

SUPREME COURT OF INDIA

Vishnu Prakash

Vs.

Smt. Sheela Devi

C.A.Nos.2702-06 of 1992

(V.N. Khare and Shivaraj V. Patil JJ.)

03.04.2001

JUDGMENT

Shivaraj V. Patil, J.

1. These appeals are by the defendants. The facts, in brief, leading to filing them are the following:-

2. Sheela Devi filed five suits - OS Nos. 55 of 1965, 56 of 1965, 57 of 1965, 58 of 1965 and 59 of 1965 - against the defendants for ejection and possession of the suit properties from tenants or licensees or trespassers as the case may be. Plaintiff claimed to be the widow of late Chaudhary Suraj Prasad. She had married him according to Arya Samaj rites on 8.7.1951. Chaudhary Suraj Prasad died on 11.1.1953. After his death she filed application for mutation in respect of agricultural property, the land and zamindari inside the district of Orai; mutation was made in her name; the zamindari compensation was also paid to her. Kalavati as sister and Gopal Das as collateral of Chaudhary Suraj Prasad claimed the suit properties.

3. All the five suits were dismissed by the trial Court and the first appeals filed by the plaintiff against the common judgment and decrees of the trial court were dismissed. The second appeals, filed by her, were allowed by the impugned common judgment of the High Court. The said second appeals were contested only by the heirs of Gopal Das, who had expired. Kalavati or the other tenants and occupants of the properties did not contest them having not put any appearance.

4. In all the suits one of the defences that Sheela Devi was not legally wedded wife of Chaudhary Suraj Prasad was common. Gopal Das and Kalavati were impleaded in the suits as they were claiming to be heirs of Chaudhary Suraj Prasad. Some of the tenants pleaded that they are tenants of Gopal Das and Kalavati and not of the plaintiff Sheela Devi.

5. The trial Court as well as the first appellate court held that plaintiff was not legally wedded wife of Chaudhary Suraj Prasad and as such was not entitled to any rights in his properties. Consequently the suits as well as the first appeals filed by the plaintiff were dismissed. In the

impugned judgment, the High Court has noticed that the approach of the Courts below in deciding the issues that came up before them was patently erroneous inasmuch as the findings were recorded on conjectures and surmises, drawing wrong inferences even from the facts proved, ignoring the material evidence brought on record and failing to consider the material evidence. The High Court also observed that the findings recorded as to the status of the plaintiff as legally wedded wife of Chaudhari Suraj Prasad in previous proceedings were not taken into consideration. In short, according to the High Court, the findings recorded by the Courts below were untenable. It is observed by the High Court that "After looking to the entire record I have no hesitation in holding that the observations of the Courts below about the plaintiff were not merely unkind but they were highly defamatory and uncalled for. I would not like to repeat all the adjectives and adverbs used by the Courts below for the plaintiff but I cannot refrain from remarking that such defamatory and unparliamentary language must not be used in judgments especially when there was absolutely no basis for such remarks."

6. The material questions that need to be addressed and decided are (1) whether the plaintiff was legally wedded wife of Chaudhari Suraj Prasad, and (2) Whether the tenants or persons in occupation were tenants of Gopal Das or Kalavati having regard to the contentions raised by the parties. The result of these appeals depends on the finding whether plaintiff Sheela Devi was the legally weeded wife of Chaudhari Suraj Prasad or not.

7. The learned counsel for the appellants-defendants contended that the High Court was not at all right and justified in interfering with the concurrent findings of fact recorded by the Courts below based on evidence. He argued supporting the judgments of the Courts below as against the impugned judgment. Per contra, learned counsel for the respondent-plaintiff, while reiterating the submissions made before the High Court, contended that the High Court was perfectly justified in interfering with the findings recorded by the Courts below when they committed manifest error both on facts and in law. He submitted that the clinching and material evidence which was positively in favour of the plaintiff has been ignored by the Courts below, particularly, the evidence recorded in the earlier proceedings, the admissions made by the parties in their statements in those proceedings and the other judgments between the parties. According to him non-consideration of material evidence and ignoring the admissions made by the parties warranted the interference at the hands of the High Court to set aside the findings of the Courts below.

8. We have considered the submissions made by the learned counsel for the parties. The High Court stated in the impugned judgment that both the Courts below condemned the plaintiff's conduct in claiming as the widow of a Brahmin stating that she belonged to a low caste and that Chaudhari Suraj Prasad could not have married a woman of low caste; the condemnation of the plaintiff that she was motivated with greed and lust for property entering into the marital relationship with Chaudhari Suraj Prasad was without any basis. The High Court proceeded to say:-

"From the discussion of the Courts below I find that they have omitted the evidence that was positively in favour of the plaintiff and have been led away by the sentiments

that a woman of low caste lured by great (greed ?) of properties and wealth, married Suraj Prasad and surmises and assumptions in that light."

9. There was ample evidence on record in support of the marriage of the plaintiff with Chaudhari Suraj Prasad both oral as well as documentary. Brahma Nand, the main respondent in second appeal No. 96 of 1974, gave a statement on 15.9.1953, long before filing of the OS No. 57 of 1965 (one of the present suits) in a mutation case initiated on the application filed by the plaintiff. He stated that he was visiting the house of Chaudhari Suraj Prasad since three years before his death and he saw the plaintiff in the house of Chaudhari Suraj Prasad; they were residing as husband and wife and Chaudhari Suraj Prasad had told him that he had married to Sheela Devi by Arya Samaji rites. Referring to the copy of the statement (43-C), the High Court held that that statement was binding on him and was admissible in the present suit. Same Brahma Nand in his statement in suit No. 3 of 1955 in the Court of Civil Judge, Orai also stated that the plaintiff was married to Chaudhari Suraj Prasad as per Arya Samaji method. Brahma Nand appeared to be vaidya. He stated that he went to examine Chaudhari Suraj Prasad two days before his death. He further deposed that he maintained register of patients and that names of Sheela Devi and Chaudhari Suraj Prasad and payment of fees were entered therein. It was unfortunate that the first appellate Court rejected this evidence stating that the statements were not covered by Sections 32 and 33 of the Evidence Act.

10. Ramwati, one of the defendants in OS No. 56 of 1965, had also given statement in case under Sections 452/147/323 I.P.C. on 13.12.1964 as per Exh. 16 that they were tenants of plaintiff Sheela Devi and she was paying rent to the plaintiff. Gopal Das, who was examined before the Sub-Divisional Officer, Orai in suit No. 11, had admitted that Chaudhari Suraj Prasad was an Arya Samaji. Further the High Court has noticed that the plaintiff and her witnesses, namely, Basdeo Mishra, Deo Narain and Uma Shankar supported the marriage of the plaintiff with Chaudhari Suraj Prasad. The trial Court took the view that the marriage of the plaintiff with Chaudhari Suraj Prasad was not established as there was no proof that they walked seven steps although they had taken seven rounds around the nuptial fire. The High Court observed that when seven rounds were taken, they could not be short of seven steps. The High Court also noticed that the statement of Basdeo Mishra was ignored by the lower appellate Court. So also the voluminous evidence contained in the statements and judgments in mutation and other cases were lightly brushed aside by the trial Court as well as the first appellate Court. In the impugned judgment the High Court has further stated thus:-

"The Court below has ignored the statements of Jagdamba Prasad and Ram Gopal made in previous litigations x .20 and 19 respectively though it held in para 11 that they were admissible. The voluminous evidence pertaining to statements and judgment in mutation and other cases, the entry in the voter list (Exh. 3) orders of the Sub-Divisional Officer for delivery of Zamindari Abolition Compensation Bonds to the plaintiff and rejecting the objections of Smt. Kalawati and Gopal Das, the judgment in suits Nos. 12 and 13 under Section 209, of U.P. Zamindari Abolition and Land Reforms Act holding Smt. Sheela Devi, the widow of Chaudhari Suraj Prasad; various revenue records such as Khataunis showing the plaintiff as a widow of

Chaudhari Suraj Prasad; Khewats showing that the plaintiff was entered in the place of Suraj Prasad in the Zamindari Urban area and so on, were illegally rejected on flimsy and frivolous grounds by the Courts below."

11. As already pointed out above, Ramwati and Brahma Nand had in earlier cases admitted that the plaintiff was their landlady but in the present suits they took a contrary stand. The plaintiff had filed copies of the judgments of consolidation Courts wherein Vishnu Prakash and Bhagwati Devi, the heirs of Gopal Das, the appellants herein, were parties. Their claims to the property of Chaudhari Suraj Prasad were rejected upholding the objections of the plaintiff stating that she was the widow of Chaudhari Suraj Prasad. The parties had produced some additional evidence in the High Court. Copy of the judgment in OS No. 93 of 1965 (Gopal Das v. Sheela Devi) was filed by the defendants in which suit Gopal Das had claimed to be the owner of certain properties in dispute; the suit was decreed ex parte against Sheela Devi. In the rejoinder affidavit it has been sworn that Sheela Devi was never served with notice in the suit and that the ex parte decree was obtained by fraud and that an application for setting aside the ex parte decree was pending. The second document relied on by the defendants was a copy of the judgment in miscellaneous case No. 165 of 1973 under Section 18 of the Land Acquisition Act and against that judgment first appeal No. 306 of 1977 is said to be pending in the High Court and that operation of the order of the Court below has been stayed. Hence the High Court has observed that these documents did not help the defendants. The plaintiff had filed a certified copy of the judgment in Civil Appeal No. 114 of 1977 arising out of original suit No. 20 of 1972. In that suit Kalavati had contested claiming herself to be the sister of Chaudhari Suraj Prasad and disputing the rights of the plaintiff. In the said appeal a positive and clear finding of fact had been recorded that the plaintiff was the widow of Chaudhari Suraj Prasad and her suit was decreed. On behalf of the plaintiff reliance was placed on copy of the judgment in second appeal No. 338 of 1979, which was dismissed confirming the judgment made in Civil Appeal No. 114 of 1977. Thus, as far as Kalavati is concerned the plaintiff was held to be the widow of Chaudhari Suraj Prasad. Municipal Board filed a suit under Section 209 of Zamindari Abolition and Land Reforms Act seeking eviction of the plaintiff from the agricultural land within the municipal limits alleging that Chaudhari Suraj Prasad had died without leaving any issue of heir. The said suit was dismissed by the Sub-Divisional Officer with a special cost against Municipal Board on the basis of the finding that Sheela Devi, the plaintiff, was the widow of Chaudhari Suraj Prasad.

12. In these circumstances the High Court concluded that the Courts below committed serious error on facts as well as in law as already stated above. We do not find any good ground or reason to take a view other than the one taken by the High Court in holding that the plaintiff Sheela Devi was legally wedded wife of Chaudhari Suraj Prasad. It may be added that Gopal Das claimed as a collateral of Chaudhari Suraj Prasad. He could not even give pedigree in his statement. The High Court has noticed that though the pedigree had not been proved but assuming that to be correct Gopal Das was 29 degrees away from Chaudhari Suraj Prasad and he could not succeed to Chaudhari Suraj Prasad under any law. Further as already noticed earlier, neither Kalavati nor other tenants or occupants of the suit properties contested the second appeals filed by the plaintiff in the High Court. Hence, without any

hesitation we answer the question No. 1 in the affirmative and the question No. 2 in the negative. Having regard to all aspects, the High Court was right and justified in recording the findings in favour of the plaintiff Sheela Devi. We have no good reason to interfere with the impugned judgment and decrees. Declining to interfere, we dismiss these appeals but with no order as to costs.

Appeals dismissed.