



THE HIGH COURT OF SIKKIM : GANGTOK

R.F.A. NO.1 OF 2004

In the matter of an appeal under section 384 of the Indian Succession Act, 1925 against the order dated 27.12.2003 passed by the District Judge, East and North, Sikkim at Gangtok in Civil Misc. Case No. 66 of 2002

and

In the matter of

1. Latta Sharma,
d/o Hari Prasad Sapkota,
Lall Market Road,
Gangtok, East Sikkim.
2. Yasoda Sharma,
d/o Hari Prasad Sapkota,
Lall Market Road,
Gangtok, East Sikkim. **... Appellants**

Versus

1. Udai Prasad Sharma,
s/o Hari Prasad Sharma,
Development Area,
Gangtok, East Sikkim.
- 2(a). Hari Prasad Sapkota,
s/o Late Dadhiram Sapkota,
Lall Market Road,
Gangtok, East Sikkim.
- 2(b). Mohan Sapkota,
s/o Hari Prasad Sapkota,
Lall Market Road,
Gangtok, East Sikkim.
- 2(c). Bed Prakash Sapkota,
s/o Hari Prasad Sapkota,
Lall Market Road,
Gangtok, East Sikkim.
- 2(d). Tulsi Prasad Sapkota,
s/o Hari Prasad Sapkota,
Lower Taza, Rorathang,
P.O. Rorathang,
East Sikkim.

P.K.



2(e). Ambika Sharma (Kharel),
w/o Kamal Kharel,
Mamring Busty,
Rangpo, East Sikkim.

... Respondents

For the appellants : N. B. Kharga, Advocate
For the respondent no.1 : B. K. Gupta, Advocate.
For the respondent no.2 : Sapna Rai, Advocate.

PRESENT: THE HON'BLE SHRI JUSTICE R. K. PATRA, CHIEF JUSTICE

Date of judgment : 5th October, 2004.

J U D G M E N T

R. K. PATRA, C.J.

Being aggrieved by the order dated 27.12.2003 passed by S. W. Lepcha, District Judge (E & N), Sikkim at Gangtok in Civil Misc. Case no.66 of 2002 refusing to grant succession certificate to the appellants, they have filed this appeal under section 384 of the India Succession Act, 1925.

2. The appellants commenced the aforesaid Civil Misc. Case no.66 of 2002 for grant of succession certificate in respect of the scheduled debts/securities. Their case is that their mother died in-testate on 16.9.2001 at Siliguri while undergoing medical treatment leaving behind the scheduled debts/securities which are her 'stridhana'. They being the unmarried daughters of the deceased Menuka are jointly entitled to succeed to the properties.

Pkm
Pursuant to the notice issued to the general public to file objection respondent no.1, one of the sons of the



deceased Menuka appeared and filed written objection praying for dismissal of the case. His case is that late Menuka had no 'stridhana'. Whatever properties were recorded in her name, they were in fact acquired by his grandfather late Dadhiram and thereafter by his father Hari Prasad [respondent no.2(a)]. Late Menuka came from a very poor family and did not have any independent business, profession or service from which she could acquire 'stridhana'.

Respondents no.2(b), 2(c) and 2(d) are the appellants' brothers and respondent no.2(e) is their married sister. They filed a joint objection stating that a partition suit was filed by the sons of late Menuka which ended in compromise and serial nos.5 to 8 of the scheduled 'A' to the plaint were mentioned as 'stridhana'. Alternatively their case is that they are not bound by their earlier statements and they may now be given equal share in the disputed properties.

3. Both the appellants were examined as PWs 1 and 2. Respondent no.1, the principal objector, was examined as DW1. The learned District Judge on perusal of the evidence held that the scheduled properties are the joint family properties and not the 'stridhana' of late Menuka and accordingly refused grant of succession certificate to the appellants.

Rkm



4. In course of the hearing of this appeal, the appellants filed an application under Order 41 Rule 27 CPC to admit the plaint, written statements of the partition suit (C.S. no. 5 of 1982) and depositions of late Menuka, Hari Prasad, Purna Prasad and the compromise decree of the said suit as additional evidence. The respondent no.1 filed written objection to the said application. Considering the facts and circumstances of the case, I have admitted the above documents as additional evidence.

5. Learned counsel for the appellants contended that the scheduled debts/securities are 'stridhana' of late Menuka. Since the appellants claim the scheduled debts/securities as 'stridhana' of their late mother Menuka burden lies on them to prove by producing satisfactory evidence in support of their case. Appellant no.1 was examined as PW1. She stated in her evidence that her mother died on 16.9.2001 at Paramount Nursing Home, Siliguri leaving behind the scheduled debts/securities as her 'stridhana'. In her cross-examination, she admitted that her mother was dependent upon her since 1990 and she incurred the expenses for her medical treatment and has claimed reimbursement of medical expenses from the Government of Sikkim. It has come out in her evidence that the paddy field situated at Ahoo Yangthang measuring two and a half acres was previously recorded in the name of her

Rkm



father and now it has been jointly recorded in the name of respondents no.1 and 2(b). Although she stated that her late mother had agricultural lands at Luing Busty, Rorathang and Tareythang and one cardamom field at Dikchu in her name besides one building at Lall Market Road, Gangtok, she did not produce any document in corroboration of her version. She further stated that her mother had received a sum of Rs.6,500/- as cash gift at her marriage besides 12 tolas of gold ornaments and 50/60 tolas of silver ornaments. She is not supposed to know what her mother got as gift at the time of marriage. Therefore contemporaneous evidence was necessary to be adduced in this regard but the appellants failed to do it. Appellant no.2 was examined as PW2. Her evidence is in the same line as that of appellant no.2 and it suffers from the same lacune as that of her sister appellant no.1.

Respondent no.1 is the principal objector who in his evidence stated that his mother late Menuka had no property of her own. According to him, whatever properties were recorded in her name are joint and he himself being a member of the joint family is entitled to his share in the scheduled properties. In his evidence, he denied his mother Menuka receiving any gift during her marriage or afterwards. He also denied the fact of owning of any landed property or any building at Lall Market Road, Gangtok by his mother.

Pkm

6. In Mulla's Hindu Law (Seventeenth Edition) vide paragraph 124 it has been stated as 'stridhana' as follows:-

"§ 124. Peculiar features of stridhana —

A Hindu female may acquire property from various sources. She may acquire it by gift, or by inheritance, or on partition. She may also acquire it by her own labour and skill. However, all property acquired by her is not stridhana. Whether a particular kind of property is stridhana or not, depends on —

- (1) the source from which the property was acquired.
- (2) her status at the time of acquisition, that is whether she acquired it during maidenhood, coverture, or widowhood; and lastly.
- (3) the School to which she belongs."
[emphasis supplied]

As discussed above, the appellants did not adduce any satisfactory evidence to show as to how their late mother Menuka could acquire scheduled debts/properties. Their assertion is flatly denied by the contesting respondent no.1 in his evidence. In absence of any cogent and reliable evidence the learned Sessions Judge has rightly held that the scheduled debts/securities are not the 'stridhana' of late Menuka.

7. Learned counsel for the appellants strenuously argued that in the earlier partition suit C.S. no. 5 of 1982 the present scheduled debts/securities were held to be the 'stridhana' of Menuka. I have carefully perused all the above documents which have been taken as additional evidence. There is absolutely no reference to any of the present



scheduled debts/securities in any of the documents. Therefore those documents are of little assistance to the appellants.

8. It is relevant to mention here that under the Hindu Law, prior to coming into force of the Hindu Succession Act, 1956 a woman's ownership of property was circumscribed by certain limitations but after enforcement of the said Act she becomes the full owner of all property possessed by her, whether acquired by her before or after the commencement of the Act by virtue of section 14. Incidentally the said Act has not yet been extended to the State of Sikkim.

9. In course of the hearing, I got this matter adjourned on number of occasions to get it compromised since the parties to the litigation are none other than brothers and sisters of a family. Although adequate time was given to them they could not reach any compromise.

10. For the foregoing reasons, I do not find any merit in this appeal which is accordingly dismissed. The parties shall bear their own costs.


(R. K. Patra)
Chief Justice
05.10.2004

Dictation taken
&
typed by me
Dipak Saha