
(1973) 02 RAJ CK 0007

Rajasthan High Court

Case No: Civil Regular First Appeal No. 42 of 1967

Smt. Chanda

APPELLANT

Vs

Sheokaran and Others

RESPONDENT

Date of Decision: Feb. 1, 1973

Acts Referred:

- Hindu Marriage Act, 1955 - Section 14, 22, 26

Citation: (1973) RLW 282 : (1973) 6 WLN 79

Hon'ble Judges: J.P. Jain, J; C.M. Lodha, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

C.M. Lodha, J.

This is a plaintiff's first appeal from the judgment and decree by the Senior Civil Judge, Ganganagar dated 3.2.1967 by which he dismissed the plaintiff's suit for possession of a piece of agricultural land situated in chak No. II-K in District Ganganagar by preemption.

2. the land in question measuring 364 Bighas and 11/2 Biswas was sold in different lots by defendant number 1 Shrimati Roopa to defendants No. 2 to 5 for a consideration of Rs. 35,000/-. The plaintiff Smt. Chanda's case is that she and defendant No. 1 Smt. Roopa are the cowidows of the deceased Lakhuram who died on Migsar Bad 4, Section 2013 leaving behind 75 Bighas of land. It was alleged that the sale of the land in question had been effected as a matter of fact for Rs. 10000/- only and Rs 35,000/- were shown as fictitious price in the sale deeds. It was further pleaded that since the death of Lakhuram took place after the coming into force of the Hindu Succession Act, 1956 (which for the sake of brevity will be hereinafter referred to as "the Act") she was entitled to get possession of the land in question from the defendant Nos. 2 to 5 on payment of Rs.10 000/- only.

3. The suit was resisted by the defendant No. 1 as well as the other defendants who are vendees on a number of grounds the chief of which are that Lakhuram had died before the coming into force of the Act i.e. some time in Samwat 2012. They also alleged that after the death of Lakhu Ram both the widows namely Smt. Chanda and Smt. Roopa divided the land belonging to Lakhuram and each of them got in her share equal land measuring about 37■ Bighas. It was further pleaded that the sale consideration mentioned in the sale deeds amounting to Rs. 35,000/- represented the correct price paid by the vendees. Lastly the defendants resisted the plaintiff's suit on the ground that Section 22 of the Act had no application to the present case inasmuch as the property in question had devolved upon the two co-widows before the commencement of the Act.

4. After discussing the evidence led by both the parties on the various issues, the learned Senior Civil Judge found that the plaintiff had failed to prove that Lakhuram had died on Magsar Bad 4, Section 2013 before the coming into force of the Hindu Succession Act. On the other hand, according to the learned Judge the defendants had succeeded in proving that Lakhuram had died in Kartik Samwat 2012 corresponding to November 1955 before the coming into force of the Act. As to the interpretation of Section 22 of the Act the learned Judge came to the conclusion that Section 22 had no application to devolution of property which had taken place before the commencement of the Act. Besides the aforesaid findings the learned lower court also found that partition between the two co-widows with respect to the land in question had taken place shortly after the death of Lakhuram before the commencement of the Act. As a result of the aforesaid findings the learned Senior Civil Judge dismissed the plaintiff's suit.

5. Learned Counsel for the appellant has argued two points before us. He has contended in the first instance that Section 22 is retrospective and will apply also to those cases where devolution of property had taken place before the coming into force of the Act. In order to fortify his submission he has sought assistance from Section 14.

6. In order to appreciate the contention of the learned Counsel we may reproduce the relevant portion of Section 22 of the Act:

Section 22 Preferential right to acquire property in certain cases:

(1) Where, after the commencement of this Act, an interest in any Immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class 1 of the Schedule, & any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

7. In our opinion, the words of Section 22(1) are crystal clear and show that the section is intended to be prospective and has no retrospective operation. The use of the words "after the commencement of this Act" is highly suggestive and shows that the section

applies only where succession has opened after the coming into force of the Act. The date of the devolution is material and in order that the section may apply, the devolution must take place after the commencement of the Act and that would happen only where a person dies after the Act came into force. Reference may be made to [Mangtoo Ram Vs. State of Bihar and Others](#), wherein it was observed that there cannot be any manner of doubt that the provisions of Section 22 are prospective and cannot be taken advantage of by the widows of persons who died before the commencement of this Act.

8. The conclusion to which we have come also clearly flows when we compare the language of this section with that of Section 26 of the Act where the words used are "whether before or after the commencement of this Act". This clearly shows that wherever the Legislature wanted to make a particular provision retrospective, it has used the words "before or after the commencement of the Act". The position would become further clear from the language of Section 14 of the Act where the expression used is "whether acquired before or after the commencement of this Act". We have, therefore, no doubt in our minds that the provisions of Section 22(1) are only prospective and the advantage of the same cannot be availed of when devolution of the property had taken place before the commencement of the Act. The argument that u/s 14 any property possessed by a female Hindu whether acquired before or after the commencement of this Act has been declared to be her absolute property does not at all advance the case of the plaintiff in any manner. Section 14 only deals with the enlargement of the rights of a Hindu woman in the property by abolition of what was known under the Hindu Law before the Act as "widow's estate". The main objective behind enacting Section 14 was to convert into full ownership the property of a Hindu woman whether acquired by her before or after the commencement of this Act. We fail to understand how this provision has any impact on the provisions of Section 22(1) of the Act. It is true that what was a limited right vested in the widow before the commencement of the Act became an absolute right nevertheless devolution of the property on the widow must be held to have taken place as soon as her husband died. We are, therefore, unable to accept the contention of the learned Counsel that the preferential right provided u/s 22 of the Act would be available even though the devolution of the property may have taken place before the commencement of the Act.

9. In this view of the matter the next important question for our consideration is as to the date of Lakhuram's death? Learned Counsel for the appellant has strenuously urged that the plaintiff has succeeded in proving that Lakhuram's death took place on Migasr Bad 4, Section 2013 equivalent to 21. 11.1956, i.e. after the commencement of the Hindu Succession Act, i.e. 17.6.1956.

10. We have carefully scrutinised the plaintiff's evidence on this point and have come to the conclusion that the finding of the lower court that the plaintiff has failed to prove that Lakhuram had died before the commencement of the Act is correct. P.W. 1. Smt Chanda has no doubt stated in examination in chief that her husband died on Migasr Bad 4, Section 2013 and the "Nyota" i.e. distribution of sweets and holding of the death feast

took place on Migsar Sudi 1, she has further stated that Kaluram, nephew of Lakhuram performed all the obsequial ceremonies and cash presents were made to Kaluram at the time of the "Nayota". She has also stated that the entries in respect of cash presents were made in a "Bahi" and the same were written by one Sugnaram. There is force in the criticism levelled by the lower court that an adverse inference must be drawn against the plaintiff for not producing in evidence Kaluram, Sugnaram and entries of the cash presents. It further appears from cross-examination of Smt. Chanda that she has not been able to give even approximately the dates of many other important events of her life. In order to test her memory she was asked who had died first, her mother or her father, but she was not able to give any reply. She was not able to state even roughly the time when her parents had died. She is not able to state when her Muklawar ceremony took place and then what was her age? She is not able to give the date of death, even roughly of Lakhuram's brother Nanak. She was not able to state the Samwat or Miti of the birth of the children of Kaluram, who was admittedly living with Lakhuram. She is not also able to state the date of Kaluram's separation from Lakhuram. We might observe straight away that her evidence regarding the date, month and year of the death of Lakhuram is very unsatisfactory, and cannot be relied upon. P.W. 2 Tejaram states that Lakhuram had died about 10 years ago from the date of his statement. However, he admits that at that time he was at Bikaner. In the course of cross examination this witness has stated that he cannot say as to in which year his son was born, and then subsequently he replied that he was born in Jeth Section 2003. From the statement of this witness the date of Lakhuram's death cannot be said to have been proved. The evidence of P.W.3 Birbal is none the better. He has also stated that Lakhuram died about 10 years ago. A question was put to him in his cross examination as to after how much time of the Hindu-Muslim riot, Lakhuram became ill? The witness could not give any reply to this question. Curiously enough the witness could not even state the date or year of his birth or of his son's birth and at the top of it all he was not able to give the current Samwat during which his statement was recorded. P.W. 4 Gheruram has not supported the plaintiff at all. On the other hand he has supported the stand taken by the defendant that Lakhuram had died 12 or 13 years before the commencement of the Act. The plaintiff got the witness declared hostile and in spite of having been permitted to cross-examine the witness nothing useful to the plaintiff could be elicited from his cross-examination. This is all the evidence produced by the plaintiff in respect of the date of death alleged by her. The evidence apart from being highly unsatisfactory is most vague and indefinite, on the basis of which, no finding in favour of the plaintiff on the point in question can be given. This hardly makes it necessary for us to deal in detail with the evidence led by the defendants on the point because the burden of proving the fact that Lakhuram's death had taken place after the commencement of the Act lay squarely on the plaintiff. However, we find from the evidence of Smt. Roopa (D.W. 3), Sheokaran (D.W. 1), Gopal Chand (D.W. 2), Nathuram (D.W. 4), and Surajbhan (D.W. 6) that the death of Lakhuram had taken place in the month of Kartik Section 2012. Sheokaran is a close relation of Lakhuram. He had also attended the funeral ceremony and the "Nayota" ceremony of Lakhuram. The evidence of the defendants' witnesses has been accepted by the lower court and we do not see any

sufficient ground for setting aside that finding. However, we must observe that the defendants' evidence apart, since the plaintiff has failed to establish the case set up by her, the verdict on the point must go against her.

11. The result of the foregoing discussion is that Lakhuram had died before the commencement of this Act and the property in question devolved on the two co-widows of Lakhuram before the commencement of the Act and consequently the plaintiff cannot take advantage of the preferential right to purchase the property envisaged by Section 22 of the Act

12. No other point was pressed in support of the appeal. The appeal is, therefore, dismissed but without any order as to costs.