

SUPREME COURT OF INDIA

State of M.P.

Vs.

Dungaji

C.A.No.11326 of 2011

(M.R.Shah and A.S.Bhopana,JJ.,)

16.07.2019

JUDGMENT

M.R.Shah,J.,

1. Feeling aggrieved and dissatisfied with the impugned Judgment and Order dated 29.10.2010 passed by the High Court of Madhya Pradesh, Bench at Indore in Second Appeal No.580 of 2003 by which the High Court has allowed the said appeal preferred by the respondent-original plaintiff - Dungaji (now represented by his legal representatives) and consequently has decreed the suit declaring that the marriage between Dungaji (now plaintiff) and his wife Kaveribai had been dissolved by way of customary divorce, much prior to the coming into force of the provisions of the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (hereinafter referred to as 'the Act') and that the property inherited by Kaveribai from her mother, after divorce, cannot be treated to be a family property of Dungaji for the purposes of determination of surplus area under the Act and the High Court has also held that the Competent Authority had not followed the mandatory provisions of law before passing the order dated 18.05.1976 and consequently has declared the same order as null and void, the State of Madhya Pradesh and another have preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under: That, Kaveribai, wife of Dungaji, in the year 1966 inherited 19.89 hectares of land (land in dispute) after the death of her mother. That the said Kaveribai said to have sold the land in dispute through a Sale Deed dated 18.11.1971. That the proceedings were initiated before the Competent Authority under the Act regarding determination of surplus land. That the Competent Authority by its order dated 18.05.1976 treated Kaveribai as a member of the family of Dungaji and included 19.89 hectares of land inherited by her from her mother as the land held by the family of Dungaji for the purpose of determination of surplus area.

2.1 That Dungaji instituted a suit before the learned Civil Court, Ujjain challenging the order dated 18.05.1976 passed by the Competent Authority under the Act, 1960. That the learned Trial Court by its Judgment and Decree dated 27.04.1988 dismissed the suit and upheld the order dated 18.05.1976 passed by the Competent

Authority. That being aggrieved by Judgment and Decree dated 27.04.1988 passed by the learned Civil Judge, Ujjain, Dungaji preferred First Appeal No. 26-A/1989 before the First Appellate Court. The said appeal came to be allowed. The learned First Appellate Court remanded the matter back to the learned Civil Judge for fresh consideration after giving an opportunity of hearing to Dungaji. That thereafter Dungaji instituted a Civil Suit No.48-A/2002 before the learned Civil Judge, Ujjain against State of Madhya Pradesh and Kaveribai for declaration that the Order dated 18.05.1976 passed by the Competent Authority under the Act is illegal and null & void and also for a declaration of divorce between the plaintiff and Kaveribai and also for declaration that the plaintiff (Dungaji) does not have excess land under the provisions of the Act, 1960.

2.2 That, it was the case on behalf of the original plaintiff- Dungaji that he had three wives Kaveribai, Kashibai and Nanibai. That after he had married Kashibai and Nanibai, his first wife Kaveribai started quarrelling with him and consequently, being fed up with the daily quarrel in the family, he had divorced Kaveribai 17 years prior to the filing of the suit as per the custom prevalent in the community. According to the plaintiff after the said divorce he and Kaveribai had been living separately and there had been no relationship of husband and wife between them. According to the plaintiff, after the aforesaid divorce, Kaveribai started living with her mother Amritabai. Amritabai had died and as such Kaveribai had inherited the land owned by her mother-Amrita Bai and the same land had been even mutated in the name of Kaveribai. The plaintiff pleaded that he had no concern with the aforesaid land owned by Kaveribai and therefore the same cannot be included in the holdings of the family of Dungaji. According to the plaintiff, Kaveribai is wrongly being treated as member of the family of plaintiff even after the divorce. According to the plaintiff, Order dated 18.05.1976 was null and void and not binding upon the rights of the plaintiff. The plaintiff also pleaded that proper procedure had not been followed by the Competent Authority while passing the order dated 18.05.1976.

2.3 Kaveribai as original defendant no.3 filed a written statement and admitted that she had been divorced from the plaintiff-Dungaji. She also admitted that she had inherited a land measuring 19.89 hectares from her mother-Amritabai. The original defendant nos.1 and 2-the State of Madhya Pradesh and another (appellants herein) opposed the suit by filing a separate written statement. Defendant nos.1 and 2 denied that Dungaji had ever been divorced with Kaveribai and the land inherited by her from her mother was not to be included in the land held by the family of Dungaji. The Trial Court framed the requisite issues. The parties led their evidence. On appreciation of evidence, the learned Trial Court dismissed the suit by Judgment and Decree dated 22.10.2002. The learned Trial Court specifically observed and held that the plaintiff has failed to prove that there is any customary divorce which has taken place between the plaintiff and Kaveribai. The Judgment and Decree passed by the learned Trial Court came to be confirmed by the First Appellate Court. The original plaintiff carried the matter to the High Court by way of Second Appeal No.580 of 2003. The High Court framed the following substantial questions of law :

“1. Had the findings recorded by both the Courts below that the customary divorce

between late Dungaji and late Smt. Kaveribai had not been proved, been perverse and arbitrary, disregarding the oral evidence which had support of the documents and affidavits of both late Dungaji and late Smt. Kaveribai, though, there had been no cross-examination on the point and no rebuttal was led evidence on mere surmises or suspicion that theory of such divorce was put to defeat the provision of the Ceiling Act?

2. Could the property inherited by Smt. Kaveribai from her mother form part of family property of late Dungaji and thus be declared surplus?

3. Could the competent authority dismiss the objections of late Dungaji without holding any enquiry which was mandatory under the Provisions of the Ceiling Act?"

2.4 That by the impugned Judgment and Order, the High Court has allowed the said appeal and has quashed and set aside the Judgment and Decree passed by the First Appellate Court as well as the learned Trial Court, dismissing the suit and consequently has decreed the suit and has held that the marriage between Dungaji and Kaveribai has been dissolved by way of customary divorce, much prior to the coming into force the provisions of the Act, 1960 and also that the property, inherited by Kaveribai from her mother, after divorce, cannot be treated to be family property of Dungaji for the purposes of determination of surplus area. By the impugned Judgment and Order, the High Court has also held that the Competent Authority had not followed the mandatory provisions of law before passing order dated 18.05.1976 and consequently has held the order dated 18.05.1976 as null and void.

2.5 Feeling aggrieved and dissatisfied with the impugned Judgment and Order passed by the High Court in Second Appeal No.580 of 2003, original defendant nos.1 and 2-the State of Madhya Pradesh and another, have preferred the present appeal.

3. Ms. Prachi Mishra, learned Counsel has appeared on behalf of the appellant-State and Mr. Guru Krishna Kumar, learned Senior Counsel has appeared on behalf of the respondents.

4. Ms. Prachi Mishra, learned Counsel appearing on behalf of the appellant-State has vehemently submitted that in the facts and circumstances of the case, the High Court has committed a grave error in allowing the Second Appeal and interfering with the findings of facts recorded by both the Courts below.

4.1 It is further submitted by Ms. Prachi Mishra, learned Counsel appearing on behalf of the appellant-State that while passing the impugned Judgment and Order, the High Court has exceeded in its jurisdiction while deciding the Second Appeal under Section 100 of the CPC which was against the concurrent findings recorded by both the Courts below.

4.2 It is further submitted by Ms. Prachi Mishra, learned Counsel appearing on behalf of the appellant-State that the High Court has materially erred in not appreciating the fact that suit filed by the original plaintiff challenging the Order passed by the Competent Authority dated 18.05.1976 declaring 57.32 acres of land as surplus under Section 7 of the Act, was not maintainable at all. It is submitted that the High Court has failed to appreciate the fact that the jurisdiction of the Civil Court was expressly barred under Section 46 of the Act, 1960. In support of her above submissions, learned counsel for the State has heavily relied upon the decisions of this Court in the case of *Sooraj v. SDO*¹; *Mohanlal Nanbhai Choksi (Dead) by Lrs. v. State of Gujarat*²; *Dhulabhai v. State of Madhya Pradesh*³ as well as *Union of India v. Shri Kant Sharma*⁴. Relying upon the above decisions and relying upon Section 46 of the Act 1960, it is vehemently submitted that the suit filed by the original plaintiff challenging the Order passed by the Competent Authority dated 18.05.1976 was not maintainable at all. It is submitted, therefore, the High Court has materially erred in quashing and setting aside the Order passed by the Competent Authority declaring 57.32 acres of land as surplus land. It is submitted that therefore the entire proceedings before the Civil Court were void ab initio.

4.3 It is further submitted by Ms. Prachi Mishra, learned Counsel appearing on behalf of the appellant-State that even otherwise on merits also the High Court has failed to appreciate that there are concurrent factual findings recorded against Dungaji and Kaveribai by both the Courts below. It is submitted that both the Courts below, on appreciation of evidence on record, specifically observed and held that the plaintiff Dungaji has failed to prove the customary divorce between him and Kaveribai. It is submitted that the High Court has materially erred in not properly appreciating the fact that on appreciation of evidence on record both the Courts below specifically gave the finding that the plaintiff-Dungaji failed to prove customary divorce between Dungaji and Kaveribai.

4.4 It is submitted that the High Court has failed to appreciate the fact that Kaveribai herself executed a Sale Deed in favour of Padam Singh in the year 1971 in which she has specifically stated that she is the wife of Dungaji. It is submitted that, therefore, both the Courts below, as such, rightly found that the plaintiff has failed to prove any customary divorce between Dungaji and Kaveribai.

4.5 It is further submitted by Ms. Prachi Mishra, learned Counsel appearing on behalf of the appellant-State that the High Court has failed to appreciate the fact that Dungaji has failed to prove and establish the factum of customary divorce and has also not proved that such a customary practice exists in his society. It is submitted that no such evidence was led in this regard. It is submitted that, as per the settled proposition of law, Hindu marriage can be dissolved only in accordance with the provisions of the Hindu Marriage Act, 1955. It is submitted that as held by this Court in the case of *Swapnanjali Sandeep Patil v. Sandeep Ananda Patil*⁵; *Subramani v. M. Chandralekha*⁶ and *Yamanaji J. Jadhav v. Nirmala*⁷, if a customary divorce practice is claimed in a community then the same needs to be

clearly established. It is submitted that in the present case, the original plaintiff failed to prove and establish the factum of divorce/customary divorce. It is submitted that in any case when on appreciation of evidence both the Courts below disbelieved concurrently a customary divorce as prayed by the plaintiff, the same was not required to be interfered with by the High Court in exercise of its powers under Section 100 of the CPC. It is submitted that as such there was no substantial question of law before the High Court. It is submitted that the High Court has materially erred in allowing the Second Appeal and quashing and setting aside the concurrent findings recorded by both the Courts below on the customary divorce pleaded by the plaintiff.

4.6 Making the above submissions, it is prayed to allow the present appeal.

5. Present appeal is vehemently opposed by Mr. Guru Krishna Kumar, learned Senior Counsel appearing on behalf of the respondent(s) herein-original plaintiff.

5.1 Mr. Guru Krishna Kumar, learned Senior Counsel appearing on behalf of the respondent(s) herein-original plaintiff has vehemently submitted that in the facts and circumstances of the case, the High Court has not committed any error in passing the decree of declaration declaring that the marriage between Dungaji and Kaveribai was dissolved in the year 1962. It is submitted that once there was a divorce as per the customary divorce between Dungaji and Kaveribai, the land held by Kaveribai could not have been included in the holdings of the family of Dungaji. It is submitted that, therefore, the High Court has rightly allowed the appeal.

5.2 It is submitted that while allowing the appeal and decreeing the suit, the High Court has considered the relevant evidence on record including Deed of Divorce; statement of PW1-Padam Singh; statement of PW2-Ram Chandra; statement of PW3- Mangilal and affidavit of Kaveribai. It is submitted that the appellants herein-original defendants have not cross-examined any of the aforesaid witnesses who firmly deposed on the factum of divorce. It is submitted that therefore statement of aforesaid witnesses remained unchallenged before the lower Courts.

5.3 It is further submitted by Mr. Guru Krishna Kumar, learned Senior Counsel appearing on behalf of the respondent(s) herein- original plaintiff that as the land held by Kaveribai which she inherited from her mother, was not required to be included in the holdings of the family of Dungaji and no proper procedure, as required to be followed under the Act 1960, was followed, the suit filed by the plaintiff for a declaration to declare the Order dated 18.05.1976 of the Competent Authority as null and void was maintainable. It is submitted that the relief sought in the suit would not fall in either of the two categories mentioned in Section 46 of the Act 1960. It is submitted that the major issue is in respect of the divorce between Dungaji and Kaveribai. It is submitted that therefore, the said issue was not covered under Section 46 of the Act 1960. It is vehemently submitted by Mr. Guru Krishna Kumar, learned Senior Counsel appearing on behalf of the respondent(s) herein-original plaintiff that as held by this Court in the case of Dwarka Prasad Agarwai v.

Ramesh Chander Agarwai. (2003) 6 SCC 220 that the bar of jurisdiction of a Civil Court is not required to be readily inferred and a provision seeking to bar jurisdiction of a Civil Court requires strict interpretation. It is submitted that as held by this Court in the aforesaid decision the Court, it is well settled, would normally lean in favour of construction, which would uphold retention of jurisdiction of the Civil Court.

5.4 It is submitted by Mr. Guru Krishna Kumar, learned Senior Counsel appearing on behalf of the respondent(s) herein-original plaintiff that even otherwise as there was a grave procedural lapse on the part of the Competent Authority, the jurisdiction of the Civil Court cannot be barred. In support of his above submission learned Senior Counsel appearing on behalf of the original plaintiff has vehemently relied upon the decision of this Court in the case of Dhulabhai (supra).

5.5 Making the above submissions, it is prayed to dismiss the present appeal.

6. Heard learned counsel appearing on behalf of the respective parties at length. At the outset, it is required to be noted that by the impugned Judgment and Order, the High Court in exercise of its powers under Section 100 of the CPC has allowed the Second Appeal and has reversed the concurrent findings recorded by both the Courts below and consequently has decreed the suit and has declared and held that the marriage between Dungaji and Kaverbai had been dissolved by way of customary divorce, much prior to the coming into force the provisions of the Act 1960. The High Court has also set aside the Order dated 18.05.1976 passed by the Competent Authority declaring 57.32 acres of land as surplus land under the provisions of the Act 1960. The learned Trial Court dismissed the suit by specifically observing on appreciation of evidence on record that the plaintiff has failed to prove that divorce has already been taken place between the plaintiff-Dungaji and Kaveribai according to the prevalent custom of the society. The learned Trial Court also specifically observed and held on appreciation of evidence on record that the execution of the Divorce Deed at Exhibit P1 is not proved. The Judgment and Decree passed by the learned Trial Court came to be confirmed by the First Appellate Court. However, in Second Appeal under Section 100 of the CPC, the High Court has interfered with the aforesaid findings of facts recorded by the learned Trial Court confirmed by the First Appellate Court. Therefore the short question which is posed for the consideration of this Court is, whether in the facts and circumstances of the case, the High Court was justified in allowing the Second Appeal and consequently decreeing the suit and holding that the marriage between Dungaji and Kaveribai had been dissolved by way of customary divorce and therefore the Order passed by the Competent Authority dated 18.05.1976 is null and void?

7. Having heard learned Counsel appearing on behalf of the respective parties and considering the evidence on record and the findings of facts recorded by the learned Trial Court confirmed by the First Appellate Court, it appears that by Order dated 18.05.1976 and after following due procedure required to be followed under the provisions of Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960, the Competent Authority declared 57.32 acres of land as surplus land under the provisions of the Act 1960. As Kaveribai-

wife of Dungabai inherited 19.89 hectares of land from her mother Amritabai, therefore, as such, she became the absolute owner of the aforesaid land. As per the provisions of the Act, the land held by the wife was required to be included in the holding of the family of the husband. Therefore, the Competent Authority included 19.89 hectares of land in the holding of the family of Dungaji and consequently by Order dated 18.05.1976 declared 57.32 acres of land as surplus land. It is not in dispute that the Order passed by the Competent Authority declaring the land as surplus land is subject to appeal and further revision as provided under the Act 1960 (Section 41 and 42 of the Act 1960). Section 46 of the Act 1960 provides that no Civil Court has jurisdiction to settle, decide or deal with any question which is by or under the Act 1960 required to be settled, decided or dealt with by the Competent Authority. Therefore, as per Section 46 of the Act 1960 there shall be a complete bar against maintainability of the suit challenging the decision of the Competent Authority. Despite the above and without preferring any appeal/revision as provided under the Act 1960 challenging the Order passed by the Competent Authority dated 18.05.1976, Dungaji filed the suit before the Civil Court praying for a declaration to declare the Order dated 18.05.1976 of the Competent Authority as null and void. Therefore, as such, considering the bar under Section 46 of the Act 1960, the suit filed by Dungaji challenging the Order dated 18.05.1976 passed by the Competent Authority, was not at all maintainable. It is true that in the suit the plaintiff also prayed for declaration to declare that the divorce had taken place between Dungaji and Kaveribai on the basis of the customary procedure. Therefore, as such, the suit qua the same relief can be said to be maintainable. But certainly, the suit challenging the Order passed by the Competent Authority dated 18.05.1976 was not maintainable at all. The view which we are taking is supported by the decisions of this Court in the case of Sooraj (supra); Mohanlal Nanbhai Choksi (Supra) and in the case of Dhulabhai (Supra). The decision of this Court in the case of Dhulabhai (Supra) relied upon by the learned Counsel appearing on behalf of the original plaintiffs, shall not be applicable to the facts of the case on hand and/or the same shall not be applicable to any reliefs sought in the suit. Therefore, in the facts and circumstances of the case, the High Court has materially erred in quashing and setting aside the Order dated 18.05.1976 passed by the Competent Authority.

8. Now, so far as the impugned Judgment and Order passed by the High Court declaring and holding that the marriage between Dungaji and Kaveribai had been dissolved by way of customary divorce, much prior to the coming into force the provisions of the Act 1960 and therefore after divorce, the property inherited by Kaveribai from her mother cannot be treated to be holding of the family property of Dungaji for the purposes of determination of surplus area is concerned, at the outset, it is required to be noted that as such there were concurrent findings of facts recorded by both the Courts below specifically disbelieving the dissolution of marriage between Dungaji and Kaveribai by way of customary divorce as claimed by Dungaji-original plaintiff. There were concurrent findings of facts recorded by both the Courts below that the original plaintiff has failed to prove and establish that the divorce had already taken place between Dungaji and Kaveribai according to the prevalent custom of the society. Both the Courts below specifically disbelieved the Divorce Deed at Exhibit P5. The aforesaid findings were recorded by both the Courts below on appreciation of evidence on record. Therefore, as such, in exercise of powers under Section 100 of the CPC, the High Court was not justified in interfering with the aforesaid findings of facts

recorded by both the Courts below. Cogent reasons were given by both the Courts below while arriving at the aforesaid findings and that too after appreciation of evidence on record. Therefore, the High Court has exceeded in its jurisdiction while passing the impugned Judgment and Order in the Second Appeal under Section 100 of the CPC.

9. Even on merits also both the Courts below were right in holding that Dungaji failed to prove the customary divorce as claimed. It is required to be noted that at no point of time earlier either Dungaji or Kaveribai claimed customary divorce on the basis of Divorce Deed at Exhibit P5. At no point of time earlier it was the case on behalf of the Dungaji and/or Kaveribai that there was a divorce in the year 1962 between Dungaji and Kaveribai. In the year 1971, Kaveribai executed a Sale Deed in favour of Padam Singh in which Kaveribai is stated to be the wife of Dungaji. Before the Competent Authority neither Dungaji nor Kaveribai claimed the customary divorce. Even in the Revenue Records also the name of Kaveribai being wife of Dungaji was mutated. In the circumstances and on appreciation of evidence on record, the Trial Court rightly held that the plaintiff has failed to prove the divorce between Dungaji and Kaveribai as per the custom.

9.1 At this stage, it is required to be noted that before the Competent Authority, Kaveribai submitted the objections. Before the Competent Authority, she only stated that she is living separately from Dungaji and Ramesh Chandra, son of Padam Singh, has been adopted by her. However, before the Competent Authority neither Dungaji nor Kaveribai specifically pleaded and/or stated that they have already taken divorce as per the customs much prior to coming into force the Act of 1960. Therefore, as rightly observed by the learned Trial Court and the First Appellate Court only with a view to get out of the provisions of the Ceiling Act 1960, subsequently and much belatedly, Dungaji came out with a case of customary divorce. As rightly observed by the learned Trial Court that Divorce Deed at Exhibit P5 was got up and concocted document with a view to get out of the provisions of the Ceiling Act 1960. As observed hereinabove, the High Court has clearly erred in interfering with the findings of facts recorded by the Courts below which were on appreciation of evidence on record.

10. In view of the above and for the reasons stated above, the present appeal succeeds. Impugned Judgment and Order dated 29.10.2010 passed by the High Court is hereby quashed and set aside and the Judgment and Decree passed by the learned Trial Court confirmed by the learned First Appellate Court is hereby restored. Consequently, the suit preferred by Dungaji stands dismissed. No costs.

Judgment Referred.

¹(1995) 2 SCC 0045

²(2010) 12 SCC 0726

³AIR 1969 SC 0078

⁴(2015) 6 SCC 0773

⁵(2019) SCC Online SC 0329

⁶(2005) 9 SCC 0407

⁷(2002) 2 SCC 0637