Bhagat Ram (dead)

Vs

Teja Singh

Civil Appeal No. 3663 of 1984

(A.P. Misra, U.C. Banerjee JJ)

31.03.1999

JUDGMENT

A.P. Misra, J

1. In this case, the respondent has not appeared inspite of service.

2. Heard learned counsel for the appellant.

3. The short facts are that one Kehar Singh was the owner of the land admeasuring 280 kanals and 18 marls situated in Village Antowali (now in Pakistan). He died prior to the partition. His widow Kirpo succeeded to his estate as owner. She had two daughters Santi and Indro who came to India. Smt. Kirpo, widow of Kehar Singh was allotted suit land in lieu of the land left behind by her in Pakistan. In 1951 she died leaving behind two daughters who remained in possession of the suit land. Thereafter the Hindu Succession Act, 1956 came into force. Some time in 1961 one of the sister Santi died. In 1963, mutation on the entire land was made in favour of Indro, the other sister. On 2nd March, 1963, Indro entered into an agreement to sell off this land in dispute, with the present appellant. It seems that subsequently as Indro tried to retract from the said agreement to sell, the present appellant had to file a suit for specific performance which was decreed in appellant's favour.

4. This led to the filing of the present suit by one Teja Singh who is the brother of Santi's pre-deceased husband. The suit was for possession of the half share of the suit land which had fallen to the share of Santi. Teja Singh based his claim on sub-section (1) of Section 15. He claimed to fall in the line of succession under the second clause of this sub-section, namely, Section 15(1)(b) - `heirs of the husband'. This position is contested by the appellant. Appellant's case is, sub-section (2) and not sub-section (1) of Section 15 will apply, on the facts and circumstances of this case. The trial court decreed the suit holding that Section 15(1) will apply. The appeal was also dismissed and the High Court also dismissed the appeal filed by the appellant. Hence the present appeal by special leave.

5. The short question raised for our consideration is, whether on the facts and circumstances of this case, sub-section (1) or sub-section (2) of Section 15 of Hindu Succession Act 1956 will apply. For ready reference, sub-sections (1) and (2) of Section 15 are quoted hereunder :-

> "15. *General rules of succession in the case of female Hindus.* - (1) The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16, -

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1), -

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband."

6. On perusal of the two sub-sections we find that their spheres are very clearly marked out. So far sub-section (1), it covers the properties of a female Hindu dying intestate. Sub-section (2) starts with the words `Notwithstanding anything contained in sub-section (1).' In other words, what falls within the sphere of sub-section (2), sub-section (1) will not apply. We find that Section 15(2)(a) uses the words `any property inherited by a female Hindu from her father or mother'. Thus property inherited by a female Hindu from her father and mother is carved out from a female Hindu dying intestate. In other words any property of female HIndu if inherited by her from her father of mother would not fall under sub-section (1) of Section 15. Thus, property of a female Hindu can be classified under two heads : Every property of a female Hindu dying intestate is a general class by itself covering all the properties but sub-section (2) excludes out of the aforesaid properties the property inherited by her from her father or mother.

7. In addition, we find the language used in Section 15(1) read with Section 16 makes it clearly, the class who has to succeed of property of Hindu female dying intestate. Sub-section (1) specifically states that the property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16. So, in case sub-section (1) applies, then after the death of Santi, Indro cannot inherit by succession but it would go to the heirs of the pre-deceased husband of Santi.

8. In the present case, it is not in dispute that both Indro and Santi inherited this property from their mother, hence inherited this property as a female from her mother. Thus on the facts of this case succession clearly falls under sub-section (2). Hence, we have no hesitation to hold that on the facts of this case, the property would devolve after death of Santi not on the heirs of her pre-deceased husband but would devolve on Indro. This legal principle has wrongly been decided by all the courts below including the High Court.

9. For the said reasons, we find merit in this appeal. We accordingly allow the appeal and set aside the judgment and order of the High Court and also of two courts below. Since none has appeared for

the respondent, the appellant to bear his own costs.

Appeal allowed.