
(2010) 03 JH CK 0087
In the Jharkhand High Court

Ajay Kumar Singh and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 15-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2

Citation : (2010) 03 JH CK 0087

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad, J.—Heard learned Counsel appearing for the parties. The aforesaid interlocutory application bearing No. 2514 of 2006 has been filed wherein prayer has been made to substitute Somri Oraon in place of deceased respondent No. 5, Sukra Oraon, who died during the pendency of hearing of the writ application as she being daughter-in-law of the deceased Sukra Oraon inherited the property of the deceased whereas the interlocutory application bearing No. 2703 of 2006 has been filed on behalf of Pyara Kachhap praying therein to substitute him in place of deceased respondent No. 5, Sukra Oraon, who died without leaving any lineal male descendants Gharjamai adopted into the house as a prospective son-in-law as the petitioner being nearest male agnate has inherited the property of the deceased as per the customs of Oraon.

2. Before advertng to the submissions advanced on behalf of the parties, the facts giving rise to this writ application need to be stated hereunder.

3. As per the case of the petitioner the then Ex-landlords Mahalia Pahan and Gosala Pahan settled the land in the year 1937 to one Chhedi Khansama through Hukumnama with Chaparbandi right, who came in possession and constructed houses over the land. After the death of Chhedi Khansama, when his son Badal came in possession of the land, his name was entered into the revenue record. In course of time, the each of the petitioner purchased different plots of land in

question and got their names mutated in the revenue record of the State and then constructed houses over the respective land and started living peacefully by regularly making payment of taxes including Municipal Taxes. However, in the year 1985, one Gajila Pahan filed an application u/s 71A of the Chotanagpur Tenancy Act claiming restoration of the land in question. On the said application, case was registered as S.A.R. No. 18 of 1985. In the year 1991, one Sukra Pahan filed an application for intervention claiming himself to be the legal heir and successor of the owner of the property Mahalia Pahan. His claim was turned down by the Special Officer while deciding the matter on merit. However, on appeal being preferred by Sukra pahan, the order passed by the Special Officer was set aside and the matter was remanded for fresh adjudication. After the remand, the said S.A.R case No. 18 of 1985 and other connected matters were heard. The Special Officer, vide its order dated 20.2.1996 passed an order of restoration of the land in favour of Sukra Pahan, respondent No. 5 whereby 51 persons were directed to give possession of the land to respondent No. 5, Sukra Oraon.

4. Against that order, aggrieved persons preferred an appeal which got dismissed and then the revision preferred against the order passed by the appellate authority was also dismissed. Thereupon this writ application, bearing W.P. (Cr) No. 225 of 2003 as well as other writ applications including W.P. (C) Nos. 226, 898 and 1132 of 2003 were filed.

5. During the pendency of the writ application, I.A. No. 2514 of 2006 was filed on behalf of Somri Oraon, the daughter-in-law of the deceased respondent No. 5, Sukra Oraon whereas I.A. No. 2703 of 2006 was filed on behalf of Pyara Kachhap claiming himself to be the agnate of the deceased respondent No. 5 wherein prayer was made to substitute them as according to them, they inherited the property of the deceased respondent.

6. Earlier when the matter was taken up, prayer made for substituting Pyara Kachhap in I.A. No. 2703 of 2006 was allowed, vide order dated 4.9.2008 whereas the I.A. No. 2514 of 2006 was dismissed as none appeared to press the application bearing I.A. No. 2514 of 2006. Subsequently, on 31.1.2010 on an application filed as I.A. No. 839 of 2009 on behalf of the daughter-in-law of deceased respondent No. 5, the said order dated 4.9.2008 was recalled and then both the matters relating to substitution came up for hearing.

7. Mr. Tandan, learned Counsel appearing for the applicant in I.A. No. 2514 of 2006 submits that the petitioner being daughter-in-law of deceased respondent No. 5, Sukra Oraon inherited the property of the deceased on account of the fact that Sukra Oraon or his ancestor though belonged to the Oraon community but, as they had adopted Hinduism and, therefore, customary law of Oraon would not be applicable, rather case would be governed by the Hindu Succession Act.

8. Learned Counsel in support of his submission that when aboriginal/santhal adopts Hinduism, then customary law does not get apply to the succession,

rather they are governed by the Hindu Law of Succession has referred to a decision rendered in a case of *Dhanai Majhi and Anr. v. Ranga Majhi and Ors.* 1999 (1) PLR 605.

9. Learned Counsel further submits that keeping in view the provision as contained in Order 22 Rule 3 and 4 of the Code of Civil Procedure, the applicant by virtue of having right of maintenance out of the property of her deceased husband and father-in-law would be their legal representative and as such she is entitled to be substituted in place of respondent No. 5, deceased father-in-law.

10. Mr. R.P. Gupta, learned Counsel appearing for the applicant of I.A. No. 2703 of 2006 submits that as per the customary law of the Oraon, the petitioner being son of Birsa @ Masih Das Kachhap, cousin of deceased respondent No. 5, Sukra Pahan whose common ancestor is the same happened to be an agnate of the deceased and as such, in absence of any lineal male descendant of the deceased Sukra Pahan or in absence of Ghardamad adopted in the house as prospective son-in-law, the property would be inherited by the applicant being male agnate and therefore, it is only this applicant who is to be substituted and not the daughter-in-law of the deceased respondent No. 5, Sukra Pahan as under the customs of Oraon, daughter-in-law never inherits the property to her husband or father-in-law.

11. The assertion made on behalf of Pyara Kachhap with respect to his relationship with the deceased respondent No. 5 and the customs of Oraon has never been denied by the applicant Somri Oraon, the daughter-in-law of the deceased respondent No. 5. However, it has been pleaded on behalf of the daughter-in-law of the deceased respondent No. 5 that the customary law of Oraon of Chotonagpur would not be applicable to her as the deceased respondent No. 5 and his ancestor belonged to Oraon community but by efflux of time had adopted Hinduism and therefore, law of succession as in case of Hindu would be applicable and not the customary law of Oraon but strangely in none of the petition, the aforesaid assertion regarding adoption of the Hinduism has been stated and, therefore, in absence of any such statement or proof thereof, it can never be assumed that deceased respondent No. 5 or his ancestor though belonged to Oraon community adopted Hinduism and, as such, claim of the daughter-in-law for her substitution on this ground is hereby rejected.

12. Notwithstanding the aforesaid finding the substitution as contemplated under Order 22 Rule 3 and 4 is not only confined to legal heir rather it includes also legal representative, definition of which has been given in Section 2(11) of the CPC which reads as under:

"Legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

13. It is plain from the above that the definition consists of two distinct

categories. Firstly, the heirs or persons, who in law represent the estate of the deceased person and at par with them and in a class by itself is any person who intermeddles with the estate of the deceased. The phrase intermeddler has not been defined in the CPC but whenever that phrase came up for consideration the court invariably thought it proper to construe in such manner that it may have widest amplitude. In a case of Sudama Devi and Ors. v. Jogendra Choudhary and Ors. 1987 PUR 79 (FB), the Full Bench after taking into consideration the Dictionary meaning of the "intermeddler" and the precedent and also the intent of the legislature falling from Section 2(11) of the CPC expressed to its majority view in following terms:

It would be manifest from the above that an intermeddler (who is on the same footing as an executor de son tort in English law) is One who in any way whatsoever dabbles with or comes in touch with the estate of the deceased. The wide sweep of the phrase, as a term of art, and the intention of the legislature in expressly including an intermeddle in the definition of legal representatives u/s 2(11) of the Code of Civil Procedure, is thus not in doubt.

14. In the said case, the court having come to such conclusion as indicated above did hold that legal guardian in possession of the estate of the minor deceased is a legal representative. However, in the present case, the issue is as to whether widow of a coparcener is a legal representative or not.

15. It is the stand of the applicant Pyara Kachhap who claimed to have inherited the property by virtue of being surviving agnate that widow of a coparcener does not inherit property of the person governed by customary law of the Oraon but at the same time, it has been stated that the widow of a coparcener does have a limited right of maintenance and once the widow does have such right, she can be said to have been representing the estate of the deceased but of course to a limited extent and as such, there has been no difficulty in accepting the proposition that widow of a coparcener is a legal representative. Way back in the year 1952, in a case of Bishun Narayan v. Om Prakash AIR 1952 Punjab 167 it has been held that widow of a coparcener is also legal representative under the Hindu Women's Right to Property Act, 1937. Though that was not a case of a person belonging to any aboriginal governed by any customary law but it was a case of Hindu widow who had a limited right at that time. Here, in the instant case, admittedly widow of the deceased respondent No. 5 does have also a limited right.

16. Thus, there has been no hesitation in holding that widow of a coparcener belonging to Oraon community succession of which is governed by its customs is a legal representative of the deceased coparcener. Accordingly, Somri Oraon be substituted in place of deceased respondent No. 5.

17. Coming to the case of Pyara Kachhap, it has already been recorded that his relationship with the deceased respondent No. 5 has not been disputed and at the same time, nor it could be disputed that under the customs of Oraon in

absence of any lineal male descendant and any Ghardamad to be prospective son-in-law nearest male agnate as in the case of Pyara Kachhap would be inheriting the property of the deceased and as such, Pyara Kachhap can be said to be the heir of the deceased respondent No. 5 and therefore, he is also ordered to be substituted in place of deceased respondent No. 5 as there does not appear to be any bar or any restriction under the scheme of CPC of substitution of heir with substitution of any other legal representative.

18. In this view of the matter, both Pyara Kachhap as well as Somri Oraon, daughter-in-law of the deceased are hereby directed to be substituted in place of deceased respondent No. 5.

19. Accordingly, both the aforesaid interlocutory applications are hereby allowed.