

JAMMU AND KASHMIR HIGH COURT

Th. Ajab Singh

Vs.

Th. Ram Singh

First Appeal No. 10 of 1957

(J.N. Wazir, C.J., S.M. Fazl Ali and K.V. Gopalakrishnan Nair, JJ.)

02.03.1959

JUDGMENT

S. Murtaza Fazl Ali, J.

1. The present reference to the Full Bench arises out of a suit for declaration filed by the plaintiff to-the effect that certain alienations made by Mst. Ram Piari in favour of the appellant, Ajab Singh, be set aside. The Court below decreed the suit of the plaintiff respondent No. 1 and the defendants have appealed from the decree of the Additional District Judge, Jammu. The appeal was heard by a Division Bench of this Court. As the case involved interpretation of Sections 12 and 13 of the Jammu and Kashmir Hindu Succession Act, 1956, the case has been referred to us. The Division Bench has not formulated the points for reference and it is, therefore,, necessary to formulate the points which we have been called upon to decide in this reference.

2. The point that arises for decision in this reference may be formulated as follows :

"Whether the present suit is maintainable in-view of Section 12(2) and Section 13 of the Jammu and Kashmir Hindu Succession Act, 1956 ?"

3. Briefly put the facts of the present case are as follows :

4. The property originally belonged to one Natha Singh who executed a will in favour of Ram. Piari on 19th Jeth 1994 under which he bequeathed his properties to Ram Piari but gave her only a limited estate and prohibited her irons making any alienations. According to the recitals of the will the property was to go to male collaterals after the death of Mst. Ram Piari and failing collaterals to the Arya Samaj. Natha Singh had a son Ram Singh, who was disinherited by a previous will but the Court below has, however, field that he was not disinherited by the present will which revoke the previous will.

5. The defense was that the alienations were justified by legal necessity and as Ram Singh was disinherited he could not maintain the present suit.

6. It is not necessary for us to go into the details of the case which will be decided by the Division Bench after we dispose of the present reference.

7. The question as to whether Section 12 which is the same as Section 14 of the Hindu Succession Act applicable to India is retrospective does not really arise in this case as the present case is completely covered by Sub-Section (2) of Section 12- Sub-Section (2) of Section 12 runs as follows :

"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".

A perusal of this Sub-Section makes it abundantly clear that where the property has been made the subject-matter of gift or will Section 12(1) will not apply at all. It is not disputed in the present case that Natha Singh had executed a will in favour of Ram Piari under which he had given her only a limited estate. The intention of the Legislature in engrafting Sub-Section (2) of Section 12 was clearly to leave untouched, transfers made by the last male holder in favour of a female, from the mischief of Section 12 of the Act. In other words, if the last male holder intended that the female should take only a limited interest the Legislature did not intend to interfere with that intention and has clearly saved such transactions by virtue of the Sub-Section quoted above. In the present case Section 12(1) is clearly inapplicable because of Sub-Section (2) of Section 12. Mr. Inder Dass, however, argued that Sub-Section (2) had a limited operation and it referred only to particular kinds of restrictions under which the right of the female was limited and not to any other restrictions at all. In other words, Mr. Inder Dass relied on the words 'prescribe a restricted estate in such property.' The contention of Mr. Dass is that only restrictions with respect to the female holding a limited interest would be given effect to by virtue of Sub-Section (2) and as the Act has already destroyed reversionary interests the plaintiff could not in any event maintain the present suit and would like us to construe Section 12 in that light. I am, however, unable to agree; with this contention, because no such limitation is laid down in Sub-Section (2) itself and the words 'Nothing contained in Sub-Section (1) shall apply to any property clearly indicate that in cases where Sub-Section (2) is actually applicable Sub-Section (1) will not apply at all or for any purpose. It is not possible for us to give such a mutilated interpretation to Sub-Section (2) as the learned counsel for the appellants wants us to do.

8. It was then contended by Mr. Das that in view of Section 13, the only persons who could challenge the alienations were the persons mentioned in clauses (a) to (e) of Section 13 and the

plaintiff not being one of them the suit was not maintainable, Section 13 runs as under :

"13(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 14,

(a) firstly, upon the sons and daughters including the children of any pre-deceased son or daughter and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother,

.....

A perusal of Sub-Section (1) of Section 13 quoted above 'clearly indicates that the heirs contemplated in clauses (a) and onwards can succeed only to such property of a female Hindu of which she has become a fresh stock of descent and regarding which she has not made any testamentary disposition. The expression 'intestate' has been defined in Section 3(1)(f) as follows :

" 'intestate' - a person is deemed to be intestate in respect of property of which he or she has not made a testamentary disposition capable of taking effect". Clause (e) of Section 3(1) defines 'heir' as under :

"heir' means any person, male or female, who is entitled to succeed to the property of an intestate under this Act".

It is, therefore, manifest that the question of succeeding to the property of a female Hindu as heir would only arise if the property of such a Hindu is her absolute property. In other words, Section 13 would apply only to those properties of a female Hindu in respect of which she has an absolute interest under Section 12(1) of the Act. In the present case, in view of my decision that Sub-Section (2) of Section 12 applies and the widow in question had only a limited interest in the property there can be no question of her heirs succeeding to the property after her death. In the present case, therefore, the widow having taken only a limited interest she could not form a fresh stock of descent and the property will not pass after her death to her heirs but to the reversioners. Section 13, therefore, will not apply in terms to the present case. As I have already said it would only apply to such females whose estate is enlarged by virtue of Section 12(1) of the Act. Once it is held that Section 12(1) does not apply to the present case, it must be held as a consequence thereof that Section 13 also does not apply at all. The argument of the learned counsel for the appellants is, therefore, devoid of any substance.

9. For the reasons given above we answer the point formulated by us in the affirmative, that is to say, we hold that the suit is maintainable.

10. The case will now be placed before the Division Bench for disposal on merits in accordance with the opinion expressed by us.

Wazir, C. J.

11. I agree.

Gopalakrishnan Nair, J.

12. I agree with the conclusions reached by my brother Ali, J, I would however add a few lines of my own. The facts of this case lie within a brief compass and the question of law arising is a short one. The property in suit was the self-acquired property of one Natha Singh who died leaving a will. This will gave Mst. Rama Piari, the concubine of the testator, an estate for life in the property and expressly forbade her from alienating the corpus. On her death, the property was to devolve on the collateral heirs of the testator and failing them on the Arya Samaj. Mst. Rama Piari, after taking the property under the will, made an absolute alienation of it in favour of one Ajab Singh, as though she was the full owner. Ramsingh the son of the testator, and the other collateral heirs of the testator brought a suit for a declaration that the sale in favour of Ajab Singh did not enure beyond the life of Mst. Ram Piari, the alienor. The trial court decreed the suit. The alienee has preferred an appeal in which he has raised the contention that by virtue of the provisions of the Jammu and Kashmir Hindu Succession Act, 1951 (hereinafter referred to as the Act), the plaintiffs have no locus standi to maintain the suit and that the property vests in him absolutely. Sections 12 and 13 of the Act which correspond to Sections 14 and 15 of Central Act, XXX of 1956, are relied on by the appellant.

13. It is not necessary in this case to examine the true scope and effect of Sub-Section (1) of Section 12 of the Act which says that

"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." The relevant provision is Sub-Section (2) of Section 12 which reads :

"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 prescribed a restricted estate in such property."

14. Mst. Rama Piari acquired the property in question under the will of deceased Natha Singh and the terms of the will which are unambiguous conferred on her only a life estate in the property. Section 12(2) therefore applies in terms to the present case. The application of Sub-Section (1) of Section 12 is excluded by the express words of Sub-Section (2) itself. In other words, there can be no question in the case of Mst. Rama Piari being the full owner of the suit

property by virtue of the provisions of Sub-Section (1) of Section 12. The nature and extent of the property acquired by Mst. Rama Piari must be determined exclusively by reference to the terms of the will under which she obtained the property. The provisions of Sub-Section (1) of Section 12 have no bearing on such determination.

15. Mst. Rama Piari, who had only a life estate could not convey to the appellant, her alienee, any higher right, title or interest than she herself possessed. The contention of the appellant that the sale by Mst. Rama Piari clothed him with absolute ownership of the property is therefore wholly devoid of merit.

16. Even so, it is contended on behalf of the appellant that neither the son nor the other male heirs of the deceased testator can maintain the present action. Reliance is placed on Section 13(1) of the Act, the material portion of which reads as follows: "General rules of succession in the case of female Hindus : The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 14."

The expression "intestate" is defined in Section 3(f) of the Act in the following words:

"A person is deemed to be intestate in respect of property of which he or she has not made a testamentary disposition capable of taking effect". The property in respect of which a person can make a testamentary disposition or the property which he can leave behind on his death as part of his estate to devolve on his heirs. When there is no such property there can be no question of testamentary disposition or intestate succession in respect of it. The life estate of Mst. Rama Piari becomes extinct on her death; it cannot survive her to devolve on her heirs under Section 13 of the Act.

It is unmeaning to speak of Mst. Rama Piari dying intestate in respect of her life estate or of its devolving on her heirs on her death. Section 13 which deals with intestate succession to the property of a deceased female Hindu cannot conceivably apply to the life estate which she held before her death. The property referred to in that Section surely does not and cannot comprehend the life estate of the deceased. It follows that the heirs of the female Hindu enumerated in Section 13 do not at all come into the picture in a case where the deceased had only a life estate. Section 13 or the connected Section 14 cannot therefore avail the alienee appellant in the instant case.

17. The plaintiffs are persons on whom according to the clear terms of the will, the property is to devolve on the determination of the life estate in favour of Mst. Rama Piari. The plaintiffs are, therefore, competent to maintain the present action. The rights of the parties to this litigation have to be adjudged essentially on a true construction of the terms of the will rather than the provisions of the Jammu and Kashmir Hindu Succession Act, 1956.

Reference answered.