

SUPREME COURT OF INDIA

Kamla Devi

Vs.

Prabhawatti Devi (Smt)

(A.P. Mishra and D.P. Mohapatra JJ.)

12.12.2000

ORDER

1. The appellant filed a suit for declaration that she was the owner of the house in dispute on the strength of the Will dated 20th January, 1975 executed by her husband Shri Mahadev Prasad making her the absolute owner and since the defendant nos. 1 to 4 were interfering with her possession, injunction was sought and in the alternative, for possession.

2. The trial court decreed the suit, holding the Will to be genuine and the appellant absolute owner of the disputed house and the property. It rejected the case of the defendant Nos. 1 to 4 that Kedarnath was the owner of the house and they have perfected their title by adverse possession. An appeal was filed by the said defendants before the High Court which was allowed in part. The High Court, while construing the Will, held that Smt. Kamla Devi, the present appellant, has only life estate and was entitled only to the extent of 1/6th share in the house. Aggrieved by this, present appeal has been filed.

3. The submission on behalf of the appellant is, the house in question was purchased by the three brothers, namely, Mahadev Prasad, Bihari Lal and Sant Ram jointly out of their own income, thus question of this house being an ancestral property does not arise. It is not in dispute that there has been partition among the brothers subsequent to the purchase of this house in the year 1962. In the said partition, the disputed properties were allotted to Mahadev Prasad. The execution of the Will is not in dispute. Thus the main question which arises is the interpretation of the said Will. According to the appellant, the Will clearly indicates that after the death of Mahadev Prasad, the property in question would vest in the appellant, i.e. , the wife of the testator absolutely and there is no rider or limitation under it for its enjoyment. However, submission for the respondents is that the intention of the testator becomes clear by reading the whole Will which indicates that he desired to distribute it equitably to his sons and grandsons also. If that be so, the testator's intention could only be to give limited life interest to his wife (the appellant). It records that after her death it goes to the sons and grandsons with the shares mentioned therein. The High Court interpreted this Will and held the right of the appellant is limited and she has only life interest. Thus two questions arise. First, whether the house in question is ancestral or jointly held by three brothers as joint owners and the second, whether under the Will the appellant has only life interest.

4. Learned Counsel for the appellant submits, with respect to the first point with vehemence that the house was purchased by three brothers as aforesaid jointly out of their own income. On the other hand, submission for respondents is, at the time of purchase of this house, the family was joint as no

partition had taken place; hence presumption would be that this property would be ancestral in nature, hence even if it was purchased by three brothers, it would be construed to be purchased on behalf of joint family, hence, ancestral in nature.

5. We find in the present case, the High Court has clearly recorded the findings to the following effect:

In para 9 of the written statement it was pleaded for the appellants vaguely that the house is of the time of the ancestors of Mahadev Prasad. But there is no material before us to substantiate this nor is it alleged or shown that the family was possessed of any nucleus.

6. Further, submission on behalf of the respondents is as aforesaid even if it was purchased by the three brothers, it would be presumed to have been put in hotchpotch, hence it will take the character of ancestral property. Reliance is placed in *Mallesappa Bandeppa Desai and Anr. v. Desai Mallappa alias Mallesappa and Anr.*, *G. Narayana Raju (dead) by his Legal Representative v. G. Chamaraju and Ors.*, The principle laid down in these cases are when the joint family continues with joint mess then, acquisition of any property out of the personal income would be deemed to have been put in the hotchpotch which takes the character or blend such property to be ancestral property. These cases have no application to the facts of the present case. As we have quoted above, the findings recorded by the High Court is that the family was not even possessed of any nucleus. Hence question of acquisition of the house in question to be deemed to be ancestral does not arise. Then no question of blending arises. There is no evidence even otherwise that the brothers intended to put this property in hotchpotch for the purpose of its being blended into joint family property. In the absence of any such evidence and in view of the findings recorded as aforesaid, by the High Court, itself, it fell into error by concluding that the house in question has taken the character of ancestral property. In fact, the High Court itself in the earlier part recorded a clear finding that the joint family was not possessed of any nucleus; thus no ancestral property. Hence, for the said reason this part of the finding of the High Court is not sustainable. Thus we hold, this property was not ancestral and after partition it fell into the share of Mahadev Prasad who became exclusive owner of it.

7. The other part of the submission is in respect of the interpretation of the Will. We find paragraph 3 of the Will itself is very relevant for the purpose of interpretation of the Will which is quoted hereunder:

3. That subsequent to Smt. Kamla's death the persons enumerated thereafter shall be the owners of the property that subsists.

8. We find the Will in its earlier part recites that on his death his wife, Smt. Kamla Devi (the appellant), shall become the owner of the property which survives. Use of the word 'survives' here means what remains after the testator death. If the testator is still living, he may dispose of some and thus she will become the owner of what survives. Similarly, we do not find any rider is placed in this Will, after vesting of this property unto her or in any way limiting her right of transfer or disposal. Finally, the aforesaid quoted portion makes it absolutely clear that this property given to her under the Will was not limited but made her absolute owner. The significant words in paragraph 3 quoted above records clearly, subsequent to the death of the appellant, the persons enumerated in the Will shall be the owner of the property of what subsists. This means, whatever remains, or the residual property at the time of her death. So the High Court misconstrued the Will. It clearly

confers on the appellant absolute ownership and not limited ownership. We may record here that trial court declined to grant decree of possession to the appellant against which the appellant has not preferred any appeal which has become final.

9. Hence, for all these reasons we find, the High Court has fallen into error in interpreting the said Will of giving the appellant only life estate and holding the house in dispute to be ancestral. Accordingly, the said findings of the High Court are hereby set aside and the decree and judgment of the trial court are restored subject to the modification made by us through this Court by this judgment. With the said observations this appeal is allowed. Costs on the parties.