B
C.A.No. 652 OF 1998
ITEM NO.105 COURT NO. 5 SECTION IV

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Civil Appeal No.652 of 1998

MADUSUDAN & Anr. Appellant (s)

Versus

RAJ KAUR & Ors.Respondent (s)

(With Office Report)

Dated:27/04/2004: This appeal was called on for hearing today.

CORAM

HON'BLE MR. JUSTICE Y.K. SABHARWAL
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Appellant (s)Mr. KG. Bhagat, Adv.
Mr. Debasis Misra, Adv.

For Respondent (s)Mr. KK. Mohan, Adv.

UPON hearing counsel, the Court made the following
O R D E R

After hearing learned counsel for the parties for about an hour the Court allowed Civil Appeal No. 652 of 1998 and dismissed Civil Appeal Nos. 653-654 of 1998.

(S. Thapar) (V.P. Tyagi)
PS to Registrar Court Master

[Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.652 OF 1998

Madusudan & Anr. Appellant (s)

Versus

Raj Kaur & Ors.   Respondent (s)

(WITH CIVIL APPEAL NOS. 653-654 OF 1998)

O R D E R

The respondents, Raj Kaur and her two daughters filed a suit for declaration claiming ownership of the suit properties said to have been left behind by husband of Raj Kaur and father of the two daughters, named, Harsharan Singh. The defendantns to the suit were Mohinder Kaur, first wife of Harsharan Singh, her two sons and mother of Harsharan Singh. The claim in the suit was based on a Will dated 12th November, 1982 executed by Harsharan Singh as also on the basis of Raj Kaur being the second wife of Harsharan Singh and the other plaintiffs being their daughters. The trial court decided the issue in respect of execution of valid Will in favour of the plaintiff Raj Kaur and her daughters. In view of the said finding, the trial court did not give any finding in respect of issues 2 and 3. The issue No.2 was that if the execution of the Will is not proved, whether Raj Kaur is the widow of Harsharan Singh and plaintiffs 2 and 3 are his daughters. Issue No.3 was that if Raj Kaur is not proved to be widow of Harsharan Singh, what shares, if any, her two daughters were entitled to claim by way of inheritance from the estate of Harsharan Singh. The trial court was of the view that as a result of proof of Will, issue Nos. 2 and 3 became redundant and it was not necessary to decide those issues. In view of finding on the question of Will, the suit was decreed.

In the first appeal that was filed by Mohinder Kaur and other defendants in suit, the finding of the trial court in respect of execution of Will dated 12th November, 1982 was reversed. The High Court in second appeal that was filed by Raj Kaur and others has affirmed the finding of the First Appellate Court on the aspect of the Will. The said finding of fact can neither be challenged nor has it been seriously challenged and, in our view, rightly.

Since the approach of the trial court in not deciding issues 2 and 3, was erroneous in view of Order XIV Rule 2, Code of Civil Procedure, the First Appellate Court went into the question whether Raj Kaur is the widow of Harsharan Singh and the other two plaintiffs are their daughters. On detailed examination and critical analysis of oral and documentary evidence the First Appellate Court held that the plaintiffs have failed to prove that any marriage was effected between Raj Kaur and Harsharan Singh. It was further held that since the marriage has not been proved, the status of the other two plaintiffs may be that of illegitimate children. In respect of Section 16(3) of the Hindu Marriage Act, 1955 it was held that the said section cannot be invoked in absence of proof of marriage. In this view it was further held that the two daughters of Raj Kaur were not entitled to the benefit of Section 16.

The High Court, by the impugned judgment, passed in the Second Appeal that had been preferred by Raj Kaur and others under Section 100, Civil Procedure Code, relying on Section 16(3) of the Hindu Marriage Act, has come to the conclusion that the two daughters would be entitled to 1/6th share each, the other four heirs being the first wife, her two sons and the mother of deceased Harsharan Singh.

Section 16 of Hindu Marriage Act reads as follows:

"16. Legitimacy of children of void and voidable marriages.----(1) Notwithstanding that a marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976, and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage under section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents."

A plain reading of the aforesaid provision makes it clear that it protects the legitimacy of children of void and voidable marriages. Section 16 does not protect the children where no marriage has taken place.

The High Court without framing any question of law has reversed the finding of the First Appel

late Court rendered in respect of marriage of Harsharan Singh with Raj Kaur. In fact, the High Court without holding that any such marriage had taken place, comes to conclusion that the marriage of Raj Kaur with Harsharan Singh was void in terms of Hindu Marriage Act and therefore the children were entitled to inherit the property in terms of Section 16(3) of the Hindu Marriage Act. The High Court, it seems, was labouring under an impression that even without a marriage the children would be entitled to inherit the properties. It is evident from the following observations made by the High Court:

" The lower appellate Court while holding Smt. Raj Kaur to be a mistress has chosen to deprive even the minor children of their right to inherit in view of Section 16 sub-clause (3) of the Hindu Marriage Act."

Apart from above, the First Appellate Court on critical examination of the evidence came to the conclusion that the marriage had not been proved. The said finding of fact could not have been reversed in exercise of jurisdiction under Section 100, Civil Procedure Code, without coming to the conclusion that the finding of fact returned by the First Appellate Court was perverse. No such finding of perversity has been recorded in the impugned judgment. In fact, most of the factual aspects adverted to by the First Appellate Court for coming to the conclusion that there was no proof of marriage have not been dealt with by the High Court. In this view, the impugned judgment to the extent it holds that the children of Raj Kaur are entitled to inherit the property of deceased Harsharan Singh in terms of Section 16(3) of the Hindu Marriage Act, 1955 cannot be sustained.

For the aforesaid reasons, we set aside the impugned judgment of the High Court and restore the judgment of the First Appellate Court dismissing the suit of Raj Kaur and her two daughters.

The appeal is allowed in the above terms. Resultantly, the appeals filed by Raj Kaur and others are dismissed. On the facts and in the circumstances of the case, parties are left to bear their own costs.

.....................J
(Y.K. Sabharwal)

.....................J
(B.N. Agrawal)

New Delhi,
April 27, 2004