Avadesh Bahadur Singh And Anr. vs Mt. Ram Raj Kuar And Anr. on 28 March, 1950

Equivalent citations: AIR1952ALL333, AIR 1952 ALLAHABAD 333

Author: Ghulam Hasan

Bench: Ghulam Hasan

JUDGMENT

Kidwai, J.

1. One Ram Sarup Singh died about 1905 leaving a widow, Balraj Kuar, two sons, Mahabir Singh and Indarpal Singh and three daughters, Ram Raj Kuar, Partab Kuar and Jaipal Kuar. The two sons died shortly after their father (circa 1906) and their mother was their only heir. Accordingly mutation was effected in her favour and she obtained possession of the property, which included a 1 anna 9165/175 pie share in village Ghandra Bhanpur, in the district of Partabgarh. On 5-3 1919, Balraj Kuar sold the share to Thakur Badri Narain Singh for Rs. 4000. Badri Narain entered into possession and in December. 1935, when he applied under Section 4, Encumbered Estates Act, he showed their share also in the list of his properties.

2. Balraj Kuar died in November, 1987, and on 11 3-1945, Bam Baj Kuar, Partab Kuar and Jaipil Kuar. filed the suit out of which this appeal arises against Badri Narain Singh for possession of the property on the ground that the sale in favour of Badri Narain was fictitious and without consideration. The defence was that daughters and sisters are excluded by custom from inheritance ; that the suit was barred by time since Balraj Kuar died over 14 years before the suit was filed ; that the sale was genuine and was for legal necessity ; and thas the suit was barred because the defendant had applied under Section 4, Encumbered Estates Act, and consequently the only remedy open to the plaintiff was to apply under Section 11 of that Act.

3. The trial Court held that the alleged custom o! exclusion of daughters was not proved : that the suit was within limitation : that only Rs. 575 14-0 out of the consideration of the sale deed were justified by legal necessity : and that the suit was not barred by Section 11, Encumbered Estates Act. The learned Civil Judge accordingly decreed the suit for possession conditionally upon repayment of Es. 575-14-0.

4. The defendant appealed. His grounds of appeal challenged all the findings of the trial Court but he was not represented by counsel but only by one of his sons who was his general agent. At the hearing of the appeal only the finding as to legal necessity was attacked and the District Judge

upheld the decision of the trial Court on this point. The defendant came up in second appeal but he died during the pendency of the appeal and his two sons were brought on the record as appellants. Jaipal Kuar is also dead and is represented by her two sisters. The appellants' learned Advocate contended that the finding of the lower Courts on the question of legal necessity is wrong and that the civil Court cannot take cognisance of the case by reason of Sections 11 and 47, U. P. Encumbered Estates Act.

5. The first contention challenges a finding of fact and this cannot be permitted in second appeal. We have been taken through the judgment of both the Courts below on this point and do not find any legal flaw in their findings. The decision of the Court below on this point must, therefore, be upheld.

6. As to the second point, it is urged that the decision in Ram Ran Bijay Prasad Singh v. Sarjoo Singh, A. I. R. (34) 1947 ALL. 188 supports the view that no claim can be made in respect of property which is shown in the list filed by an applicant under the Encumbered Estates Act except in the Court of the Special Judge. It is also pointed out that this view has not been accepted by the Chief Court of Avadh in Ram Dal v. Suraj Bux, 1948 Oudh W. N. 13. It is not necessary for the purposes of the present appeal to resolve this conflict because the facts of those cases are greatly different from the facts of the present case. In those cases the person who claimed title to the property possessed that title at the time that the application under the Encumbered Estates Act was made. In the present case that is not so. When the application was made in December, 1935, and also when the decrees in favour of creditors were passed on 25-10-1937, Mt. Balraj Kuar, was alive. In her lifetime the daughters had no interest and the holder of property under a sale from her could sustain his title so long as she was alive. The daughters could therefore, make no claim and Section 11 could not justify any claim by them--vide Lal Ganga Kant Singh v. Girraj Kunwar, 1940 Oudh W. N. 890. That case also related to a claim by reversioners. Proceedings were going on at the instance of a Hindu widow and the reversioners desired to intervene in order to prevent decrees being passed against the estate in the hands of the widow which would bind their reversionary interests. They were hot allowed to do so on the ground that they had no such interest as would justify their making a claim under Section 11 (2), Encumbered Estates Act.

W So long as a Hindu widow is alive, no one else has any claim to the property in her possession or in the possession of her transferee since, even a transfer not for legal necessity, is binding for the widow's lifetime. No claim could consequently have been made by the daughters within the time allowed by Section 11 (2). It is true that by a proviso added by Act XI [11] of 1939, the time for making a claim was extended. The proviso reads as follows :

> "Provided that, if a claimant satisfied the Special Judge that he had sufficient cause for not making the application within the above period, the Special Judge may receive the application if presented at any time before such property is transferred to any person under the provisions of Section 24, 25, 28 or 31 or a bond is issued by the Collector to a creditor under Section 30 or 31."

This proviso only extends the time for making an application that oould have been made under Section 11 (2) i. e., an application which could have been made within three months of the publication of the notice in the gazette. In the present case the daughters could not have made such an application since their mother was alive and they had no claim to the property at that time.

8. It would not be sufficient cause to say that they could not make the application earlier since they had no title earlier. "Sufficient cause" only relates to an application which might have been made earlier under the law then existing and was not made, e. g. by reason of lack of notice. Thus in the present case it was not possible for the plaintiffs to move the Special Judge in the matter and the ordinary civil Court as Courts possessing residuary jurisdiction, were competent to go into the question. The appeal therefore, fails and is dismissed with costs.

Ghulam Hasan, J.

9. I agree.