

PETITIONER:
MST. KARTAR KAUR

Vs.

RESPONDENT:
AJMER SINGH

DATE OF JUDGMENT: 19/04/1996

BENCH:
HANSARIA B.L. (J)
BENCH:
HANSARIA B.L. (J)
AHMAD SAGHIR S. (J)

CITATION:
JT 1996 (5) 324 1996 SCALE (3)616

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

HANSARIA, J.

The appellant is window of one late Ranjit Singh who was admittedly the owner of the property in question. the respondent is the son of Ranjit Singh. he filed a suit, out of which this appeal arises, for seeking declaration that he was the exclusive owner of the property and mutation entries made in the name of the appellant are incorrect. Decree for possession was also prayed the respondent's case that he being the son and the appellant being a window of Ranjit Singh, he alone was entitled to succeed to the property as per the custom prevailing in the society. The appellant, who was the sole defendant, asserted that as per custom she also was entitled to succeed. Ownership over the suit property was claimed because of succeed of acquisition of title on the basis of adverse possession too. The trial court dismissed the suit by answering Issues 3,4 and 5 against the plaintiff, though it had answered Issue No.1 reading : "whether the plaintiff is the sole owner of the property in the suit ?" in affirmative. On appeal being preferred, the Additional District Judge decreed the suit. The appellant carried the matter to the High court in second appeal which dismissed. Hence this appeal.

2. A Perusal of the judgment of the trial court shows that following were issues 3.4 and 5:

"3. Whether the suit is filed within the period of limitation ?

4. Whether the defendant has become the owner of the property in dispute by adverse possession?

5 Whether the plaintiff is estopped from filing this suit?

3. The appellate court decided Issue No.3 relating to limitation in favour of the respondent and disbelieved the case of the appellant regarding her having become owner of property by adverse possession. As to the claim of the

appellant to succeed because of special custom. the learned Addl. District Judge observed that it was well settled that under the general custom a widow was not entitled to inherit property in the presence of a son. when the provisions of the Hindu Women's Right to Property Act, 1937 were pressed into service by the appellant, the court observed that the Act was not applicable to PEPSU where the land was situate for reasons given in para 9 of the judgement. The High Court has apparently accepted this position.

4. There is no infirmity in the impugned judgment insofar as the question of limitation is concerned inasmuch as the suit was filed in 1967 and the dispossession was in 1956. This is not seriously contested by Shri Verma, learned senior counsel appearing for the appellant. There are also no materials on record to show that the appellant's possession was adverse in nature because of which prescriptive title could have been acquired by her. It is well settled that mere possession is not enough to claim this title inasmuch as the possession has to be adverse.

5. The real bone of contention is regarding custom prevalent in the society to which the parties belong. Though in the written statement the appellant had not claimed inheritance because of any special custom inasmuch as what was stated in para 1 was that the mutation has been sanctioned according to "law and custom", this is not material, according to us, because the trial court did frame Issue no.2 on this aspect of the case which reads as below :

"Whether the parties were governed by custom in matters of succession before the enforcement of the Hindu succession Act. if so, what custom was ?"

6.To establish her case relating to custom, the appellant examined DW.2 and had put on record some documents. As the trial court has noted the sum and substance of the oral and documentary evidence led by the appellant, it would be enough to note what was stated in this regard by that court. This is as below:

The learned counsel for the defendant has, on the other hand, urged that according to the custom also, Kartar Kaur was entitled to succeed to the property left by Ranjit Singh and in that regard the learned counsel has tried to refer to the statements of some of the witnesses examined by the defendant and he has also referred to the mutations/Ext. D-7 and D-8. Ext. D-7 is the mutation pertaining to Village Kotha guru purporting to have been sanctioned in the year 1954 and vide that mutation a widow and a son of one deceased Inder Singh inherited his property in equal shares. Ext. D-8 is the copy of the mutation pertaining to village Saidoke situated in Tehsil Moga of District Ferozepur and that mutation shows that a son and widow of one Sewa Singh inherited the property left by Sewa Singh, in equal shares. The learned counsel for the defendant has also referred to the statement of one Harnek

Singh, D.W.2, who deposed that at village Madhe, also, a widow and son of a deceased person by a second widow, i.e. him. This witness seems to refer to the same instance is given in mutation Ext. D-8."

7. The Addl. District Judge affirmed the finding of trial court relating to custom. The High Court did not specifically advert to this case of the appellant.

8. We are not in position to accept the findings of the courts below on this aspect, inasmuch as the trial court had rejected the claim by observing in the main that the evidence brought on record by the appellant did not appertain to the village in which the parties resided, which was Alia. We do not think if a custom has to be proved with reference to a village - it really appertains to a community or tribe. The appellant having led oral and documentary evidence to show that mutation had been granted in favour of a widow along with the son, we are of the view that appellant's case relating to there being a special custom allowing inheritance to a widow along with the son did not merit outright rejection. We have taken this view because, though it may be that the provisions of Hindu Women's Right to Property Act did not apply to the area in then PEPSU, the underlining principle and idea behind that statutory provision are required to be borne in mind while deciding the claim of a widow relating to property situate in an area to which an Act might not have applied.

9. But then, the appellant can be regarded as only one of the heirs of Ranjit Singh who had, apart from the respondent, four other Class-I heirs, namely, Dalip Kaur another wife of Ranjit Singh; a daughter of Ranjit Singh, through the appellant, and two sons of Ranjit Singh through Dalip Kaur. It is because of this that in the counter-affidavit filed by the respondent it has been stated in para 18 that even if the appellant would be entitled to inherit, she would be entitled to 1/6th share only. On the facts of the case we accept this position.

10. The appeal is, therefore, allowed by declaring that the appellant is legally entitled to 1/6th share in the suit property. The impugned judgment is modified to this extent. The suit of the respondent stands decreed accordingly. The concerned Collector shall proceed to divide the suit property by metes and bounds so as to allot 1/6th specific share to the appellant as visualized by Order 20, Rule 18 CPC. This would be done within 3 months of the receipt of copy of this judgment; and the appellant shall hand over the the possession of the remaining part of the property to the respondent within 3 months thereafter. An undertaking to this effect shall be filed in this court within 1 month from today, failing which this appeal shall stand dismissed without reference to the Court. On the facts and circumstances of the case, we leave the parties to bear their own cost throughout.