SUPREME COURT OF INDIA

Pyare Lal

Vs.

Mani Ram

C.A.No. 3111 of 1990

(Ajay Prakash Misra and Y. K. Sabharwal, JJ.)

22.08.2000

JUDGEMENT

Y. K. SABHARWAL, J.:-

1. The question for determination in this appeal is whether sister's son or decendants of father's father's father are entitled to inherit the property of the deceased. It is not in dispute that the right of succession in respect of the agricultural land in question is governed by a special legislation of the then Gwalior State, namely, Quanoon Mal Riyasat Gwalior, Samvat 1983 (hereinafter referred to as 'Special Legislation').

2. On factual matrix, there is no dispute between the parties. The subject matter of appeal is land in question left behind by one Harbilas. Harbilas died in the year 1948. Who out of the aforesaid two categories have the right of succession to his land, is the question ? The appellants fall in the category of descendants of great grandfather of Harbilas. Appellants are sons of Hansraj. Murli was father of Hansraj and Mohan was father of Murli. Harbilas was son of Bhagwant, Ghansyam was father of Bhagwant, Murli and Ghansyam were brothers, both being sons of Mohan, Mohan was,

thus, great grandfather of Harbilas as also of appellants. The other defendants in the suit also belong to different branches of great grandfather, Mohan. The respondents are Harbilas's sister's sons. After the death of Harbilas, his sister's sons having failed before the Revenue Courts in their claim for succession, filed the suit which has given rise to this appeal, inter alia, seeking a declaration as owners of the land left behind by Harbilas and for restoration of possession thereof from the defendants being descendants of great grandfather of Harbilas. The suit for declaration and restoration of possession has been decreed by the trial Court. The judgment and decree of the trial Court has been affirmed in the first appeal as also by the High Court in the second appeal. Under these circumstances, the defendants in the suit are in appeal before us.

3. The only question is about the interpretation of part of Section 253 of the aforesaid Special Legislation. At the time of death of Harbilas, his sister Kokila was alive. The plaintiffs in the suit, namely, Pooja Ram and Mani Ram are sons of Kokila, Smt. Kokila died after the death of Harbilas. All the defendants in the suit, as stated above, belong to several branches of descendants of great grandfather of Harbilas. The controversy relates to interpretation of clause (9) of Section 253 of the Special Legislation read with Appendix 3 appended thereto. Admittedly, none of the claimants fall within clauses 1 to 8 of Section 253. Each of the two categories of claimants claim to fall within clause (9). The Special Legislation is in Hindi. Counsel for the parties admit that the correct English translation of Section 253 and Appendix 3 appended thereto reads as under :-

"253. Right to Skitul Malkiyat tenants and Maursi is heritable and order of succession to these tenants shall be as under :-

(1) Natural offspring seriatim i.e. first the son, then grand-son and in his absence great grandson.

(2) Widow of deceased during her life time or so long as she does not remarry.

(3) father of deceased.

(4) mother of deceased.

(5) Son's widow, who lived jointly with deceased, during her life time or so long as she does not marry.

(6) daughter of deceased.

(7) brother of deceased if born of the same father as was the deceased.

(8) daughter's son.

(9) nearest blood relation, in the abovesaid serial order, as shown by way of illustration in genealogical tree Appendix 3, who are within three generations from father or grandfather, or great grandfather."

Pyare Lal v. Mani Ram

4. It has been concurretly held by all Courts that the sister's son of the deceased fall in the category of the 'nearest blood relation' within the meaning of aforesaid clause (9) read with the third Schedule and on that finding, the suit was decreed by the trial Court which judgment and decree has been affirmed in the first and second appeal.

5. Learned counsel for the appellants contends that sister or sister's son have no right to claim succession as neither sister nor sister's son are within the contemplation of clause (9) of Section 253 of the Special Legislation. The said clause, it is contended, only recognises the male descendants who are within three generations from father or grandfather or great grandfather. It is claimed that the appellants fall in that category. In the order of succession, the daugther of the deceased is in the sixth position. It may, however, be noticed that in the section and in Appendix 3 as originally stood, the daughter did not find any place. Section 253 of Special Legislation as originally stood had only clauses 1 to 8. Daughter of deceased was brought in by virtue of amendment of Samvat, year 1989 published in the Gwalior Government dated 15th April, 1943. By the said amendment, 'daughter of the deceased' was inserted below sons' widow as in clause (5) and above the brother of the deceased as now in clause (7). Prior to amendment, clause (7) was clause (6). The High Court has held that the amendment incorporating daugther of the deceased has a historical background inasmuch as the ancient Hindu Law did not recognise the sister and sister's son as heirs but Hindu Law of Inheritance (Amendment) Act, 1929 which came into force on 21st Feb., 1929 made a far reaching departure from the ancient rule by its Section 2 providing that a son's daugther, daughter's daughter, sister and sister's son shall in the order so specified, be entitled to rank in the order of succession next after father's father and before a father's brother. The High Court observed that rule of succession enacted by Special Legislation was also accordingly amended so as to get in tune with the march of time. The amendment as aforestated that was incorporated in 1943 in Section 253 by adding thereto in the order of succession daughter of deceased, may have been inspired by amendment of Hindu Law made in 1929. At the same time, however, it has to be kept in view that no amendment was made

incorporating in Section 253 of the Special Legislation, the sister or sister's son of the deceased. The such an amendment made in Hindu Law cannot be read into Special Legislation. Section 253 of Special Legislation is a part of Revenue Law of the erstwhile State of Gwalior. It enacts the list of heirs, who succeed an ex proprietary or an occupancy tenant. It applies to every such tenant uniformly without reference to tenant's personal law. It would be equally applicable to all irrespective of deceased tenant being a Muslim, Hindu, Christian or any other religion. Under these circumstances, learned counsel for the respondents rightly conceded that the Hindu Law of Inheritance (Amendment) Act, 1929 cannot be read into Section 253 of the Special Legislation. The contention of learned counsel for respondent, Mr. Khanduja, however, is that abovesaid clause (9) on its own force covers the sister or sisiter's son who alone can be said to be 'nearest blood relation' within the meaning of the said clause. On the other hand, the contention of Mr. Jain, learned counsel for the appellants is that his clients fall without the meaning of 'nearest close relation' as in clause (9) which read with the appendix, nowhere mentions sister or sister's sons.

6. Clause (9) of Section 253 does not only mention 'nearest blood relation' as a last category in the order of succession. The 'nearest blood relation' has been mentioned by way of illustration in genealogical tree, Appendix 3, who are within three generations from father or grandfather or great grandfather. The 'nearest blood relations' are, therefore, circumscribed by the limitation of three generations from father's side. The appellants are descendants of great grandfather of Harbilas, namely, Mohan. In Section 253, only daughte is mentioned in one of category in order of succession. The sister or sister's sons are nowhere mentioned. The sister or sister's son do not fall within three generations from father or grandfather or great grandfather. It is not a case of any close or nearest blood relations as such falling within the meaning of clause (9) . It is only those nearest blood relations who fall in clause (9) who would come in order of succession. It appears that on marriage, sister goes out of family and has thus not being shown in the family tree of the deceased. The daughter was added in 1943 but not the sister or her sons. In the absence of mention of sister or sister's son in clause (9) or Appendix 3, the question of their being entitled to succession in preference over the descendants of the great grandfather does not arise. The descendants of great grandfather clearly fall within three generations as contemplated by Appendix 3. It is nobody's case that priro to amendment of 1943, sisteror sister's son were included in clause (9) or in Appendix 3 but the daugther of deceased was not included. Therefore, inclusion of daughter of the deceased in 1943 was deliberate and by the same token the omission of sister or her sons was also deliberate. If so, it is not possible to include them in the said provision now by interpretation of clause (9) of Section 253 read with Appendix 3.

7. Learned counsel for the respondents also sought to bring in the concept of stare decisis and submitted that the interpretation sought to be placed on the aforesaid provision by the High Court has stood the stand of time over number of years and a different interpretation now would result in unsettling property rights settled long ago. The said principle has no applicability in the present case. No other decision of the High Court was brought to our notice placing the similar intepretation on the provisions in question. The sister or sister's son cannot be brought in order of succession by applying the principle of stare decisis when they are clearly excluded. However, we make it clear that the interpretation of clause (9) of Section 253 of Special Legislation so placed by us would not entitle anyone to reopen the issue of succession which stand already settled. This interpretation would be applicable prospectively.

8. For the aforesaid reasons, we allow the appeal and set aside the impugned judgment. The suit of the plaintiffs stand dismissed. In the facts and circumstances of the case, parties are left to bear their own costs.

Appeal allowed.