

Supreme Court of India

Shri Rajeshwari Prasad Singh vs Shashi Bhushan Prasad Singh And ... on 3 August, 1995

Equivalent citations: AIR 1996 SC 181

Bench: K Ramaswamy, K Paripoornan

JUDGMENT

1. Leave granted.

2. One Smt. Laljhari Devi, maternal grandmother of the appellant and widow of one Kamla Prasad Singh filed Suit No. 106 of 1941 for partition of the Hindu joint family property. A compromise decree dated 2nd May, 1942 was made for maintenance, wherein a life estate for residence in a portion of the residential house was provided for her. In 1956, Title Suit No. 100 of 1956 was filed in which Laljhari Devi was impleaded as 15th defendant. It would appear that since one of the issues could not be tried by the civil court, a reference was made to the Revenue Court and a finding in that behalf was called for. After its receipt without further notice to her, she was set ex-parte, the other contesting coparceners entered into three compromises and a preliminary decree was passed thereon in which the rights secured by Laljhari Devi in her Suit No. 106 of 1941 were not reiterated. The preliminary decree became final. Subsequently, in the final decree proceedings she had appeared and made here objections expressly stating on September 30, 1967 that the life estate of right to residence should be preserved and the same may be separately demarcated. Thus:

That this opposite party is an aged and 'Paradanasin' lady of a highly respectable family and she being in the sole occupation of the residential portion of Sadhana House" aforesaid and more fully detailed and described at the foot of this petition and she being in peaceful exclusive possession over the same from a long number of years, improving and maintaining the same and the same being recognised by the parties, it is necessary, just in the ends of justice that her exclusive possession over the zanana portion of "Sadhana House" be kept in tact and be not disturbed by any of the parties till her life time, and the final decree be ordered to be prepared in such a way that the portion in her occupation as said forth above be not disturbed in any way.

3. It would appear that the Advocate-Commissioner appointed in the final decree proceedings separately demarcated the portion in which Laljhari Devi was residing. She continued to live therein and Laljhari Devi died on 10th July, 1984.

4. On 1st August, 1984, her daughter, Smt. Krishna Devi filed an application for her substitution as her mother's legal representative claiming that the limited estate created in the compromise deed dated 2nd May, 1942 was enlarged into an absolute estate under Section 14(1) of the Hindu Succession Act, 1956 [for short, 'the Act'] and that thereby she acquired 1/6th share in the said property and that she was entitled to reopen the final decree. Krishna Devi who also remained to live in that house died and the appellant has come on record as her legal representative. The courts below refused to reopen the case and dismissed the application on the ground that after the knowledge of the ex-parte decree having been made against Laljhari Devi she did not make an application under Order 9 Rule 13, Civil Procedure Code [for short, 'the Code']. Since preliminary decree did not recognise the right of Laljhari Devi and the same having become final, she did not

acquire any share in the coparcenary property. Therefore, Krishna Devi was not entitled to be substituted. Accordingly the applications were dismissed on 25th March, 1985. On revision, the High Court by the impugned order dated May 12, 1994 held that pending revision, final decree had become final, the question of reopening the preliminary decree and substitution of the appellant does not arise. The High Court dismissed the revision application. Thus this appeal by special leave.

5. It appears from the above quoted objections filed by Laljhari Devi, after the compromise preliminary decree in Title Suit No. 100 of 1956 was passed, that she had admitted to have life estate of right to residence and maintenance given in compromise decree in Suit No. 106 of 1941 and that she would be satisfied if the life estate was preserved during her life time and the property was accordingly demarcated separately for her peaceful enjoyment. Admittedly, she continued to live in the premises throughout her life till her death and also received maintenance in terms of the compromise decree. Shri P.P. Rao, learned senior counsel for her grand son contended that since Laljhari Devi died after the Act had come into force, her limited estate given in the compromise decree as admitted by her in the counter-affidavit and that she lived during her life time in the said premises without any let or hindrance, ripened into an absolute estate under Section 14[1] of the Act. Therefore, she had become the absolute owner. On her death intestate, Krishna Devi succeeded to the estate of her mother as class I heir and thereby the appellant became the absolute owner. Therefore, the courts below were not right in rejecting the application for substitution and to reopen the preliminary decree. He also contended that the preliminary decree having been passed without notice to Laljhari Devi, the same does not binding on her. The argument was that she and on her behalf her daughter, Krishna Devi were entitled to object to passing of the final decree asserting their right to a share in terms of the compromise decree passed in Suit No. 106 of 1941. The court has power to pass any number of final decrees. It is not necessary that either Laljhari Devi or Krishna Devi should seek setting aside of the ex-parte decree.

6. We find no force in the contentions. It is seen that pursuant to the compromise decree in Title Suit No. 100 of 1956, i.e., the subsequent suit, there was no recognition of the right of Laljhari Devi as engrafted in the compromise decree in Suit No. 106 of 1941. True, had Laljhari Devi pleaded in her objections to the final decree that the limited life estate given in compromise decree in suit No. 106 of 1941 became absolute estate under Section 14(1) and the ex-parte compromise decree in title suit No. 100 of 1956 was fraudulent and did not bind her, different consideration would arise. The preliminary decree declared in title suit No. 100 of 1956 merely the rights of those other than Laljhari Devi. The only course, therefore, open to the parties at the first instance was to seek to set aside the preliminary ex-parte decree in Title Suit No. 100 of 1956 and have engrafted the compromise decree in Suit No. 106 of 1941 and to have made an application to pass final decree in that behalf. Admittedly, for over 20 years no such attempt was made by filing an application under Order 9 Rule 13, CPC. On the other hand, Laljhari Devi filed a statement agreeing that she would be satisfied to maintain her life estate in a separate and demarcated portion of the house in which she was living and she be allowed to remain in possession and peaceful enjoyment for her life. Admittedly, she remained in possession till her death and also received maintenance in terms of the compromise decree. There is no dispute that she died intestate. The preliminary ex-parte decree became final. Therefore, there is no scope to reopen the preliminary decree. Though Krishna Devi was a Class I heir of her mother, no property or interest in coparcenary was left behind Laljhari

Devi. Neither Krishna Devi nor the appellant can seek to come on record as legal representatives of Laljhari Devi. The appellant is not a legal heir of Laljhari Devi. The question of devolution of the interest in the property on Krishna Devi, though legal heirs of Laljhari Devi, does not arise since she did not acquire any right, title or interest in the preliminary decree in Title Suit No. 100 of 1956 under Order 22 Rule 10. In consequence, she cannot be substituted as the legal representative of Laljhari Devi to represent her estate under Order 9 Rule 4, CPC. Under these circumstances, the question of substitution or devolution of interest in the estate of Laljhari Devi by way of intestate succession upon Krishna Devi does not arise. Therefore, she cannot come on record either under Rule 4 or Rule 10, as the case may be, of Order 22, CPC. Therefore, the courts below were right in rejecting the applications of Krishna Devi or the appellant to come on record as legal heirs of Laljhari Devi.

7. The appeals is accordingly allowed (sic) with no order as to costs.