

Nakchhed Singh And Ors. vs Bijai Bahadur Singh And Anr. on 17 April, 1953

Equivalent citations: AIR1953ALL759, AIR 1953 ALLAHABAD 759

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Bhargava, J.

1. This is a plaintiffs' appeal arising out of a suit for possession of certain property mentioned in the plaint. The facts that are either admitted or which have been found by the lower Court and are no longer questioned in this appeal are that the property in suit belonged to one Ram Harakh Singh. In the year 1916 Ram Harakh Singh was murdered by Ram Anand Singh and Ram Narain Singh, against whom the suit was brought by the appellants impleading them as defendants. Ram Anand Singh and Ram Narain Singh both died during the pendency of this appeal in this Court. In their place Bijai Bahadur Singh and Ram Pal Singh sons of Ram Anand Singh have been substituted as legal representatives. They were impleaded as legal representatives of Ram Anand Singh and Ram Narain Singh. These two respondents, Bijai Bahadur Singh and Ram Pal Singh were also impleaded as claiming in their own right. When Ram Harakh Singh died in the year 1916, he left Ms widow, Abhairaji but no issues. Abhairaji, therefore, succeeded to this property as widow's estate and held it until 1933 when she died. On her death one claimant to the property in suit was Menda a daughter of Ram Harakh Singh and Abhairaji but it has been held that under the custom prevailing in this family, daughters are not entitled to the succession of the property of their father and, consequently, Menda's claim to the property was negatived.

2. Thereafter the nearest heirs of Ram Harakh Singh were the defendants, Ram Anand Singh and Ram Narain Singh who had murdered him. It has also been found that in case Ram Anand Singh and Ram Narain Singh be excluded from succession to the property of Ram Harakh Singh the nearest heirs claiming under the Hindu Law would be the present respondents, Bijai Bahadur Singh and Ram Pal Singh and thereafter would come the appellants who are more distantly related to Ram Harakh Singh than Bijai Bahadur Singh or Ram Pal Singh. Since I am concerned only with these findings and these findings are not challenged in this Court nor can they be challenged, it is unnecessary to give the exact relationship of the respondents or the appellants with Ram Harakh Singh. The plaintiffs-appellants claim that, since Ram Harakh Singh had been murdered by Ram Anand Singh and Ram Narain Singh not only Ram Anand Singh and Ram Narain Singh are excluded from succeeding to the property of Ram Harakh Singh but even the sons of Ram Anand Singh, who are the present respondents, cannot claim to succeed to that property. This plea of the

appellant has been rejected by both the lower Courts. The appellants have come up to this Court only to challenge this view taken by the lower Courts on this plea.

3. The learned Judge of the lower Court has quoted extensively from the texts of the ancient writers on Hindu Law and has tried to deduce a principle therefrom in order to apply it to this case. In my opinion, it was wholly unnecessary to enter into any such learned discussion of the texts of Hindu Law. Even the learned Judge himself ultimately had to base the decision on the interpretation of the principle laid down by their Lordships of the Privy Council in -- 'Kenchawa v. Girimallappa', AIR 1924 PC 209 (A). In that case, their Lordships of the Privy Council considered the argument that Hindu Law makes no provision for disqualifying a murderer from succeeding to the estate of his victim and held that it was unnecessary to go into this question. They laid down that the principles of equity, justice and good conscience would exclude a murderer from succeeding to the property of the murdered person. The exclusion of various classes of heirs such as an impotent person, an outcast, a mad man and an idiot under the text of Hindu Law is not necessarily based on the principles of justice, equity and good conscience. In most cases the exclusion is due to some disability where the exponents of the Hindu Law felt that it would be unjustified to allow the property to pass into the hands of such a person. In a case where the exclusion is sought on the basis of equity, justice and good conscience, the principles applied in Hindu Law to those other cases would afford no comparison. The decision of this case depends almost entirely on the interpretation to be put on the view expressed by their Lordships of the Privy Council in the case cited above.

4. Their Lordships when giving their decision enunciate the principle in the following words :

"The murderer should be treated as nonexistent and not as one who forms the stock for a fresh line of descent."

The argument before me and, it appears, in others Courts also where similar cases have arisen, has centred round the interpretation of the words "who forms the stock for a fresh line of descent." It has been argued that, if there is a direct descendant of the murderer, he must be treated as belonging to the stock of the murderer in his line of descent and, consequently, the language used by their Lordships of the Privy Council would exclude such person from succeeding to the property if the murderer person. This interpretation of the word's does not appear to me to be justified. When their Lordships used the words "the stock for a fresh line of descent", I believe, they meant that the property which is the subject-matter of dispute for succession should not be treated as belonging to a nucleus formed by the murdered person and should not pass to those persons who would claim succession as descendants of that nucleus. This might be put in another way also viz. that the property itself should not be treated as stock belonging to the murdered person so as to pass on in the line of descent of that murderer person. The interpretation in either way only means that their Lordships intended to exclude from succession those persons who claimed their title through a murderer, and who would have no title at all unless at one time the property in suit became the property of the murderer.

Learned counsel's argument that the sons, who are descended from the murderer in his line of descent should be excluded from succession even though they might be entitled to claim the

property without any assertion that the property at one time had vested in their father who was the murderer, cannot be accepted as giving the correct interpretation. All that their Lordships meant in that case was that the property was not to pass to the descendants of the murderer if they claimed the property as the heirs of the murderer. There was no intention of excluding a person who, though he might be the descendant of the murderer, did not claim through the murderer after treating the property as having once belonged to the murderer. This interpretation of the words used by their Lordships of the Privy Council is the only one that appears to be consistent with the further view expressed by them in the next paragraph in which the decision of the Bombay High Court in -- '*Gangu v. Chandrabhagabai*', 32 Bom 275 (B) was considered by their Lordships. That was a case where the wife of a murderer was held entitled to succeed to the estate of the murdered man. Their Lordships did not disapprove that case and it was not overruled. That case was merely distinguished on the ground that the wife did not deduce her title through her husband but got a title because of the principle of Hindu family law that a wife becomes a member of her husband's gotra, an actual relation of her husband's relations in her own right or as it is called in Hindu Law, as a gotraja-sapinda. The wife gets her status in the family of her husband simply on account of marriage. It is only by virtue of the marriage that she acquires the gotra of the husband and the principle laid down by their Lordships of the Privy Council in approving the decision of the Bombay High Court in that case shows that, even if the husband becomes a murderer and the wife is not entitled to claim any right to the property as if the property had once belonged to her husband, she does not lose her status as a gotraja-sapinda of her husband and she can succeed to the property of the murdered person in the capacity of a gotraja-sapinda.

The case of the sons of a murderer would be no different from the case of the wife of a murderer. The wife becomes a gotraja-sapinda by virtue of her marriage with the murderer and the fact that the murderer becomes non-existent for the purposes of deciding the succession to the estate of the murdered person does not affect the status of the wife as a gotraja-sapinda. Similarly the sons of the murderer become gotraja-sapindas by virtue of their birth as sons of the murderer and in case the wife does not lose her status as a gotraja-sapinda, there is no reason why the sons should lose that status either. In the case before me Bijai Bahadur Singh and Ram Pal Singh are claiming the right to the property of Ram Harakh Singh not as heirs of the murderers, Ram Anand Singh and Ram Narain Singh, but as being the nearest rever-sioners of Ram Harakh Singh. They are clearly entitled to succeed to his property and there is nothing at all which would exclude them from such succession. The mere act of their father, Ram Anand Singh having committed the murder and having thus become disentitled to succeed to the property of Ram Harakh Singh, would not take away their right which they had acquired by birth and which did not depend upon the right which Ram Anand Singh and Ram Narain Singh lost by committing the murder.

This view that has been taken by me is clearly in line with the view taken by a learned single Judge of the Madras High Court in -- '*Stanumurthiayya v. Ramappa*', AIR 1942 Mad 277 (C). In that case also the same interpretation was placed upon the words used by their Lordships of the Privy Council in the case cited above. No case has been cited before me in which any different interpretation might have been put on these words. I must, therefore, hold in this case also that Bijai Bahadur Singh and Ram Pal Singh were entitled to succeed to the property of Ram Harakh Singh and, consequently, the plaintiffs appellants who were more distant reversioners of Ram Harakh Singh could not claim any

right in the property. Their suit has been rightly dismissed and the appeal is also dismissed with costs. Leave to appeal to a Bench is granted.