(2011) 06 DEL CK 0071

Delhi High Court

Case No: Regular Second Appeal No. 164 of 2005 and CM No''s. 8899 of 2005, 2149 of 2006 and 10190 of 2010

Raj Rani and Another		APPELLANT
	Vs	
Bimla Rani		RESPONDENT

Date of Decision: June 3, 2011

Acts Referred:

- Hindu Succession Act, 1956 - Section 14, 15, 15(1), 15(2), 16

Citation: AIR 2011 Delhi 170 : (2011) 180 DLT 682

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: Prem Bhusan Dewan and Gurjeet Kaur, for the Appellant; B.N. Gupta, for the Respondent

Final Decision: Dismissed

Judgement

Indermeet Kaur, J.

This appeal has impugned the judgment and decree dated 28.04.2005 which had reversed the finding of the trial judge dated 05.08.2003. Vide judgment and decree dated 05.08.2003, the suit filed by the Plaintiff Bimla Rani seeking partition of the suit property i.e. property bearing No. 14, Pandit Park, Patparganj Road, opp. Gandhi Nagar Police Station, Delhi (hereinafter referred to as the suit property) had been dismissed. Impugned judgment has reversed this finding; preliminary decree for partition had been passed apportioning 1/3rd share to each of the parties, i.e., to the Plaintiff and the two Defendants.

2. Plaintiff Bimla Rani is the daughter of late Sh. Bhola Ram, borne out of the wedlock of late Bhola Ram and Smt. Lajo Devi. Defendants are the step sisters of the Plaintiff; Defendant No. 1 and 2 having been borne out of the wedlock of late Sh. Bhola Ram and Smt. Motia Rani. Father of the Plaintiff and the Defendants late Sh. Bhola Ram is common.

3. Bhola Ram was the owner of the aforenoted suit property. He had by a registered will dated 01.03.1966 bequeathed this property to Motia Rani. Motia Rani had by a subsequent will dated 26.11.1983 bequeathed this property to her two daughters i.e. the two Defendants. There is no dispute that after the death of Bhola Ram by virtue of his will dated 01.03.1966; Motia Rani had become the owner of this suit property. u/s 14 of the Hindu Succession Act, 1956 (hereinafter referred to as HSA) , 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 explanation explains that this property includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person. Thus, there is no dispute that the suit property had devolved upon the Motia Rani in her capacity as a full-fledged owner.

4. The contention of the Plaintiff is that she also being the daughter of Bhola Ram was entitled to a share in the suit property; suit for partition had been filed. Defense of the Defendants was that Motia Rani had bequeathed this property in their favour by virtue of her will dated 26.11.1983. This will had admittedly not been proved. Contention of the Defendants is that even otherwise under the law of succession, the daughters of Motia Rani alone could have inherited this property from Motia Rani and Bimla Devi not being her "daughter", (under Section 15 of the HSA); she had no interest in the suit property).

5. Six issues had been framed by the trial judge. Trial judge was of the view that the will of Motia Rani had been proved; since the Plaintiff knew about this will of Motia Rani, she not having challenged it; it did not now lie in her mouth to assert to the contrary. In terms of the aforenoted will, the suit property had been validly bequeathed to her two daughters; suit of Bimla Devi had been dismissed.

6. The impugned judgment had reversed this finding of the trial judge. Court was of the view that the will of Motia Rani has not been proved in accordance with law; all the parties were entitled a 1/3rd share in to the suit property; a preliminary decree for partition had been passed in favour of all the parties apportioning 1/3 rd share each to the Plaintiff and the two Defendants.

7. This is a second appeal. It has been admitted and on 31.08.2009, the following substantial question of law had been formulated:

Whether the Appellate Court did not rightly appreciate the provision of Section 15 read with Schedule of the Hindu Succession Act while passing preliminary decree for partition in favour of the Respondent?

8. The question which thus has to be answered by this Court is as to whether the impugned judgment had correctly interpreted the provisions of Section 15 of the HSA or not by bequeathing 1/3rd share to the two natural daughters and 1/3rd share to the step daughter of Motia Rani.

Relevant would it be to extract this provision of law.

15. General rules of succession in the case of female Hindus.-

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16,-

(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 heirs of the father, and

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

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

(2) Notwithstanding anything contained in Sub-section (1),-

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in Sub-section (1) in the order specified therein, but upon the heirs of the father, and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in Sub-section (1) in the order specified therein, but upon the heirs of the husband.

9. Section 16 is also relevant. It reads as under:

16. Order of succession and manner of distribution among heirs of a female Hindu. -

The order of succession among the heirs referred to in Section 15 shall be, and the distribution of the intestate property among those heirs shall take place according to the following rules, namely:

Rule 1 .- Among the heirs specified in Sub-section (1) of Section 15, those in one entry shall be preferred to those in any succeeding entry and those including in the same entry shall take simultaneously.

Rule 2.- If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate" death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate''s death.

Rule 3 The devolution of the property of the intestate on the heirs referred to in Clauses (b), (d) and (e) of Sub-section (1) and in Sub-section (2) to Section 15 shall be in the same order and accordingly to the same rules as would have applied if the

property had been the father''s or the mother''s or the husband''s as the case may be, and such person had died intestate in respect thereof immediately after the intestate''s death.

10. The aforenoted provisions of law deal with succession of a Hindu female in respect of property over which she has an absolute right.

11. Section 15 deals with the distribution of property of a female Hindu inter se between the heirs; the order of succession is prescribed u/s 16. The property of a female Hindu shall thus devolve in the manner prescribed therein. The rules of succession prescribe that the sons and daughters of the Hindu female (including the children of any pre-deceased son or daughter) and her husband shall be in the first category of beneficiaries. This is a simultaneous succession by all the heirs together. Thus the husband and each son and each daughter is entitled to an equal share; Sub-Section 15(1)(a) also recognizes the right of representation, to the extent that children of a pre-deceased son or a daughter are also entitled to succeed along with the son, daughter and the husband of the deceased female Hindu. The heirs of the husband succeed after the children and husband and this is evident from Section 15(1)(b). The heirs of the husband have to be ascertained u/s 8 of the HSA which lays down the rules of succession of a male dying intestate.

12. It is not in dispute that the subject matter of the suit property was the absolute property of Motia Rani; she had become a full-fledged owner with absolute rights in terms of Section 14 of the HSA.

13. Question which has to be answered is whether the expression "daughter" as appearing in Section 15(1)(a) includes a step daughter i.e. the daughter of the husband of the deceased by another wife. The word "daughter" and "step-daughter" have not been defined in the HSA. According to the Collin''s English Dictionary, "daughter" means a female off-spring and a "step-daughter" means a daughter of one''s husband or wife by a former union. In the case of women, it is natural that the step-daughter i.e. daughter borne out of her husband''s wedlock with another wife is a step away from the daughter who has come out of the female''s own womb. If a step daughter does not fall within the scope of the expression "daughter" u/s 15(1)(a), she is sure to fall under Clause (b) of Section 15(1) being the heir of her husband.

14. The expression "daughter" in Section 15(1)(a) of the Act would thus include:

(a) daughter borne out of the womb of the female by the same husband or by different husbands and includes an illegitimate daughter; this would be in view of Section 3(j) of the HSA

(b) adopted daughter who is deemed to be a daughter for the purpose of inheritance.

Children of a pre-deceased daughter or an adopted daughter also fall within the meaning of the expression "daughter" as contained in Section 15(1)(a). If the legislature had felt that the word "daughter" should include the word "step-daughter", it should have said so in express terms. Thus, the word "daughter" appearing in Section 15(1)(a) would not include a "step daughter" and such a step-daughter, in the view of this Court would fall in the category of an heir of her husband as referred to in Clause 15(1)(b).

15. This view finds support from the decision of the Mysore High Court reported in AIR 1962 Mys 140 Mallappa Fakirappa Sanna Nagashetti and Ors. (Vs. Shivappa and Anr. as also the Bombay High Court reported in Rama Ananda Patil Vs. Appa Bhima Redekar and Others, and Ors. The High Court of Punjab and Haryana reported in Gurnam Singh Vs. Smt. Ass Kaur and Others, had also followed the same view; word "son" in Section 15(1)(a) did not include a step son. Same was the view taken by the Calcutta High Court in Kishori Bala Mondal Vs. Tribhanga Mondal and Others, (Allahabad High Court reported in ILR 1968 All 697 Ram Katori v. Prakash Wati had taken a contrary view. This controversy had been set at rest by the Apex court in Lachman Singh Vs. Kirpa Singh and Others, . (The Apex court had rejected the contrary view of the Allahabad High Court. The Apex Court, in this context, had noted as follows;-

The words ''sons and daughters...and the husband'' in Clause (a) of Section 15(1) only mean ''sons and daughters...and the husband'' of the deceased. They cannot be ''sons and daughters...and the husband'' of any body else. All relatives named in the different clauses in Sub-section (1) of Section 15 of the Act are those who are related to the deceased in the manner specified therein. They are sons, daughters, husband, heirs of the husband, mother and father, heirs of the father and heirs of the mother of the deceased. The use of the words ''of the deceased'' following ''son or daughter'' in Clauses (a) and (b) of Sub-section (2) of Section 15 of the Act makes no difference. The words ''son of daughter of the deceased (including the children of any predeceased son or daughter)'' in Clauses (a) and (b) of Section 15(2) of the Act refer to the entire body of heirs falling under Clause (a) of Section 15(1) of the Act except the husband. What Clauses (a) and (b) of Sub-section (2) of Section 15 of the Act do is that they make a distinction between devolution of the property inherited by a female Hindu dying intestate from her father or mother on the one hand and the property inherited by her from her husband and from her father-in-law on the other. In the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter), in a case falling under Clause (a) of Section 15(2) of the Act the property devolves upon the heirs of the father of the deceased and in a case falling under Clause (b) of Section 15(2) of the Act the property devolves upon the heirs of the husband of the deceased. The distinction made by the High Court of Allahabad on the ground of the absence or the presence of the words ''of the deceased'' in Sub-section (1) and Sub-section (2) of Section 15 of the Act appears to be hyper-technical and the High Court has tried to make a distinction

where it does not actually exist. The second reason, namely, that exclusion of step-sons'' and ''step-daughters'' from Clause (a) of Section 15(1) of the Act would be unfair as they would thereby be deprived of a share in the property of their father is again not well-founded. The rule of devolution in Section 15 of the Act applies to all kinds of properties left behind by a female Hindu except those dealt with by Clauses (a) and (b) of Section 15(2) which make a distinction as regards the property inherited by her from her parents and the property inherited from her husband or father-in-law and that too when she leaves no sons and daughters (including children of predeceased sons and daughters). If the construction placed by the High Court of Allahabad is accepted then the property earned by the female Hindu herself or purchased or acquired by her would devolve on step-sons and step-daughters also along with her sons and daughters. Is it just and proper to construe that under Clause (a) of Section 15(1) of the Act her step-sons and step-daughters, i.e., children of the husband by another wife will be entitled to a share along with her own children when the Act does not expressly says so" We do not think that the view expressed by the High Court of Allahabad represents the true intent of the law. When once a property becomes the absolute property of a female Hindu it shall devolve first on her children (including children of the predeceased son and daughter) as provided in Section 15(1)(a) of the Act and then on other heirs subject only to the limited change introduced in Section 15(2) of the Act. The step-sons or step-daughters will come in as heirs only under Clause (b) of Section 15(1) or under Clause (b) of Section 15(2) of the Act. We do not, therefore, agree with the reasons given by the Allahabad High Court in support of its decision. We disagree with this decision.

16. The impugned judgment, is thus liable to be set aside; the step-daughter of Motia Rani does not fall in the category of succession as contained in Section 15 of the HSA; the expression "daughter" in Section 15(1)(a) does not make reference to a "step-daughter" i.e. a daughter borne to the husband of the deceased female Hindu out of the wedlock with another woman.

17. The property of Motia Rani would thus devolve upon the two Defendants alone.

18. Appeal is allowed. Suit of the Plaintiff is dismissed.