

Supreme Court of India

Manju Shukla (Smt.) And Anr. vs Shyama Devi And Ors. on 3 March, 1992

Equivalent citations: 1995 (1) ALT 62 SC

Bench: V Ramaswami, M F Beevi, R Sahai

JUDGMENT

1. Delay condoned. Leave granted.

2. This appeal arises out of final decree proceedings in a partition suit. The suit was filed by one Dhanpat Rai claiming partition of his 1/3 share. The legal representatives of his two brothers who were entitled to remaining 2/3 share were impleaded as parties/defendants in the suit. The eldest brother died leaving two sons by name Ganga Prasad and Jamuna Prasad who were impleaded as defendants 1 and 2 in the suit. Defendants 3 to 9 are the legal representatives of the other deceased brother. The trial Court passed a preliminary decree on 24-1-1979 directing that the property to be divided into three moieties of 1/3 each and that if the defendants in the same branch claim separate shares among themselves over the property falling to their share, that their share should be considered by the Commissioner and a division by metes and bounds of their share also to be effected. There was an appeal against this preliminary decree to the High Court in Appeal No. 59 of 1975. The parties seem to have entered into compromise on 5-5-1980 but before the compromise was made a decree of Court, Jamuna Prasad second defendant died on 9-1-1987. His legal representatives namely the widow, two sons and (sic. four) daughters were brought on record and the appeal was disposed of in terms of compromise. But substantially the preliminary decree of the trial Court remains the same insofar as direction relating to the division of the shares and allotment of the same among the sharers of each of the branches. It is stated that Jamuna Prasad executed a Will on 7-3-1986 bequeathing his property to his wife Shyama Devi. But it is not on evidence that this Will was propounded and any objection was taken at that time to the legal representatives being brought on record by the High Court in the appeal but it appears though the legal representatives' application was ordered impleading the Wife, two sons and (sic. four) daughters in the appeal the cause title was not amended. When the matter came up before the trial Court for passing final decree an application was moved on behalf of legal representatives of the plaintiff to bring on record the legal representatives of the plaintiff the legal representatives of the second defendant Jamuna Prasad and the legal representatives of one Mahendra Kumar, the third defendant in the suit. This application was opposed by Ganga Prasad brother of Jamuna Prasad on the ground that Jamuna Prasad had executed a Will during his lifetime in favour of his wife Shyama Devi on 7-3-1986 and as such only the widow should be impleaded as the party and not all the heirs of Jamuna Prasad. It is not known whether Shyama Devi herself claimed any right under the Will at that stage. It may however be stated that this objection of Ganga Prasad was overruled and all the legal representatives of Jamuna Prasad were impleaded as defendants including the appellant herein and her sister Indira Shukla by an order dated 25-8-1988. Thereafter on 6-5-1989 the appellant filed an application praying that the direction be issued to the Commissioner to divide her share out of 1/3 share of Jamuna Prasad in moveable and immovable properties and allot the same to her. This application was allowed by trial Court on 13-7-1990. Shyama Devi filed a revision against this order in Civil Revision No. 747 of 1990 and Ganga Prasad filed Civil Revision No. 831 of 1990. In this revision petitions before the High Court number of objections were raised against the order of the

trial Court. By the impugned order of the High Court dated 28-5-1991 the High Court held that her application dated 6-5-1989 was maintainable but however it will have to be decided afresh by the trial Court after giving an opportunity to the affected parties. It is against this order the appellant who is the daughter of the deceased Jamuna Prasad has filed this appeal. As may be seen from the facts set out at the time when the legal representatives were sought to be brought on record in the appeal before the High Court against the preliminary decree no objection seems to have been taken by the widow of Jamuna Prasad basing her right under the Will. Even before the trial Court in the final decree proceedings after the remand by the High Court the objection to the application filed by the plaintiff's legal representatives to bring on record the legal representatives of the deceased Jamuna Prasad, the widow of Jamuna Prasad did not file any objection for impleading the appellant or other legal representatives but only Jamuna Prasad's brother Ganga Prasad filed an objection. Overruling this objection by an order dated 25-8-1988 the legal representatives were brought on record. No reservation appeared to have been made with reference to the claim under the Will. The preliminary decree passed by the trial Court has not been modified by the High Court insofar as it directed that the individual shares of the legal representatives of each branch made also be ascertained and divided by metes and bounds by the Commissioner and allotted to them. In the light of these circumstances we do not see any ground in the objection by the learned Counsel appearing for the widow of jamuna Prasad against impleading of the the direction to the allotment of their shares according to the Hindu Succession Act Without reference to the Will. The appeal is, therefore, allowed and the trial Court is directed to allot the shares of each legal representatives separately in respect of the share of Jamuna Prasad as per Hindu Law without reference to any Will alleged to have been executed by Jamuna Prasad. However, we make it clear that this will not preclude the widow of Jamuna Prasad to file a separate suit claiming title on the basis of the Will. We further make it clear that on the ground that she has filed or is going to file any such suit the final decree proceedings should not be held up. The result of leaving open the truth and validity of the Will in question to a separate suit is that the allotment of the shares of Jamuna Prasad among the legal representatives would confer title on the legal representatives only subject to any defeasance at a later stage in case the Will was found to be true, genuine and valid. Subject to this observation the order of the High Court is set aside and that of the trial Court is restored and the division now be effected as directed above. There will be no order as to costs.