

CASE NO.:
Appeal (civil) 4409 of 2000

PETITIONER:
Chandrika Singh (Dead) by Lrs. and Anr.

RESPONDENT:
Sarjug Singh and Anr.

DATE OF JUDGMENT: 30/11/2006

BENCH:
S.B. Singh & Markandey Katju

JUDGMENT:
JUDGMENT

ORDER

One Ishwar Dutta was the owner of the Property. He died leaving behind three Sons- Mahadeo, Hira and Mahabir died issueless. His Interest in the Property, therefore, vested in Mahadeo and Mewa (son of Hira) who predecessor him. Mewa died in 1921-22 leaving behind a Son Damoder. Koleshra Devi was the widow of Damodar whose exact date of death is not known but he is Said to have expired sometime after 1932.

The plaintiffs herein are heris of Ram Layak- one of the sons of Mahadeo whereas the respondent herein are heirs of Raja, another son of Mahadeo.

The Properties in question bearing plot Nos. 901, 902 and 907 were acquired under the provisions of the Land Acquisition Act. The properties were mutated in the name of Damoder.

The amount of compensation was paid to respondent Mona Devi.

The appellants herein filed an application under section 30 of the Land Acquisition Act before the Collector whereupon a reference was made. One of the issues which fell for consideration before the Reference Judge under the Land Acquisition Act was as to whether the deed of gift executed by Koleshra Devi in respect of her half share of Plot No. 901 full share of plot No. 902 and three fourth share of plot No. 907 in Favour of the appellants herein by deed of gift dated 7.5.1960 was valid in law.

It was inter alia held that Koleshra Devi being possessed of the Share which vested in her on the death of her husband-Damoder in lieu of maintenance,, she become the absolute owner in terms of Section 14 (1) of the Hindu Succession Act, 1956.

The judgment and decree passed by the Reference Court was reversed by the First Appellate Court.

The High Court by reason of the impugned judgment allowed the appeal preferred by the respondents herein and affirmed judgment of the trial Court opining :

"....It is not in dispute that mostt. Kauleshwara was maintenance holder and her husband had died before the year 1937. Nothing has come on record that she was put in possession over the lands, in lieu of maintenance, which she gifted to the respondents. In absence of such evidence, she was not authorised to make a gift and Ext.1 was invalid."

The extent of the share of the parties herein are said to be as under:

Plot No.	Originally in name of	Share of petitioners	Share of respondents
901	Mahadeo	Half	
902	Mewa	Full (gifted by Koleshra Devi)	-----
903	Mahabir (Mewa Mahadeo)	Three Fourth (Half of Mawa gifted by Koleshra Devi & One fourth of Mahadeo)	One fourth (one fourth of Mahadeo)
Total		Three fourth	One fourth

The learned counsel appearing on behalf of the appellants would contend that having regard to the fact that a finding of fact had been arrived at that Koleshra Devi was possessed of the property in question, the High Court committed a manifest error in interfering therewith.

Our attention in this behalf has been drawn to a decision of this Court in *Raghubar Singh and Ors. v. Gulab Singh & Ors.*, [1998] 6 SCC 314. Mr. Upadhyay, learned senior counsel appearing on behalf of the respondents on the other hand would support the judgment.

We may before advertting to the question raised before us must observe that the High Court dealt with the matter in a very slipshod manner. It interfered with the finding of fact arrived at by the First Appellate Court without assigning any reason therefor. While exercising its Jurisdiction under Section 100 of the Code of Civil Procedure. The High Court is required to formulate a substantial question of law in relation to a finding of fact. The High Court exercise a limited jurisdiction in that behalf. Ordinarily unless there exists a sufficient and cogent reasons, the findings of fact arrived at by the Courts below are binding on the High Court. The First Appellate Court clearly came to the following conclusion :

"....Mewa Mahto died leaving behind Demoder Mahto and Damodar Mahto died leaving behind Kaulashwari who according to the discussed evidence came into possession as limited owner and not as maintenance holder only as alleged by the respondent. Before passing of the Hindu Succession Act 1956 She was limited owner and in that capacity she was competent enough to remain in possession of the lands recorded in the name of Mewa Mahto and after passing of the Hindu Succession Act she become absolute owner. The gift deed dated 7.5.1960 was executed after passing of the Hindu Succession Act when she has full authority to execute the gift deed. The learned Subordinate Judge has given no importance to the gift deed Ext.1 and hold that in the lost it importance in eye of law. As mentioned above Kaulashwari has executed the deed after passing of the Hindu Succession Act and in that circumstances it being documents of 30 years old carried presumption of genuineness."

Once it was found that Koleshra Devi was possessed of the land in question in lieu of her right of maintenance, in our opinion, Sub-Section 1 of Section 14 of the Hindu Succession Act, 1956 will clearly be attracted.

In *Raghubar Singh and Ors. v. Gulab Singh & Ors.*, [1998] 6 SCC 314 this Court stated the law in the following terms:

" 17. The obligations, under the Shastric Hindu Law, to maintain a Hindu widow out of the properties of her deceased husband received a statutory recognition with the coming into force of the Hindu Women's Rights to Property Act, 1937. the law on the subject was, thereafter, consolidated and codified by the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946 which came into force on 23.4.1946. The right to maintenance of the Hindu widow, as a Pre-existing right, was thus recognised by the two statutes referred to above but it was not created for the first

time by any of those statutes. Her right to maintenance existed under the Shastric Hindu law long before statutory enactments came into force. After the attainment of independence, the need for emancipation of women from feudal bondage became even more imperative. There was growing agitation by Hindu women for enlargement of their rights as provided by the Shastric Hindu law in various spheres. It was at this juncture that Parliament stepped in and enacted various statutes like the Hindu Marriage Act, 1956 the Hindu Adoption and Maintenance Act, 1956 and the Hindu Succession Act, 1956 providing for intestate succession.

18. The Hindu Succession Act, 1936 made far-reaching changes in the structure of Hindu law by removing the traditional limitations on the powers of a Hindu widow to deal with the property of her deceased husband in her possession in lieu of her right to maintenance and the Act made her an absolute owner of the property, over which hitherto fore, she had only a limited right."

It was further held:

"24.....Accordingly, we hold that the right to maintenance of a Hindu female flows from the social and temporal relationship between the husband and the wife that right in the case of a widow is 'a pre-existing right ', which existed under the Shastric Hindu Law before the passing of the 1937 or the 1946 Acts. Those Acts merely recognised the position as was existing under the Shastric Hindu law and gave it a 'statutory' backing. Where a Hindu widow is in possession of the property of her husband, she has a right to be maintained out of it and she is entitled to retain the possession of that property in lieu of her right to maintenance."

In *Shakuntala Devi v. Kamla and Ors.*, [2005] 5 SCC 390] it was observed :

"11. However, the decision of this Court in the case of *Balwant Singh*, [1997] 7 SCC 137 would have a bearing on the merits of this case wherein it is held that suit for possession would not be maintainable on the basis of a declaratory decree as the declaratory decree did not convey any title in favour of the reversioners. This was a case under the Hindu Law wherein the widow of the original owner in the year 1954 made a gift and got the land mutated in favour of her adopted sons. The reversioners filed a suit seeking a decree that the alienation made by the widow was not binding on their reversionary rights. The suit was decreed and it was held that the gift made by the widow would not affect the rights of the reversioners. The property was remutated in the name of the widow. In the year 1970, the widow again gifted the suit property to the adopted sons and she died in the year 1973. In a suit for recovery of possession by the reversioners on the basis of the earlier decree, the court held that since the widow continued to be in possession of the property even after the declaratory decree obtained by the reversioners because of the enlarged rights she got under the Hindu Succession Act, 1956 which made her the absolute owner of the property, the gifts of the property made by her to her adopted sons in the year 1970 could not be set aside.

12. Almost similar are the facts of this case inasmuch as in this case also since on the coming into force of the Hindu Succession Act by virtue of Section 14 (1), the limited right got by *Uttamdassi* under the will got enlarged to an absolute right in the suit property. Thus, she became absolute owner of the property hence, any declaratory right obtained earlier by the reversioner as contemplated in the will cannot be the basis on which the suit for Possession could be maintained unless, of course, the claimants in the suit for possession established a better title independent of the declaratory decree obtained by them."

As Koleshra Devi, in terms of the provisions of section 14 (1) of the Hindu Succession Act, 1950 became absolute owner of the property and thus she was competent to execute the deed of sale in the year 1960.

In view of the authoritative pronouncements of this Court, we are of the opinion that the High Court committed manifest error in reversing the well considered judgment of the First Appellate Court and it is set aside accordingly.

The appeal is allowed. No costs.

JUDIS