

(2012) 04 MP CK 0073
Madhya Pradesh High Court
Case No: S.A. No. 616 of 1995

Virendra Kumar Dwivedi and
Another

APPELLANT

Vs

Tirath Prasad and Others

RESPONDENT

Date of Decision: April 26, 2012

Acts Referred:

- Madhya Pradesh Land Revenue Code, 1959 - Section 178

Citation: (2012) ILR (MP) 1286 : (2012) 2 MPLJ 715

Hon'ble Judges: Alok Aradhe, J

Bench: Single Bench

Advocate: G.S. Baghel, for the Appellant;

Final Decision: Dismissed

Judgement

Alok Aradhe, J.

This appeal has been preferred by the plaintiffs. This Court vide order dated 28-11-1995 while admitting the appeal had framed the following substantial questions of law :--

(1) Whether the learned first Appellate Court was right in dismissing the suit despite holding that Shobhnath died prior to 1956, i.e. before coming into force of the Hindu Succession Act?

(2) Whether under the facts and in the circumstances of the case, the first appellate Court was justified in holding that the sister of Shobhnath would succeed to the property of the deceased after his death ?

Facts giving rise to filing of the appeal, briefly stated, are that the plaintiff filed the suit seeking relief of declaration and permanent injunction. The claim in the suit was based on the ground that plaintiff No. 1 and 2's father was the owner of the half share in the suit lands situated at village Dudatola, District Rewa whereas the

remaining half share belonged to Shobhnath. After the death of Shobhnath in the year 1946, his share in the lands devolved on the plaintiffs. The plaintiffs got their names mutated in the revenue records vide order dated 30-12-1967. Thereafter, the deceased Shobhnath's sister raised objection. Thereupon, on 7-12-1981 an order of mutation was passed in favour of defendant No. 1, namely, the son of sister of Shobhnath. The mother of the defendant No. 1, however, without any authority sold the share of Shobhnath in the suit lands to defendants No. 2 and 3 vide registered sale deed dated 29-8-1970 and 27-8-1974. It was further pleaded in the plaint that defendants No. 2 and 3 got their names mutated in the revenue records and initiated proceedings for partition u/s 178 of the M.P. Land Revenue Code. It was also pleaded that the plaintiffs were in possession of the suit lands after the death of deceased Shobhnath. The defendants No. 2 and 3 were never in possession of the suit lands. Accordingly, the suit seeking the reliefs as aforesaid was filed and in the alternative the relief of possession was sought.

2. The defendants filed written statement in which it was, inter alia, pleaded that the deceased Shobhnath was not the member of joint family. It was further pleaded that partition between the father of the plaintiff and deceased Shobhnath had taken place prior to 1921. Shobhnath died in the year 1960 and was in separate cultivating possession of the land belonging to him. After his death the suit lands devolved on his sister. It was also pleaded that the order of mutation was passed in favour of the defendant No. 1 on 7-12-1981. The suit lands have been sold by mother of the defendant No. 1 in favour of defendants No. 2 and 3. The plaintiffs are neither the owners nor in possession of the suit lands.

3. The trial Court vide judgment and decree dated 8-8-1988, inter alia, held that the plaintiffs' father and deceased Shobhnath were not members of joint family. It was further held that the deceased Shobhnath died sometime in the year 1946 i.e. prior to commencement of Hindu Succession Act, 1956 and after the death of the deceased Shobhnath the suit lands devolved on the plaintiffs. The order of mutation in favour of defendant No. 1 was held to be illegal. It was further held that mother of the defendant No. 1 had neither any authority to execute the sale deed in favour of defendants No. 2 and 3 nor she had handed over the possession of the suit lands to defendants No. 2 and 3. It was also held that the order of mutation dated 31-8-1975 was not passed with the consent of the plaintiffs. Accordingly, the suit was decreed.

4. Being aggrieved by the aforesaid decree the defendant preferred an appeal. The lower Appellate Court vide judgment and decree dated 21-7-1995 by placing reliance on the entries in Khasras of the year 1954-55 as well as on the basis of oral evidence on record, inter alia, held that Shobhnath had died prior to 1956 i.e. in 1946. It was further that in view of section 48(1) of Rewa Land Revenue and Tenancy Code, 1935 (for short "Code of 1935") the suit lands did not devolve on the plaintiffs as the same would devolve only on the real brothers. The plaintiff No. 1 was the cousin of Shobhnath and not the real brother. On the basis of entries in Exhibits-D-13 to D-25

i.e. revenue records, of 1975-76 onwards, it was further held that the defendants No. 2 and 3 are in possession of the suit lands. Accordingly, the decree passed by the trial Court was reversed and the suit filed by the plaintiff was dismissed.

5. Shri G.S. Baghel, learned counsel for the appellant submitted that the first Appellate Court grossly, erred in dismissing the suit despite holding that Shobhnath died prior to commencement of the Hindu Succession Act; i.e. in the year 1946. It was further submitted that u/s 48(1) of the Code of 1935 the plaintiffs were entitled to succeed the property of deceased Shobhnath, therefore, finding recorded by the lower Appellate Court that sister of Shobhnath would succeed to the property of deceased after his death is perverse.

6. I have considered the submission made by learned counsel for the appellant and have perused the record. Section 48(1) of Code of 1935 reads as under:--

"48(1) When a pattereddar tenant dies, his interest in the holding shall devolve in accordance with the order of succession given below :--

ORDER OF SUCCESSION

(a) Male lineal descendants in the male line of descent.

(b) Widow till her death or re-marriage.

(c) Father

(d) Mother being widow.

(e) Daughter-in-law, being widow and dependent on the deceased tenant at the time of his death.

(f) Brother, being a son of the same father as the deceased.

(g) Brother's son.

(h) Daughter's son.

(i) Brother's son's son."

7. From the Order of Succession which has been mentioned in section 48(1) of the Code of 1935 it is apparent that neither the plaintiffs nor the defendant No. 1 are entitled to succeed to the property of the deceased Shobhnath. Therefore, the devolution of the property of male Hindu dying intestate would devolve as per the law which was in force prior to commencement of Hindu Succession Act, 1956. The Hindu Law of Inheritance (Amendment). Act, 1929 (for short the "Act") came into force on 21-2-1929. The aforesaid Act was enacted to alter the order in which certain heirs of a Hindu male dying intestate were entitled to succeed to his estate. Section 2 of the Act deals with the order of succession of certain heirs, which reads as under :--

"2. A son's daughter, daughter's daughter, sister and sister's son shall, in the order so specified, be entitled to rank in the order of succession next after a father's father and before a father's father

Provided that a sister's son shall not include a son adopted after the sister's death."

8. Thus, in view, of section 2 of the aforesaid Act it is son's daughter, daughter's daughter and the sister ranked as heir in all parts of India where Mitakshara law prevails. Therefore, in view of the provisions of section 2 of the Act the property of the deceased-Shobhnath would devolve on his sister, namely, mother of the defendant No. 1. Accordingly, the first and second substantial questions of law are answered. In the result, the appeal fails and is hereby dismissed with costs.