Mt. Rajpati vs Jagmohan And Ors. on 18 August, 1950

Equivalent citations: AIR1952ALL309, AIR 1952 ALLAHABAD 309

JUDGMENT

Kidwai, J.

1. This appeal arises out of a suit instituted by Jagmohan and others, respondents, for possession of certain properties specified in a list attached to the plaint and for recovery of Rs. 50, as damages. The plaintiffs' case was that Ram Sunder was the owner of the properties in suit and that after his death his widow Mt. Maharaji came into possession of those properties for her life. Mt. Maharaji is said to have died on 7-1-1944 and the plaintiffs claim that they are the reversioners of Ram Sundar. The defendant-appellant Mt. Rajpati obtained mutation of names in her favour alleging herself to be the daughter of Ram Sunder. The fact that Rajpati was the daughter of Ram Sunder was denied by the plaintiffs who also pleaded that, in the family of the parties, there is a custom of exclusion of daughters from inheritance.

2. The lower appellate Court has held that Mt. Rajpati is the daughter of Ram Sunder: that by family custom daughters are excluded from inheritance and that there is no evidence on the record to prove the plaintiffs' case on the point of damages. In the result the learned Additional Civil Judge decreed the plaintiffs' suit for possession, but dismissed it in so far as it related to damages.

3. Mt. Rajpati has now come up in second appeal and her learned Advocate contended that although the wajib-ul-arz, relied upon by the lower appellate Court, might on its language be deemed to establish a custom, such a custom was not in accordance with justice, equity and good conscience and consequently by reason of Section 3, Oudh Laws Act, it could not be given effect to. The argument was that, since the enactment of the Hindu Law of Inheritance (Amendment) Act, 1929, a sister has become an heir. It is, therefore, unjust and inequitable that while a sister succeeds, a man's own daughter is excluded from inheritance. He, therefore, contended that, whatever may have been the position before the enactment of Act II [2] of 1929, since the enactment of that Act it would be unjust and inequitable to uphold a custom of exclusion of daughters.

4. The first thing to be noticed is that Section 3(a) of Act II [2] of 1929 provides that nothing in that Act shall affect any special family or local custom having the force of law. Thus, the Act itself pre-serves customs and directs their enforcement. In face of this language it is not possible to hold that a custom excluding daughters is inequitable. This matter was touched upon in Mt. Jainath Kuar v. Danpal Singh, 1947 Oudh W. N. 197 at p. 211, in which the plea advanced was that a custom of exclusion of daughters was unreasonable.

5. There is no doubt an anomaly inasmuch as the sister succeeds to the exclusion of the daughter and her children. This anomaly has been pointed out repeatedly by the Courts. The last occasion on which it was pointed out was in Ram Pheran v. Sri Ram, 1947 Oudh w. N. 242 at p. 251. In that case it was also pointed out that it is the function of the Legislature to re-move such anomalies. The Courts cannot legislate but must give effect to the law such as it is. If, therefore, the Legislature has recognized the position that any of the heirs which it mentions in Section 2 of Act II [2] of 1929 might be excluded by custom and directs that custom shall be respected the Courts cannot circumvent that position of law by holding a custom excluding the heirs which has thus received the sanction of the Legislature to be unjust and inequitable. I must, there fore, hold that there is nothing either since the enactment of Act II [2] of 1929, or before that date, which would justify me in holding that a custom excluding daughters and their children from in-heritance is against justice, equity and good conscience and as such not enforceable. This appeal, therefore, fails and dismissed with costs.