APPELLATE CIVIL

Before Mr. Justice A. H. de. B. Hamilton, and Mr. Justice Radha Krishna Srivastava

1939
August, 3

TEK CHAND (PLAINTIFF-APPELLANT) *v.* BECHA AND OTHERS (DEFENDANTS-RESPONDENTS)*

Oudh Rent Act (XXII of 1886), section 48—Sister whether an heir or collateral—"Sharing in cultivation" under section 48, meaning of—Sister's husband taking part in cultivation with the deceased, whether could entitle her to take the benefit of section 48.

A sister is a collateral and not an heir and so she can succeed to the tenancy of her deceased brother under section 48 of the Oudh Rent Act only if she shared in the cultivation of the holding at the date of his death. *Ram Saroop Singh* v. *Maharaji* (1), referred to.

Cultivation in the sense in which it is used in section 48 refers to a physical act or in other words the sharing must be a real and a personal one. Where the sister did nothing but her husband took part in the physical cultivation of the land with her deceased brother, it could not make her a sharer in the cultivation and she could not take the benefits granted to a collateral heir under section 48 of the Oudh Rent Act. *Harbans* v. *K. Bishambhar Singh* (2), referred to.

Rai Bahadur Ram Prasad Varma, for the Appellant.

None for the Respondents.

HAMILTON and RADHA KRISHNA, JJ.:—This is a second appeal by the plaintiff in a suit brought by Tek Chand against four persons Bansi, Becha, Chhutkau and Jagannath of whom the first is dead leaving thus only three respondents, but we will keep the same numbers as were given to them in the courts below.

The plaintiff had obtained a tenancy lease of the land in suit from the Oel estate that was the superior proprietor. The date of this lease was August, 1934, and it is said to have followed on the death of Parbhu which occurred in May, 1934, who had been tenant

*Second Civil Appeal No. 288 of 1936, against the order of Mr. Ziauddin Ahmad, 1st Sub-Judge of Kheri, dated the 20th May, 1936.

(1) (1935) 17 R.D., 1013.

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of the estate in this land. The plaintiff alleged that the respondents had dispossessed him of the land in suit having no rights to it and accordingly he brought this suit to recover possession and for damages.

The defendants alleged that Parbhu had left a sister Mst. Phula who is the wife of defendant 4 Jagannath and defendants 1 to 3 were in possession as collaterals of the deceased Parbhu while respondent 4 was in possession on behalf of his wife Mst. Phula who was heir of her brother Parbhu. The defence alleged that respondents 1 to 3 had shared with Parbhu in the cultivation of the land in suit together with Mst. Phula, sister of the deceased and Lalji, her son, and all the defendants were legal heirs and were joint cultivators of the deceased during his life-time and after his death they continued in possession.

The courts below held that Mst. Phula, as sister of the deceased tenant, Parbhu, was an heir and not a collateral and, therefore, the Oel estate could not give a valid lease to the present plaintiff. They have not found that Mst. Phula herself joined in the cultivation, but the lower appellate court has made remarks which are somewhat vague on the subject. The learned Civil Judge states that the husband of Mst. Phula, i.e. Jagannath respondent No. 4 might be in possession on her behalf and his possession was practically possession of Mst. Phula. We will take the judgment of the learned Civil Judge to include two findings, firstly that Mst. Phula is an heir and not a collateral and secondly that if it was nevertheless necessary for her in order to succeed Parbhu to share in the cultivation, she must be held in law to have done so through her husband respondent No. 4.

In holding that the sister is not a collateral but an heir the courts below have relied on a decision of a single Member of the Board of Revenue reported in *Ram Saroop Singh* v. *Maharaji* (1), where it was held

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that under the Hindu Law of inheritance (Amending Act) of 1929, a sister comes in as an heir after the father's father and the respondent Mst. Maharaji was the nearest living relation of the last male tenant Rameshwar and a sister, in the opinion of the learned Member of the Board, was not a collateral but an heir just as a brother in an heir under the Oudh Rent Act. The learned Member of the Board of Revenue while referring to the brother was apparently referring to section 24 of the Agra Tenancy Act where a brother is number 5 in the order of succession, the nearest collateral male relative in the male line of descent being No. 7. In the Oudh Rent Act a brother is not mentioned as an heir—in fact he is not mentioned at all. On the other hand, under section 24 of the Agra Tenancy Act. the word "heir" does not occur at all. Under section 48(1) of the Oudh Rent Act it is laid down that when a statutory tenant dies, his heir shall be entitled to retain occupation of the holding while in (2) it is laid down that a collateral relative who did not, at the date of the death of the deceased, share in the cultivation of the holding shall not be deemed to be an heir of the deceased within the meaning of this section. An heir under this section is an heir under the personal law of the deceased and clause (2) by its wording implies that a collateral relative can be an heir, but for the purposes of this section shall not be deemed to be an heir, that is to say, he shall not be entitled to retain occupation of the holding. The word "collateral" in Wharton's Law Lexicon is held to mean "indirect, sideways that which hangs by the side": and "Collateral consanguinity or kindred, which descend from the same stock or ancestor as the lineal relation, but do not descend one from the other, as the issue of two sons". It cannot be said that a sister and a brother descend one from the other and, in our opinion, therefore, they must be held to be collaterals although the term is generally applied to a more distant relationship. We are, therefore,

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unable to agree with the decision of the learned Member of the Board of Revenue that a sister is not a collateral. As she is only a collateral heir we now have to decide whether in the words of section 48 Mst. Phula shared in the cultivation of the holding.

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We think that cultivation in the sense in which it is used in this section refers to a physical act or, in other words, to quote *Harbans* v. *K. Bishambhar Singh* (1) "the sharing must be a real and a personal one." It has not been alleged that Mst. Phula herself did anything in connection with this holding but only that her husband did so on her behalf. We think that it is relevant to note that at the time that the Rent Act first came into force a sister under the Hindu Law was not an heir and collateral heirs were only males who could take a personal part in the actual work of cultivation. If the representation of Mst. Phula by her husband made her a sharer in the cultivation, it seems to us that it would be open to any collateral to say that he shared in cultivation because somebody else was doing so on his behalf. If this was so, it would, in our opinion, in practice do away with the restrictions imposed by section 48(2). We are of opinion that the fact that the husband of Mst. Phula took any part in the physical cultivation of this land cannot in law make his wife a sharer in the cultivation. Mst. Phula, therefore, could not take the benefit granted to a collateral heir under section 48 of the Oudh Rent Act and the present defendants consequently were trespassers.

We, therefore, allow the appeal, and set aside the decisions of the lower courts and decree the suit with costs in all courts.

Appeal allowed

(1) (1913) 1 U.D., 138.