

MANU/HP/1242/2016

Equivalent Citation: AIR2016HP148

IN THE HIGH COURT OF HIMACHAL PRADESH

R.S.A. No. 17 of 2016

Decided On: 22.06.2016

Appellants: **Sweety (Eunuch)**
Vs.

Respondent: **General Public**

Hon'ble Judges/Coram:

Tarlok Singh Chauhan, J.

Counsel:

For Appellant/Petitioner/Plaintiff: Janesh Mahajan

JUDGMENT

Tarlok Singh Chauhan, J.

1 . This appeal raises rather an interesting and important question of law for consideration as what would be the mode of succession of an eunuch i.e. transgender, in absence of any religion being professed or have been claimed by the plaintiff. The brief facts of the case are that the plaintiff/appellant filed a suit for declaration that the plaintiff was the only successor in interest for moveable and immovable property left behind by deceased Rajia alias Ratni Nani (Eunuch). It was claimed that the plaintiff is the Guru/Patron of late Rajia and Desh Raj (Eunuch) who died on 29.10.2009 leaving behind the plaintiff as only their legal heir-cum-Guru. It was averred that there is a custom in the society governing the Kinner that at the time of birth of eunuch (Kinner child) it is generally taken by the Guru Kinner of that area and she/he is brought up by the said Guru. The Guru is the only person related to the chela and deceased was the chela of the plaintiff and, therefore, it is plaintiff alone who is entitled to succeed to the estate of the deceased.

2. Notice of the suit was issued to the defendant through general public, but none appeared on behalf of the defendant to contest the claim of the plaintiff. Accordingly, the appellant was directed to lead evidence before the trial Court. On conclusion of the evidence and after evaluating the same, the learned trial Court dismissed the suit and the appeal filed before the learned lower Appellate Court also met the same fate.

3. Aggrieved by the concurrent findings of the learned Courts below, the appellant has filed the present appeal before this Court in which the notices were issued to the respondent, but again none has put in appearance on its behalf.

4. The appeal was admitted on the following substantial question of law:

"Whether the learned Courts below have gravely erred in holding that the plaintiff is governed by Hindu law of succession and is not governed by Kinner custom of Guru-Chela Parampara?"

I have heard learned counsel for the parties and gone through the records of the case

carefully and meticulously.

5. The learned Courts below while dismissing the claim of the plaintiff for some strange reasons have relied upon the provisions of Hindu Succession Act, 1956 and on the basis of the same dismissed the claim of the plaintiff. Whereas, the pleaded case of the plaintiff was that in matters of succession, eunuchs were governed by Guru-Chela Parampara and in support of such averment had also led sufficient evidence to prove the same. The learned lower appellate Court has gone to the extent of holding that it was admitted case that deceased was governed by Hindu Succession Act as they were Hindus, whereas this was not even the pleaded case of the plaintiff. Therefore, in absence of any religion having been spelt out by the plaintiff in her pleadings how the provision of Hindu Succession Act, came to be invoked by the learned Courts below is anybody's guess. Merely because a particular name suggests to be that of a Hindu, the Courts cannot in absence of any material readily infer that the person is in fact a Hindu by religion, more particularly, when there are many common names shared by the people professing different religions. The Court is not expected to jump conclusions only because its individual perception perceives the person to be belonging to a particular religion.

6. Coming to the question of law, it would be noticed that Shastric law did not confer a right of inheritance upon eunuch.

7. Of the Smriti writers, Vishnu had observed as under:

"Outcastes, eunuchs, persons, incurably diseased or deficient in organs of sense or action, such as blind, deaf, dumb, or insane persons or lepers, do not receive a share; they should be maintained by those who take the inheritance and their legitimate sons receive a share-Chapter XV, Ss. 32-35."

8. Manu has stated eunuchs and outcastes, persons born blind or deaf, the dumb and such as have lost the use of a limb, are excluded from the share of heritage.

9. Yajnavalkya had stated that "an impotent person or outcaste and his son, an eunuch, one lame, a mad man and an idiot, one born blind and who is afflicted with an incurable disease must be maintained without any limit of shares.

10. It is only now by virtue of the judgment rendered by the Hon'ble Supreme Court in National Legal Services Authority v. Union of India and others, MANU/SC/0309/2014 : AIR 2014 SC 1863, that trans genders have been categorized as third gender who like any other person now enjoy legal and constitutional protection.

11. Adverting to the case, it would be noticed that the plaintiff in her evidence, had clearly established and proved the deceased to be her chela and in all the documents like ration card, bank account etc. the name of the plaintiff had been reflected as Guru. Therefore, in absence of any cross-examination, such statement was ordinarily required to be accepted but as observed earlier, the learned Courts ruled that the property in issue would not devolve upon the plaintiff on the basis of Guru-Chela Parampara, but would be governed by the provisions of Hindu Succession Act even though the learned Courts below had categorically come to the conclusion that the plaintiff was Guru and deceased was Chela. The learned lower appellate court has specifically in para 9 held as under:

".....Thus, in view of such evidence adduced by the plaintiff, it is established

that the plaintiff is Guru of the deceased Razia alias Ratni and Desh Raj and all of them are belonging to Kinner society."

12. Similar custom came up for consideration before the Madhya Pradesh High Court in *Illy as and others v. Badshah alias Kamla*, MANU/MP/0066/1990 : AIR 1990 Madhya Pradesh, 334 wherein not only the custom was upheld, but the same was also held to be not against the public policy.

13. In view of my aforesaid discussion, I am of the considered view that the learned Courts below have gravely erred in concluding that the plaintiff in matters of succession was governed by the Hindu Succession Act and not by the custom which finding is perverse and contrary to the pleaded and proved case of the plaintiff.

The substantial question of law is accordingly decided in favour of the appellant.

Resultantly, the judgment and decree passed by the learned Courts below cannot withstand judicial scrutiny and are therefore set aside. Consequently, the appeal is allowed and the suit of the plaintiff is decreed as prayed for. Pending application, if any, also stands disposed of.

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