusion was vitiated the entire judgment."

22. Applying the above legal position, we hold that the widow had not divested herself of the title in the suit property as a result of mutation No. 1311 dated 19.7.54. The assumption on the part of the courts below that as a result of the mutation, the widow divested herself of the title and possession was wrong. If that be so legally, she was in possession on the date of coming into force of the Hindu Succession Act and she as a full owner had every right to deal with the suit properties in any manner she desired.

23. It is relevant to point out that it is only the trial court that has dealt with the matter elaborately on facts. The first appellate court has dealt with the only point regarding validity and the genuineness of the adoption. The High Court, as pointed out earlier, dealt with only with the question of possession. Therefore, we have to look into the trial court judgment for findings on facts. The trial court on the fact of possession observed as follows:

"Durgi continued to live with Balwant Singh and Kartar Singh and the necessary conclusion that must be drawn is that hence forward after she made the gift the property went to the minors Balwant Singh and Kartar Singh and if at all she continued living with the minors and managing the property, if at all, the same must be only on behalf of the minors and not in her own right."

24. On the question of the consequences of mutation, the trial court observed as follows:-

"I hold that the transaction in question i.e. mutation no. 1311 of 19.7.54 was a gift and the effect of the judgments and decree in suit No. 194 of 1955 is that the alienation in favour of Balwant Singh and Kartar Singh continued to be valid till the death of Durga Devi and thereafter in view of the decree, cannot have any effect as against the reversionary rights.

25. So far as re-mutation in favour of Durga Devi is concerned, the trial court observed as follows:-

"The land had been again mutated in the name of Durga Devi and there is no evidence that in fact Balwant Singh and Kartar Singh reconveyed the property or treated the gift as cancelled. thus the mere entry in the revenue records of the name of Durga Devi won't make her full owner.

26. At the risk of repetition, we point out that the first Appellate court and the High Court have not discussed the possession aspect in the light of the above extracted findings of the trial court.

27. In the circumstances, we are of the opinion that the trial court erred in assuming that by Mutation No. 1311, the widow divested herself of the title to the suit property by treating the mutation as gift and conveying title. Further it has not applied uniform test in appreciating the mutation entries. In one place, the trial court has accepted mutation entries in toto even for conveying title but in the other place, the trial court was not prepared to accept the mutation entries by expressing some doubt about it. It is to be stated that this court in *Gurbaksh Singh vs. Nikka Singh* (1963 Supp. (1) SCR 55) has held that entries in mutation must be taken as correct unless the contrary is established. Here the trial court has shifted the burden on the appellants to prove the entries as correct. The trial court has failed to apply the same yardstick that it had applied to Mutation No.1311 to Mutation No. 1348. Assuming for the sake of arguments, that Mutation No. 1348 was on the basis of misunderstanding of the judgments in the earlier proceedings, that having been allowed to remain unaltered without challenge, cannot be brushed aside as worth nothing. Anybody affected by such entries should have challenged the same as provided under the law. In the absence of that, the entries cannot be ignored. Be that as it may, we have already noticed that mutation entries do not convey or extinguish any title and those entries are relevant only for the purpose of collection of land revenue. That being the position. Mutation No. 1311 cannot be construed as conveying title in favour of Balwant Singh and Kartar Singh or extinguishing the title of Durga Devi in the suit property. Consequently, the title to the suit property always vested with the widow notwithstanding the Mutation No.1311. Viewed in this manner, the decision in the earlier proceedings namely, decree in Suit No.194/55 even assuming operates as *resjudicata*, will not be of any avail to the contesting respondents, (plaintiffs) in the present suit because the reliefs sought in the prior proceeding was for a simple declaration that the 'mutation gift' of 1954 would not affect the reversionary rights of reversioners. As noticed already, mutation entries will not convey or extinguish title in the property. Therefore, under Mutation No. 1311 neither Balwant Singh and Kartar Singh acquired title nor Durga Devi's title in the property got extinguished. The earlier court proceedings did not and could not convey title in favour of reversioners, as the relief sought was for a simple declaration as mentioned above. If no title as such was passed on under the alleged 'mutation gift', the limited right of the widow in the property would get enlarged on the coming into force of the Hindu Succession Act. 1956.

28. The widow must be deemed to have continued in possession and she became absolute owner on

the coming into force of the Hindu Succession Act, 1956. On that view, the alienations made by her and challenged in the present litigation, cannot be said to be without authority.

29. We may also point out that the trial court was prepared to accept that factually possession and enjoyment were with Durga Devi, but it held that such possession and enjoyment as one on behalf of the minors in whose favour the mutation was earlier effected on 19.7.54. In view of our conclusion that by mutation the widow has not divested herself of title and possession, the erroneous conclusions reached by the courts below have to be set aside.

30. In the result, the appeals are allowed except regarding the properties gifted to Makan Singh under gift deed dated 9.9.70 and the properties dealt with under this gift deed will go to the plaintiffs/reversioners as per the judgment of the trial court confirmed by the appellate court and the High Court. There will be no order as to costs.