

SHIV DAS AND ORS.

v.

SMT. DEVKI (DEAD) BY LRS. AND ORS.

MARCH 7, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Hindu Law—Succession.

Mother succeeding to the estate of son—Gifting the properties to son of daughter i.e. grandson—Suit filed by other daughter challenging the gift and subsequent alienations—Held: succession opened to the sisters and challenge valid—Gift deed and alienations not to bind the sister who filed the suit, as both sisters entitled to equal moiety.

M died and his mother R inherited certain properties which she later gifted/bequeathed to her grandson and son of one of her two daughters. The collaterals challenged the gift. The High Court held that the grandson had a preferential claim over the collaterals and upheld the validity of the gift deed.

Appellants' mother died in 1924 and R died in 1960. D, the other daughter of R filed a suit for declaration that the said gift deed was invalid and inoperative, as also the alienations made by the appellant. The appellate court affirmed the decree. Second appeal was dismissed by the High Court. Hence this appeal.

Appellant contended that since R died in 1960, by operation of section 14 of the Hindu Succession Act, 1956, she became the absolute owner of the properties; and that she having died intestate after the Act came into force, appellant being class 'A' heir of his mother, he was entitled to half share in the property.

Disposing of the appeal, this Court

HELD: 1. R was only limited owner and is entitled only to enjoy the properties during her life-time. Therefore, alienations or gift of the property or will made by R to anybody even to her grandson, are invalid, inoperative and do not bind the reversioners or the legal representatives of M. The succession stood opened in 1923 when M died. The two sisters of M were

nearer in degree to the appellant, the grandson of R. Though the rights of the appellant qua collaterals were upheld in *Shiv Dass v. Nand Lal*, AIR (1932) Lahore 361, by the Division Bench, that does not have any bearing on the rights of respondent since both the sisters were entitled to the estate left by their brother M. Then both of them are entitled to succeed to the estate of M in equal moiety. Respondent and her legal representatives are entitled to half the estate left by M and alienations made by either R by her will or gift or alienation by the appellant or anybody by derivative title are invalid, inoperative and do not bind the respondents. [593-E-G]

2. The decree of the trial court is confirmed and the same may be treated as a preliminary decree declaring the rights of the parties. On an application made to it, the trial court would proceed further in the matter to pass final decree, if properties in excess of the half share of the respondents stood alienated, the respondents would be entitled to recover possession of the properties allotted to their share, from the purchaser with mesne profits. The alienated properties should, however, as far as possible, be allotted to the share of the appellant to the extent of their half share. [593-H, 594-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 606 of 1978.

From the Judgment and Order dated 14.2.78 of the Punjab and Haryana High Court in Regular Second Appeal No. 295 of 1968.

V.C. Mahajan and Ms. S. Janani for the Appellants.

S.M. Ashri for the Respondents.

The following Order of the Court was delivered :

This appeal by special leave arises from the judgment of the single Judge of the Punjab and Haryana High Court made in RSA 295/68 dated 14.2.78. The property belongs to one Mela Ram who left behind him his mother-Radha. The suit property consist of :-

- (a) One pacca 2 and 3 storeyed house bounded on the North: Shop of Abanshi Ram previously of Vir Bhar, on the South: Khola of Nanak Singh and others, on East: house of Nanak Singh, on the West: Kucha Sarbasta and house of Harnam Singh and others as

shown in the plan filed herewith by letters ABCDEFG, situated in village Kahnawan, Teh. and Distt. Gurdaspur.

(b) One pacca shop with verandha and Thara bounded as follow:-

North : Thoroughfare, South: Shop of Sohan Lal previously of Lal Singh, East: Shop of Shri Mulk Raj previously of Mohan Lal, West: Shop of Hukum Chand previously of Shri Durga Dass shown in the map filed herewith by letters ABCD situated in village Kahnawan, Tehsil and Distt. Gurdaspur.

(c) One pacca shop bounded on the North: Thara building on the South: thoroughfare. On the East: Shop of Chajju Ram previously of Nand Lal, West: Shop of Sat Pal previously of Bishan Dass situated in the village Kahnawan, Tehsil and distt. Gurdaspur.

(d) Land measuring 123 kanals 15 marlas situated in village Chak Yaqub as given in the Jamabandi for 1959-60 which copy is filed herewith; Khata No. 1, 2, 13, 19, 16, 3, 4, 8, 7, 18, 11, 12, 119, 120, 122, 111, 125, 124, 123, 116, 117, Khatoni Nos. 1, 2, 14, 20, 19, 4, 5, 9, 8, 19, 12, 13, 124, 125, 127, 116, 130, 129, 128, 121, 122, Rect. 19 Killa Nos. 20/2 Rect. no. 40 Kila No. 20 Rect. Nil Killa No. 3/3 Rect. No. 4, Kila Nos. 17, 24, 25, Rect. No. 20 Kila Nos. 9/2, 12 Rect No. 31 Killa Nos. 11/2, 12/1, 19/2, Rect Nos. 40 Killa Nos. 22/2, 23/1, Rect No. 42 Killa No. 3/1 Rect No. 30 Killa No. 1/4 Rect. No. 20 Killa No. 15/3, Rect No. 30 Killa No. 1/3 Rect. No. 19 Killa No. 11/1, Rect No. 20, Killas No. 15/4 Rect. No. 30 Killas No. 1/2, 11/2, 1/2.3 Rect No. 17 Killas Nos. 4/2, Rect No. 24, Killas No. 2/1 Rect No. 40 Killas Nos. 19/3, 22/3, 42/2, Rect. No. 41, Killas No. 6/2, Rect. No. 20, Killas No. 13/2, 14/1, 17/4, 18/4, Rect No. 20 Killa No. 13/1, Khasra Nos. 118, 1015, 430, 743, 881, situated in village Chak Yaqub Tehsil Gurdaspur as entered in Jamabandi 1959-60.

(e) Land measuring 27 kanals 9 marlas Khata No. 6, 18, Khatauni Nos. 12, 39 Rect. No. 24 Killas Nos. 15, 16, 5, 6, situated in village Daawal, Teh. & Distt. Gurdaspur as entered in Jamabandi 1959-60.

Radha, by a deed of gift dated February 28, 1922, gifted the property

items 1, 2 and 3 to her grandson by name Shiv Dass, the appellant herein, son of Durga Devi, one of the two daughters of Radha. She also bequeathed item No. 4 by a will, Ex.D-2. It would appear that the collaterals had challenged the gift which was the subject-matter of the decision of the Division bench of the Lahore High Court in *Shiv Das v. Nand Lal*, AIR (1932) Lahore 361. The High Court held that grand son of Radha had a preferential claim over the collaterals as a reversioners and, therefore, by operation of Punjab Act 2 of 1929, gift of the property to him was held to be valid.

It would appear that mother of Shiv Dass died in 1924. Radha died on December 21, 1960. Devki Devi, other daughter of Radha, filed the suit for declaration on March 12, 1965, that the gift deed dated February 28, 1922 was invalid and inoperative; so were the alienations made by Shiv Dass, which did not bind her. The trial court decreed the suit in 1967. On appeal, the Addl. District Judge, by judgment and decree dated 3.2.68, affirmed the decree of the trial court and dismissed both the appeals of the appellant as also of Devki Devi. The second appeal was dismissed. Thus this appeal by special leave.

Shri S.M. Ashri, learned counsel appearing for the respondents, raised a preliminary objection that the suit had abated as against Devki Devi and, therefore, this appeal had stood dismissed on that ground. We find no force in the contention. It is now clear from the record that the High Court heard the second appeal on 4.1.78 and delivered the judgment on 14.2.78. In the meanwhile, Devki Devi died in January 1978. The special leave petition was filed in this court on 13.3.78. The only question would be whether the appeal was properly laid. It is now settled law that when one of the parties dies, after the appeal was heard by before the judgment was pronounced, the aggrieved person need not file an application in the High Court under Order 22 Rule 3 or 4 CPC to bring on record the legal representatives of the deceased-appellant or respondent, as the case may be. It is enough that the legal representatives of the deceased party are impleaded eo-nominee in the appeal filed against the judgment to represent the estate of the deceased respondent/appellant. Though the appellants did not impleaded in the appeal the legal representatives of Devki Devi as party respondents, since admittedly, the respondents did make an application in this court to bring them on record as heirs of Devki Devi

and on April 6, 1979, the application was allowed. Whatever initial defect that crept in laying the appeal, the same got cured by an order of this Court at the instance of the respondents. In that view, the question of abatement does not arise. The appeal, therefore, was validly laid in the backdrop of the facts and circumstances of this case.

It is contended by Shri V.K. Mahajan, learned senior counsel, that since Radha died on 21.12.60, by operation of s.14 of Hindu Succession Act, 1956, (for short, 'the Act'), she became absolute owner of the properties. She having died intestate after the Act came into force, appellant-Shiv Dass has become class 'A' heir of his mother and that, therefore, he is entitled to half share in the property. This contention is not totally correct. It is seen that when the Act came into force, she was not in possession of the property. Therefore, s.14(1) of the Act is not attracted and she did not become absolute owner. As she did not die intestate, s.15 of the Act cannot be applied.

The crucial question is whether Devki Devi is entitled to challenge the gift and bequest by will made by Radha in favour of Shiv Dass. It is seen that Radha is only limited owner and is entitled only to enjoy the properties during her life-time. Therefore, any alienation or gift of the property or will made by Radha to anybody even to her grand son, are invalid, inoperative and do not bind the reversioners or the legal representatives of Mela Ram. The succession stood opened in 1923 when Mela Ram died. Durga Devi and Devki Devi are sister of Mela Ram. Therefore, they are nearer in degree to Shiv Dass, the grand-son of Radha. Though the rights of Shiv Dass qua collaterals were upheld in *Shiv Dass v. Nand Lal* (supra) by the Division Bench, that does not have any bearing on the rights of Devki Devi, since Durga Devi and Devki Devi are entitled to the estate left by their brother Mela Ram. Then both of them are entitled to succeed the estate of Mela Ram in equal moiety. Devki Devi and her legal representatives are entitled to half the estate left by Mela Ram and any alienation made by either Radha by her will or gift or alienation by Shiv Dass or anybody by derivative title are invalid, inoperative and do not bind Devki Devi and the respondents in the appeal.

The decree of the trial court is accordingly confirmed and the same may be treated as a preliminary decree declaring the rights of the parties.

On an application made to it, it would proceed further in the matter to pass final decree. If properties in excess of the half share of the respondents stood alienated, the respondents would be entitled to recover possession of the properties allotted to their share, from the purchaser with mesne profits. The alienated properties should, however, as far as possible, be allotted to the share of the appellant to the extent of their half share.

The appeal is accordingly disposed of. In the circumstances, parties are directed to bear their own costs.

G.N.

Appeal disposed of.