

Hari Chand Roach

v.

Hem Chand & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE DALVEER BHANDARI HON'BLE MR. JUSTICE DEEPAK VERMA

Hari Chand Roach v. Hem Chand & Others

Civil Appeal No. 432 Of 2002 | 28-10-2010

1. This appeal emanates from the judgment of the High Court of Himachal Pradesh at Shimla delivered on 26th July, 2000 in Regular Second Appeal No. 75 of 1993.

2. Brief facts which are necessary to dispose of this appeal are recapitulated as under.

3. In order to properly comprehend the inter se relationship of the parties, the Genealogical family tree is reproduced herein.

"CHART"

4. Admittedly, Hari Ram, Kharia and Delu were brothers and they inherited an undivided share in the two joint family properties, one situated at Chak Nani measuring 55 Bigha 2 Biswas and the other situated Chak Kaljer, measuring 103 Bigha 10 Biswas.

5. Hari Ram died in 1954 without any male issue and he was survived by his widow Jamni and daughter Debku. After the death of Hari Ram, Jamni inherited the entire share of Hari Ram in both the Chaks and consequently mutation was carried out in her name in the year 1955.

6. Jamni, wife of Hari Ram, gifted 18 Bigha 3 Biswas of land at Chak Nani in favour of Jeet Ram, her grandson (son of her daughter) vide a registered deed on 17.10.1958, leaving balance of 36 Bigha 6 Biswas of land at Chak Nani. It may be relevant to mention here that the gift deed clearly stated that she had given it to Jeet Ram and his wife because they had taken good care of her.

7. Jamni filed an application for partition of the land in Chak Kaljer against her two brothers-in-law Kharia and Delu. A compromise was arrived at between them on 13.11.1963. As per the compromise, an oral gift was made by Jamni to Hem Chand son of Kharia by which she gifted 40 Bigha 10 Biswas of land at Chak Kaljer. As per the settlement dated 4.6.1964 between the parties, Jamni received 36 Bigha 6 Biswas of land at Chak Nani. Approximately 36 Bigha of land was exchanged as per the family arrangement between the parties. Jamni and her daughter Debku were shown as the owner in possession of the Jamabandi record of rights.

8. The Appellant Hari Chand Roach purchased 36 Bigha 6 Biswas of land from Jamni and Debku for a consideration of Rs. 40,000/- by a registered sale deed on 22.6.1979. Rs. 9,000/- was paid at the time of giving possession of the land and the balance amount of Rs. 31,000/- was paid in the presence of Sub Registrar and other witnesses.

9. Kharia and Delu filed a suit on 12.7.1979 for declaration and possession and prayed that the sale deed be declared void. The Trial Court i.e. the Court of Sub Judge, 1st Class, Theog, vide its judgment dated 31.12.1987 dismissed the suit holding that Jamni and Debku had a limited interest in the estate. Against the judgment of the Trial Court, appeals were filed by both the parties before the District Judge. The learned District Judge partly allowed the appeal of the present Appellant on 15.12.1992 and dismissed the appeal filed by the Respondent herein. The Trial Court judgment was affirmed by the learned District Judge.

10. The learned District Judge has dealt with the aspect of family arrangement in great detail in paragraph 3 of her judgment, which reads as under:

"Defendants Smt. Jamni and Debku as well as Defendant Hem Chand contested the suit. Defendants Smt. Jamni and Debku in their joint written statement raised manifold preliminary objections. Firstly according to them the suit was not properly valued for purposes of court fee and jurisdiction and secondly that the Plaintiffs cannot claim relief of possession without raising the necessary pleadings as the Plaintiffs have no subsisting right to file the suit. In reply on merits, they described themselves to be the owner in possession of the disputed land. The deceased Plaintiffs Kharia and Delu had one more brother namely Hari Ram who was the husband of deceased Defendant Jamni and father of Defendant Debku. They had land in two revenue chaks namely Kaljer and Nani although in three villages. Villages Kaljer and Shoongra were forming part of Chak Kaljer while village Soonthi was forming part of Chak Nani. By way of family arrangement deceased Plaintiff Kharia was living in Chak Kaljer while deceased Plaintiff Delu and their husband/father (Hari Ram) were living in Chak Nani. On the death of Hari Ram, his estate devolved upon the replying Defendants and the mutations were accordingly attested in their favour. Thus they became the absolute owner and were in possession of the land qua the share of deceased Hari Ram. In the year 1962-63 Defendant Jamni applied for partition of the land but there was a compromise between the Plaintiffs and Smt. Jamni and as per that compromise Defendant Jamni gifted her share in the land in favour of Hem Chand and son of deceased Plaintiff Kharia vide mutation No. 115 in Chak Kaljer while in return the deceased Plaintiffs gave the land to the two

Defendants namely Smt. Jamni and Debku in Chak Nani vide mutation No. 43 but these mutations are stated to be wrong. Provisions of Section 14 of Hindu Succession Act, 1956 (in short called Act) is not application to the present case as the two replying Defendants were the absolute owners of the land and were also in its possession and accordingly were competent to sell the same in favour of Defendant Hari Chand for consideration. As the sale is valid and legal and as such after such sale Shri Hari Chand has become the exclusive owner of the land and is also in its possession. The sale consideration is described to Rs. 40,000/- which was duly received by them. The Plaintiffs never objected to such a sale although they had knowledge of it. All other averments made in the plaint have been denied."

11. The learned District Judge in the concluding portion of her judgment has observed as under:

"Undisputedly Hari Ram, brother of deceased Plaintiffs Kharia and Delu was having 1/3rd share in the lands in two Chaks namely Kaljer and Nani and on his death vide mutation No. 19 and 70 Exts. D8 and D9 respectively, his 1/3rd share was inherited by the widow namely deceased Defendant Smt. Jamni. These two mutations were attested in the year 1955 and accordingly her name came to be entered in the copies of jamabandies qua 1/3rd share in the column of ownership and possession along with deceased Plaintiff Kharia and Delu as borne out from the copy of jamabandi for the year 1954-55 Ext.D6. In the year 1956 the Act came into force and obviously in view of the provisions of Section 6 of the Act daughter and widow being the legal heirs of class one were entitled to succeed to the share of deceased Hari Chand in equal share in the two Chaks. Accordingly, they filed applications for partition of the land of their respective shares but on 3rd June 1964 some settlement was arrived at between the deceased Plaintiffs Kharia and Delu and deceased Defendant Smt. Jamni and Defendant Smt. Debku as a result of such settlement, on 3-6-64 Smt. Jamni orally gifted 1/3rd share in the land in Chak Kaljer vide mutation No. 115 in favour of Plaintiff Hem Chand son of deceased Plaintiff Kharia and in return the deceased Plaintiffs Kharia and Delu got 1/3rd share of the land in Chak Nani mutated on the same day vide mutation No. 43 in favour of Smt. Jamni and Debku making them the limited owners of the land. The two mutations dated 3-6-64 are Ext. P10 and P3, respectively. The factum of a settlement having arrived amongst the deceased Plaintiffs and deceased Smt. Jamni is further born out from mutation No. 42 Ext. P9 vide which some of the land stood mutated in favour of Jeet Ram in whose favour that land was gifted by a verbal gift by Smt. Jamni in the year 1959 vide mutation Ext. D10 in February, 1959."

12. It may be pertinent to mention here that in the suit filed by Kharia and Delu, a joint written statement was filed by Jamni and Debku - Defendant Nos. 1 & 2. In the said written statement they have stated about the family arrangement, which reads under:

"That by family arrangement the Plaintiff Kharia was and is living in village Kaljer, Shri Delu Plaintiff was and is living in village Shoongra and Shri Hari Ram deceased (the predecessor in interest of the replying Defendants) was living at village Soonthi till his death. These three brothers, Kharia, Delu and Hari Ram had separate residence, food, worship and cultivation of the land. That on the death of Shri Hari Ram which occurred about 24 years

ago, his estate devolved upon the replying Defendants, the mutation No. 19 Chak Nani and mutation No. 70 Chak Kaljer about inheritance were attested in favour of the replying Defendants. On the death of Shri Hari Ram Defendants became the absolute owners in possession of the land qua the share of Shri Hari Ram. That somewhere in 1962 or 1963, the replying Defendant No. 1 applied for partition of the land in the Court of A.C. 1st Grade, Theog. In that partition application the Plaintiffs and the Defendant No. 1 effected the compromise and in pursuance of that compromise the parties agreed to partition the land privately in accordance with the family arrangement and agreed to treat the family arrangement as complete partition between them. This compromise took place in the year 1963. That in pursuance of that compromise the replying Defendant No. 1 agreed to get her as well as the name of Defendant No. 2 removed from the revenue papers of villages Kaljer and Shoongra of Chak Kaljer and the Plaintiffs also agreed to get their names removed from the revenue papers of village Soonthi of Chak Nani. The Plaintiff Shri Delu had no issue at that time, thus he preferred to keep his Khata with Kharia Plaintiff. The Plaintiffs asked the Defendants to attest the mutation in favour of Hem Chand the only son of Shri Kharia Plaintiff and thus mutation No. 115 Chak Kaljer was entered and attested in favour of Hem Chand. The mutation No. 115 showing the gift of the land is wrong and contrary to facts. The Plaintiffs in pursuance of the compromise also attested mutation No. 43 Chak Nani in favour of the replying Defendants. That in that the mutation No. 43 Chak Nani and mutation No. 115 Chak Kaljer were relating to private partition. The mutations were effected with a view to give effect to the private partition."

In the alternative, if the mutation No. 43 Chak Nani and mutation No. 115 Chak Kaljer are not treated as mutations of private partition, the same be treated as mutations of exchange in which the parties have exchanged the lands of their exclusive ownership. It is thus wrong and denied that the Defendants No. 1 & 2 were given only limited rights.

13. It is clear from all these documents and pleadings that because of the family arrangement, Jamni and Debku became the absolute owners of the land at Chak Nani, measuring 36 Bigha 6 Biswas. They later on relinquished their undivided shares in Chak Kaljer measuring 103 Bigha 3 Biswas. A second appeal was preferred against the judgment of the learned District Judge before the High Court of Himachal Pradesh at Shimla. Learned Single Judge of the High Court decided the second appeal and aptly observed as under:

"From the oral testimony of Plaintiff No. 1 Hem Chand corroborated by PW-2 Mast Ram, PW-3 Narayan Singh and PW-4 Puran, it stands clearly proved that Smt. Jamani had inherited estate of her husband Hari Ram to the extent of 1/3rd share out of the total shares."

14. Similarly, at Page 17 of the judgment the learned Single Judge observed as under:

"After family settlement, when Smt. Jamani approached Kharia and Delu, they gladly accepted her request to part with their respective shares of the land in mauja Nani which is the subject matter of the controversy."

15. The learned Single Judge also observed as under:

"From the entire oral and documentary evidence led by the parties, it stands proved that the land in dispute fell in the shares of Kharia and Delu predecessors-in-interest of the Plaintiffs after the family settlement was arrived at between them and Smt. Jamani widow of Hari Ram. It is an admitted case of the parties that after the death of Hari Ram his entire estate was inherited by his widow Smt. Jamani. This fact stands proved on record from copies of mutations Exts.P-4 to P-6 in which it has clearly been shown in the remarks column dated 22.2.1955 and 21.2.1955, respectively, that the estate of Hari Ram had devolved upon Smt. Jamani and the mutation of inheritance stood sanctioned in her favour. On careful appraisal and consideration of these documents, it is proved that after the death of Hari Ram his widow Smt. Jamani had inherited 1/3rd share of her husband and she became absolute owner in possession of the estate inherited by her. Copy of mutation No. 30 Ex.P-7 would go to show that Smt. Jamani gifted 1/3rd of her share of the land inherited by her situated in mauja Nani in favour of Jeet Ram and mutation in respect of the said land was sanctioned by the revenue official on 21.3.1959. Again Smt. Jamani gifted 1/3rd of her share to Hem Chand, Plaintiff No. 1 of the land situate in mauja Kaljer and mutation of the said land came to be attested in his favour by the revenue authority on 3.6.1964, vide copy marked as Ext.P-10 on the record. Thus, the documents relied upon by the parties would clearly prove that after becoming absolute owner of the share of her husband, Smt. Jamani had gifted her share in favour of Jeet Ram and Plaintiff No. 1 in the year 1959 and 1964."

16. In our considered view, it is not necessary to examine the applicability of Sections 14(1) and 14(2) of the Hindu Succession Act, 1956 in the facts and circumstances of this case.

17. All the above quoted observations of the learned Single Judge of the High Court are based on the pleadings and the documents on record. But unfortunately at page 22 of the judgment, the learned Single Judge observed that Jamni and Debku had no pre-existing right in the land in dispute and because of this finding, the learned Single Judge has arrived at absolutely wrong conclusion. Consequently, this finding is set aside.

18. We are clearly of the view that Jamni inherited the estate of her husband Hari Ram on his death in the year 1954. She had undivided shares in Chak Nani and Chak Kaljer. By a family arrangement, Jamni had relinquished her share in Chak Kaljer and instead, she took the share of her brothers-in-law Kharia and Delu in Chak Nani. Thus, Jamni and Debku became full owner of the Chak Nani and consequently had full right to dispose of the said property at Chak Nani. They had sold the property (at Chak Nani) to the Appellant herein. The property was sold for consideration and in good faith.

19. On consideration of the totality of the facts and circumstances of this case, the impugned judgment of the High Court cannot be sustained and consequently the same is set aside. The appeal is accordingly allowed, leaving the parties to bear their own costs.