

IN THE HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE.

SINGLE BENCH : HON'BLE SHRI JUSTICE ALOK VERMA

M.A.NO.1184/2015

Deceased Dhapubai through L.Rs. Nathulal and another

Vs.

Banshilal and others

Shri Vinay Gandhi, learned counsel for the appellants.

Shri Pourush Ranka, learned counsel for the respondents.

ORDER

(Passed on this 21st day of September, 2016)

This miscellaneous appeal is directed against the order dated 17th March, 2015, passed by learned III Additional Sessions Judge, Mandsaur in Civil Appeal No.32-A/12, whereby the learned Additional District Judge set aside the judgment and decree passed by the learned III Civil Judge, Class-I, Mandsaur in Civil Suit No.14-A/2000 dated 25th July, 2005 and remanded the matter back for trial afresh.

2. Respondent no.1-Banshilal is son of Kachru, who is cousin brother of late husband of appellant before this Court, the deceased Dhapubai. Respondent no.4 before this Court is purchaser of land from Banshilal-respondent no.1. The admitted facts before the trial Court were that a previous suit was filed by the deceased Dhapubai against the respondents as well as Sitabai, who claims to be the second wife of father of the deceased

Dhapubai, Mangilal. However, in that suit the said Sitabai and deceased Dhapubai entered into a compromise. It was admitted by the said Sitabai that being daughter of deceased Mangilal, land can be mutated in the name of deceased Dhapubai. It is further admitted that father of deceased Dhapubai, Mangilal died on 18.12.2012 and his wife, who is mother of deceased Dhapubai also died during the life time of Mangilal. The suit property was recorded in the name of Mangilal. There was no son of Mangilal. The deceased Dhapubai filed a civil suit for declaration and permanent injunction in the year 1987. She averred in the plaint that after the death of her sister Kishnibai, she is the sole heir of deceased Mangilal. Kachru, who was defendant no.2 before the trial Court is father of respondent no.1-Banshilal and cousin brother of deceased Mangilal. Both father and son brought the said Sitabai from Khachrod and presented her as second wife of Mangilal, with whom according to them, Mangilal performed Natra marriage. However, the said Sitabai entered into a compromise as stated above. After the death of her father, deceased Dhapubai filed an application for mutation alongwith her sister Kishnibai in which respondent no.1-Banshilal raised an objection and claimed himself to be the adopted son of deceased Mangilal.

3. The revenue Court wrongly allowed his application and the land was mutated in the name of deceased Dhapubai alongwith respondent no.1-Banshilal accepting him to be the adopted son of deceased Mangilal. An appeal was filed against this order.

However, taking advantage of his name in the revenue record, respondents no.2 and 3 got land sold in the name of minor son respondent no.4-Prakash by registered sale deed. Respondent no.1-Banshilal filed written statement. However, other defendants remained ex-parte before the trial Court. In his written statement he said that after death of Mangilal, he remained in possession of the suit property.

4. The trial Court framed as many as five issues and gave a finding that deceased Dhapubai was the sole heir of deceased Mangilal. Respondent no.1 was not adopted son of deceased Mangilal and thereafter a decree was passed in which the deceased Dhapubai was declared sole owner of the land. The sale deed in favour of respondent no.4-Prakash was declared void and not binding on deceased Dhapubai.

5. Against this judgment and decree, the respondents went in appeal. Before the appellate Court, various applications were filed. I.A.No.01/2015 was filed under Order 1 Rule 3 CPC for impleading State as party and it was prayed that as State was not impleaded as party in the suit, it should be remanded back. I.A.No.02/2015 was filed under Order 6 Rule 17 of CPC for amendment in which amendment was sought that as the son of sister of deceased Dhapubai, Radheshyam was not made a party, the suit should be dismissed and also amendment was sought under Order 2 Rule 2 of CPC that all the reliefs should have been claimed in earlier suit No.160-A/83 filed by Dhapubai. These two applications were

allowed by the learned lower appellate Court.

6. The appellant also filed applications 1/13 and 3/15 under Order 41 Rule 27 of CPC for bringing various documents on record and these applications were also allowed by the lower appellate Court and lastly, application 04/15 was filed under Order 1 Rule 10 of CPC by the intervenor Radheshyam, who is son of sister of deceased Dhapubai, Kishnibai. The learned lower appellate Court found that the intervenor is heir of deceased Mangilal in category 1 and therefore he should have been made a party to the suit which was filed for declaration and opined that Radheshyam was a necessary party and therefore, all the applications were allowed by the lower appellate Court. The impugned judgment and decree passed by the lower Court was set aside and the matter was remanded back of trial afresh.

7. So far as impleading State as party is concerned, learned counsel for the appellants placed reliance on the judgment of the Division Bench of this Court in the case of **Brijrajsingh and others Vs. Bitto Devi and another 1994 MPLJ 192** in which it was held that State can be impleaded at any stage being a formal party and for this purpose the matter should not be remanded. Similarly, the amendment application and the application under Order 41 Rule 27 of CPC which are allowed by the Court are important only when it is found by the Court that intervenor Radheshyam was not a necessary party. Therefore, the moot question in this appeal is whether the said Radheshyam was a

necessary party in the suit.

8. On this aspect, both the Courts below observed that mother of the intervenor Radheshyam, Kishnibai died one day after the death of Mangilal, father of the deceased Dhapubai, which means that Kishnibai was not predeceased daughter of Mangilal and therefore, lower appellate Court erred in applying Section 8 of the Hindu Succession Act and heirs in category 1 in the Schedule. In this case, Section 15 and 16 of the Hindu Succession Act would apply which relates to succession of Hindu female which include the son as well as the husband of the deceased daughter and therefore, in this case, not only the intervenor Radheshyam, but husband of deceased Kishnibai is also a necessary party.

9. In this view of the matter, retrial under the provisions of Order 41 Rule 23-A of CPC is necessary and therefore, the order of remand passed by the learned first appellate Court is according to law and no interference is required.

Accordingly, this appeal is devoid of merits and is liable to be dismissed and is hereby dismissed.

C.C.as per rules.

(ALOK VERMA)
JUDGE

RJ/