SUPREME COURT OF INDIA

Shivdev Kaur (D) By Lrs. & Ors.

Vs.

R.S. Grewal

C.A.No.5063-5065of 2005

(B.S.Chauhan and Fakkir M.I.Kalifulla,JJ.)

20.03.2013

JUDGMENT

B.S. Chauhan, J.

1. These appeals have been preferred against the impugned judgment and order dated 2.7.2004 passed by the High Court of Punjab & Haryana at Chandigarh in Regular Second Appeal No. 257 of 1982 and Regular Second Appeal No. 608 of 1982 and Cross Objection No. 14-C of 1982 by which the High Court has affirmed the judgment of the first appellate court as well as the trial court so far as the nature of the rights of the appellant in the suit property are concerned.

2. Facts and circumstances giving rise to these appeals are that:

A. One Dr. Hira Singh had acquired a huge property in his life time. He executed various deeds creating certain rights in favour of his sole son Dr. Shivdev Singh Grewal and two daughters, namely, Smt. Dayawant Kaur and Dr. Shivdev Kaur including the Will dated 16.9.1944, creating certain rights in favour of the appellant. Dr. Hira Singh died on 11.4.1945.

B. Shri Shivdev Singh Grewal and Smt. Dayawant Kaur died leaving behind their children. Dr. Shivdev Kaur claimed certain rights on the basis of the Will dated 16.9.1944, and for the same she filed Suit No. 161/399/74 on 4.10.1974 against her nephew for mandatory injunction seeking his eviction from the suit premises claiming absolute right/ownership over the same in view of the provisions of Section 14 of the Hindu Succession Act, 1956 (hereinafter referred to as the `Act 1956'). The respondent/defendant contested the suit denying such a right.

C. During the pendency of the said suit, the respondent/defendant also filed Suit No. 80 of 1976, against the appellant/plaintiff for permanent injunction restraining her from transferring/alienating the suit property. The trial court vide judgment and decree dated 28.4.1978 decided the Suit No. 161/399/74, holding that appellant/plaintiff had no absolute right/ownership over the suit property. The trial court vide judgment and decree dated 4.6.1979 passed in Suit No. 80/1976, held to the effect that the appellant would not interfere in any manner in respect of the agricultural lands etc., however, she would not be dispossessed from the suit premises and it would be subject to the final decision of the another suit.

D. Aggrieved, both parties filed appeals and cross-objections. The appellate court dismissed the appeal filed by the respondent on 22.10.1981. On the same day, appeal filed by the appellant was allowed to certain extent. However, so far as the issue relating to conversion of the life interest into absolute title was decided against the appellant.

E. Aggrieved, respondent filed RSA Nos. 257 and 608 of 1982, and appellant filed RSA No. 608/1982 and cross-objection bearing No. 14- C/1982.

F. The appellant executed a Will dated 28.2.1991 in respect of the suit property creating a trust in the name of her father and appointing Shri Sudarshan Singh Deol and Brig Inderjeet Singh Dhillon as the trustees. She further made Codicil dated 25.8.1995. The appellant died on 15.2.1998 and thus executors of her will got impleaded.

G. The High Court allowed both the RSAs filed by the respondent and dismissed the claim of the appellant.

Hence, these appeals.

3. Shri Devender Mohan Verma, learned counsel appearing on behalf of the appellant, has argued that the appellant had become a widow at a very young age. She was maintained by her in laws, thus, her father took pity on her and as she was a destitute, brought her back and created a “life interest” in her favour in respect of the suit property by executing a Will dated 16.9.1944. She started residing in the suit property. Her father died in 1945. After commencement of the Act 1956, right of “life interest” stood crystallised into absolute right and title. Therefore, the courts below erred in deciding the issue against her. Thus, the appeals deserve to be allowed.

4. Per contra, Shri R.K. Dhawan, learned counsel appearing on behalf of the respondent, has opposed the appeals contending that the appellant cannot be permitted to introduce a new case that the appellant was a destitute. She was a well qualified person and MBBS doctor. She had acquired large properties from the family of her late husband. More so, father of the appellant had created only “life interest” in her favour in the suit property by executing the

Will. Section 14(2) of the Act 1956 does not provide that such "life interest" would stand converted into absolute ownership on commencement of the said Act. There are concurrent findings of facts on this issue and, thus, the appeals lack merit and are liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel for the parties and perused the records.

6. The document creating a limited right, "life interest" in favour of the appellant i.e. Will dated 16.9.1944 so far as the relevant part is concerned reads as under:

> "I give this Kothi situated at Iqbal Road to my daughter Bibi Shivdev Kaur subject to the rights of Bibi Shiv Charan Kaur, mentioned above, for life time, who after my death will remain abad in this Kothi and get benefit thereof. If she wishes, she can get the benefit of its rent also as per necessity and can use the income of rent. But these rights are only for her life time. She can not alienate this kothi or the site relating thereto, in any way, or create any charge thereon, nor she can mortgage gift, sell or transfer it. My son Shibdev Singh aforesaid shall also be the sole owner of this Kothi subject to the above mentioned rights."

7. It is evident from the aforesaid part of the Will that only a life interest had been created in favour of the appellant by that Will. Therefore, the sole question for our consideration remains as to whether such limited right got converted into absolute right on commencement of the Act 1956.

8. Section 14 of the Act 1956 reads as under:

> "14. Property of a female Hindu to be her absolute property.
>
> (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.
>
> (2) Nothing contained in sub- section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."

(Emphasis added)

9. The aforesaid statutory provisions provide for conversion of life interest into absolute title on commencement of the Act 1956, however, sub-section (2) carves out an exception to the same as it provides that such right would not be conferred where a property is acquired by a Hindu female by way of gift or under a Will or any other instrument prescribing a restricted estate in that property.

10. In *Mst. Karmi v. Amru & Ors*[1]., AIR 1971 SC 745, a similar issue was considered by this Court and after examining the contents of the Will came to the conclusion that where a woman succeeded some property on the strength of a Will, she cannot claim any right in those properties over and above what was given to her under that Will. The life estate given to her under the Will would not become an absolute estate under the provisions of the Act 1956 and, thus, such a Hindu female cannot claim any title to the suit property on the basis of the Will executed in her favour. (See also: *Navneet Lal @ Rangi v. Gokul & Ors*[2]., AIR 1976 SC 794; and *Jagan Singh (Dead) Through LRs. v. Dhanwanti & Anr*[3]., (2012) 2 SCC 628).

11. *In Sadhu Singh v. Gurdwara Sahib Narike & Ors*[4]. AIR 2006 SC 3282, this Court again considered the issue, held as under:

> "When he thus validly disposes of his property by providing for a limited estate to his heir, the wife or widow has to take it as the estate falls. This restriction on her right so provided, is really respected by the Act. It provides in Section 14(2) of the Act, that in such a case, the widow is bound by the limitation on her right and she cannot claim any higher right by invoking Section 14(1) of the Act. In other words, conferment of a limited estate which is otherwise valid in law is reinforced by this Act by the introduction of Section 14(2) of the Act and excluding the operation of Section 14(1) of the Act, even if that provision is held to be attracted in the case of a succession under the Act. Invocation of Section 14(1) of the Act in the case of a testamentary disposition taking effect after the Act would make Sections 30 and 14(2) redundant or otiose. It will also make redundant, the expression "property possessed by a female Hindu" occurring in Section 14(1) of the Act. An interpretation that leads to such a result cannot certainly be accepted. Surely, there is nothing in the Act compelling such an interpretation. Sections 14 and 30 both have play. Section 14(1) applies in a case where the female had received the property prior to the Act being entitled to it as a matter of right, even if the right be to a limited estate under the Mitakshara law or the right to maintenance."

(Emphasis added)

12. Shri Verma, learned counsel for the appellant placed a very heavy reliance on the judgment of this Court in *Balwant Kaur & Anr. v. Chanan Singh & Ors*[5]., AIR 2000 SC 1908, contending that a destitute Hindu daughter if acquires such a right, it would stand crystallised in absolute title. There is a complete fallacy in his argument. In the said case, this Court held that all the clauses of the Will must be read together to find out the intention of the testator. The court held:

> "…This is obviously on the principle that the last clause represents the latest intention of the testator. It is true that in the earlier part of the Will, the testator has stated that his daughter Balwant Kaur shall be the heir, owner and title-holder of his entire

remaining moveable and immovable property but in the later part of the same Will he has clearly stated that on the death of Balwant Kaur, the brothers of the testator shall be the heirs of the property. This clearly shows that the recitals in the later part of the Will would operate and make Appellant 1 only a limited estate-holder in the property bequeathed to her."

(Emphasis added)

13. Thus, in view of the above, the law on the issue can be summarised to the effect that if a Hindu female has been given only a "life interest", through Will or gift or any other document referred to in Section 14 of the Act 1956, the said rights would not stand crystallised into the absolute ownership as interpreting the provisions to the effect that she would acquire absolute ownership/title into the property by virtue of the provisions of Section 14(1) of the Act 1956, the provisions of Sections 14(2) and 30 of the Act 1956 would become otios. Section 14(2) carves out an exception to rule provided in sub- section (1) thereof, which clearly provides that if a property has been acquired by a Hindu female by a Will or gift, giving her only a "life interest", it would remain the same even after commencement of the Act 1956, and such a Hindu female cannot acquire absolute title.

14. Whether person is destitute or not, is a question of fact. The expression 'destitute' has not been defined under the Act 1956 or under the Code of Criminal Procedure, 1973, or Code of Civil Procedure, 1908. The dictionary meaning is "without resources, in want of necessaries". A person can be held destitute when no one is to support him and is found wandering without any settled place of abode and without visible means of subsistence. In the instant case, no factual foundation has ever been laid by the appellant before the courts below in this regard. In such a fact-situation, the issue does not require consideration.

15. All the courts have taken a consistent view rejecting the claim of the appellant of having acquired an absolute title. We do not see any cogent reason to interfere with the concurrent findings of facts. Appeals lack merit and are accordingly dismissed.