

# SUPREME COURT OF INDIA

Raj Kumari

Vs.

Krishna

C.A.No.1811 of 2007

(Anil R.Dave, R.K.Agrwal and R.Banumathi JJ.)

26.02.2015

## JUDGMENT

### **ANIL R. DAVE, J.**

1. Being aggrieved by the judgment delivered in Regular Second Appeal No.959 of 2001 and CM No.4711-C of 2002 and Cross Objection No.17-C of 2001, dated 21st September, 2005, by the High Court of Punjab & Haryana at Chandigarh, this appeal has been filed by the original defendants.

2. Facts leading to the present litigation in a nutshell are as under :

Late Shri Atam Parkash had married to Smt. Raj Kumari on 20th September, 1961 as per Hindu rites and customs and by that marriage, they had a daughter named Ms. Nishoo @ Meeshu. During the subsistence of the afore-stated marriage, late Shri Atam Parkash also married to Smt. Krishna on 16th June, 1970 at Arya Samaj, Anarkali, Mandir Marg, New Delhi, and by the second marriage they had a daughter named Payal.

3. During his life time, late Shri Atam Parkash had executed a Registered Will on 9th April, 1982 and by virtue of which he had bequeathed his movable and immovable properties in favour of Smt. Krishna and his daughter Payal.

4. Upon death of Shri Atam Parkash, his second wife Krishna and his daughter Payal had filed Civil Suit No.322 of 1996 in the Court of learned Civil Judge, Junior Division, Sonapat (Haryana) for a declaration to the effect that they were the only heirs of late Shri Atam Parkash and therefore, they were entitled to all the properties of late Shri Atam Parkash. In the said Suit, Smt. Raj Kumari, the first

wife of late Shri Atam Parkash and his daughter, Nishu, were defendants. The Trial Court came to the conclusion that in pursuance of the Will executed by late Shri Atam Parkash, movable and immovable properties mentioned in the Will were to be inherited by the plaintiffs and so far as other properties, which were not specifically mentioned in the Will, including pension and other retirement benefits, which would arise upon death of late Shri Atam Parkash, should be given to all the legal heirs, i.e., the defendants, namely, (i) Smt. Shanti Devi, mother of the deceased, (ii) Smt. Raj Kumari, his first wife and (iii) Nishoo, his daughter and (iv) his daughter Payal, Plaintiff No.2, in accordance with the provisions of the Hindu Succession Act.

5. Being aggrieved by the judgment and decree passed by the trial court, three appeals had been filed before the Additional District Judge, Sonapat, and all the appeals were dismissed.

6. The present respondents, namely, the original plaintiffs, had filed Regular Second Appeal No.959 of 2001 before the High Court and the High Court was pleased to allow the said appeal. By virtue of the impugned judgment, the High Court has held that all the properties including the benefits in the nature of pension, etc., should be given to the plaintiffs and therefore, this appeal has been filed by the original defendants challenging the validity of the said judgment.

7. We have heard the learned counsel appearing for the appellants, who has submitted that the High Court has committed a grave error by allowing the appeal without framing a substantial question of law.

8. It has been further submitted by him that there were three shops belonging to late Shri Atam Parkash as on 9th April, 1982 and the said shops had not been referred to in the afore-stated Will. The said shops ought to have been treated as having been inherited by the present appellants, i.e., the first wife and daughter Nishoo.

9. It has been further submitted that the Will which had been executed on 9th April, 1982, is not a valid Will and therefore, all the courts below were in error by declaring that the plaintiffs were rightful heirs of late Shri Atam Parkash.

10. Lastly, it has been submitted by him that late Shri Atam Parkash was an employee of Haryana State Electricity Board and as per rules & regulations pertaining to service conditions of its employees, pension and other retirement

benefits ought to have been given to the present appellants, i.e., Smt. Raj Kumari, the first wife and Nishoo, the daughter of the deceased.

11. The respondents have been duly served and Mr. Bhaskar Y. Kulkarni, has filed Vakalatnama for the respondents. Today, Mr. Vikas Mahajan, learned counsel, who has appeared for Mr. Bhaskar Y. Kulkarni, has submitted that he has no instructions, especially in view of the fact that Shri Kulkarni had given "No Objection Certificate" to another Advocate, whose name he does not remember. However, he has made efforts to assist the Court. He has submitted that the impugned judgment delivered by the High Court is just and proper because, according to him, when a Will had been executed in favour of the original plaintiffs/respondents herein, pension and other retirement benefits, which had arisen by virtue of service rendered by late Shri Atam Parkash to the Haryana State Electricity Board should also be given to the respondents. He has further submitted that the Will was genuine and as it had been proved before the Trial Court, this Court normally should not look into the question with regard to validity of the Will, especially when execution of a Will is a question of fact.

12. The learned counsel has thus submitted that the impugned judgment is just and proper and this Court should dismiss the appeal.

13. Upon hearing the leaned counsel and going through the relevant record, in our opinion, the High Court has committed an error by coming to a conclusion that even pension and other benefits, which late Shri Atam Parkash would have got upon his retirement, should be given to Smt. Krishna and Payal.

14. Normally, pension is given to the legally wedded wife of a deceased employee. By no stretch of imagination one can say that the plaintiff, Smt. Krishna was the legally wedded wife of late Shri Atam Parkash, especially when he had a wife, who was alive when he married to another woman in Arya Samaj temple, as submitted by the learned counsel appearing for the appellants. We are, therefore, of the view that the High Court should not have modified the findings arrived at and the decree passed by the trial court in relation to the pensionary benefits. The pensionary benefits shall be given by the employer of late Shri Atam Parkash to the present appellants in accordance with the rules and regulations governing service conditions of late Shri Atam Prakash.

15. So far as the submissions with regard to three shops are concerned, we are of the view that the said submissions cannot be accepted. It is an admitted fact that the said three shops had been constructed in a premises which has been bequeathed

by late Shri Atam Parkash to the plaintiffs/respondents. The details of the said house had been given in the Will which had been executed on 9th April, 1982. The said shops are part of House No.6-A, Khanna Colony, Sonapat. If the said house has been clearly described in the Will and it has been bequeathed to the plaintiffs, we see no reason to say that the findings of the trial court are incorrect. It is also pertinent to note that by virtue of the Will executed by late Shri Atam Parkash all immovable properties belonging to the deceased have been bequeathed to the plaintiffs. In such a case, the immovable properties, which have been described in the said Will, would invariably be inherited by the plaintiffs. Therefore, we decline to accept the submissions made by the learned counsel for the appellants that the said three shops should be inherited by the present appellants.

16. For the reasons stated hereinabove, we set aside the impugned judgment delivered by the High Court and restore the decree passed by the trial court, which had been confirmed by the Appellate Court. The appeal stands disposed of as allowed with no order as to costs.