
(1993) 08 PAT CK 0031

In the Patna High Court

Case No : Appeal form Original Decree No. 138 of 1984 (R)

Baset Manjhi and Others

APPELLANT

Vs

Raimat Majjhian and Others

RESPONDENT

Date of Decision : 23-08-1993

Acts Referred:

Citation : (1993) 08 PAT CK 0031

Final Decision : Allowed

Judgement

S.B. Sinha, J.—This First Appeal arises out of the judgment and Decree dated 6.7.1984 passed by Sri Ibrar Hassan, Sub-Judge, Chaibasa, in Title Suit No. 39 of 1981 whereby and whereunder he dismissed the Plaintiffs' Appellants' suit. The Plaintiff filed the aforementioned Title Suit claiming inter alia the following reliefs:

(a) For a decree for declaration of the right, title and interest of the Plaintiffs in respect to the lands mentioned in Schedule B.

(b) For a decree for declaration that the Defendant No. 1 and 2 have no manner of right and title or interest in the lands fully mentioned in Schedule B.

(c) For a decree for a declaration that the sale deed executed by Malho Majhian in respect of plot Nos. 297, 298 and 696 was without right, illegal, ab initio void, fraudulent and is a nullity under the law and does not confer any right on the Defendant No. 2 and is not binding on the Plaintiffs.

(d) For a decree confirming possession of the Plaintiffs over the suit plots, or in the alternative a decree for recovery of possession if the Plaintiffs are found to be out of possession.

(e) For cost of the suit and for any other relief or reliefs that the Plaintiffs are entitled to. 2. The fact of the matter is not in dispute. The relationship of Plaintiffs and the Defendant No. I would appear from the following geneological table as appended to Schedule C of the plaint.

3. Admittedly/Sakila Manjhi died in the year 1976 leaving behind his heirs and legal representatives namely Malho Majhian and Defendant no 1 Raimat Manjhian. The Plaintiffs hail from the branch of Baset Manjhi.

4. On 25.5.1980 Malho Majhian transferred three plots out of the six plots details whereof have been given in Schedule B of the plaint in favour of Defendant No. 2 who is husband of Defendant No. 1.

5. It is also admitted that Malho Majhiain died in the month of October, 1980. According to the Plaintiffs Appellants they being the Santhals are governed by their customary laws in the matter of succession and on the death of any male member, the properties devolve on his agnates.

6. On the other hand, the case of the Defendants as it appears from the written statement is that the family of the parties are sufficiently Hinduised and they are governed by Hindu Law in the matter of succession and inheritance.

7. The Defendants inter alia contend that deed of sale dated 25.9.1980 (Ext. 3) was valid in law and thus, the Defendant No. 2 has acquired valid right, title and interest.

8. The learned Court below in view of the aforementioned rival contentions of the parties framed the following issues:

(a) Is the suit maintainable in its present form and for the reliefs claimed?

(b) Have the Plaintiffs any cause of action or right to sue the Defendants?

(c) Is the suit bad for non-joinder of necessary parties?

(d) Have the parties to suit been sufficiently Hinduised and are they governed by Hindu Law or by their tribal custom in the matters of inheritance and succession?

(e) Whether the suit properties devolved on the Plaintiffs or Malho Majhiain and her daughter Defendant No. 1 after the death of Sakila Manjhi?

(f) Whether Malho Manjhian legally transferred the three suit plots to Defendant No. 2?

(g) Whether the Plaintiffs or Defendant Nos. 1 and 2 have right, title, interest and possession over the suit properties?

(h) To what relief or reliefs are the Plaintiffs entitled to?

9. The learned Court below in paragraph 14 of his judgment has held that as the parties are sufficiently Hinduised, they would be governed by Hindu Law in the matters of succession and inheritance.

10. The learned Court below further held that in this view of the matter on the death of Sakila Manjhi, his interest devolved upon his widow and daughter and, thus, the Plaintiffs suit was not maintainable.

11. Mr. Devi Prasad, learned Counsel appearing on behalf of the Plaintiffs Appellants, however, submitted that from the material available on the record, it appears that the learned. Court below has committed an error in holding that the family of. the Plaintiffs became sufficiently Hinduised so as to be governed by Hindu Law in the matter of inheritance and succession.

12. The learned Counsel in the alternative submitted that even assuming that the family of the parties became sufficiently Hinduised, the provision of Hindu Succession Act, 1956, would not apply to the case of the parties in view of Section 2(2) of Hindu Succession Act, 1956, as admittedly parties are members of Scheduled Tribes.

13. The learned Counsel, therefore, submitted that in such a situation, parties are governed under the old Hindu Law and thus upon the death of Sakila Manjhi, his widow would inherit a limited interest in terms of the provision of Hindu Women Rights to Properties Act, 1935.

14. The learned Counsel submitted that in that view of the matter, the sale deed executed by the widow of Sakila Manjhi must be held to be valid only during her life time and as she died in the month of October, 1980, the properties in question would revert back.

15. The learned Counsel in support of his contention has relied upon a decision in Daudwa Uraon and Another Vs. Karueluous Uraon and Others, .

16. In view of the admitted position, in my opinion, it is not necessary to decide the first question raised by Mr. Prasad.

17. The Plaintiffs in Paragraph-3 of the plaint categorically stated that the parties belonged to Santhal Tribe. This fact has not been disputed by the Defendants in the written statement.

18. In terms of Item No. 28 of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, "Santhals" have been declared to be Scheduled Tribes.

19. In terms of the provision of Section 2(2) of the Hindu Succession Act, 1956, the said Act does not apply to the members of the Scheduled Tribes.

20. It is not the case of either parties that the Central Government has issued any Notification in this regard.

21. In Daudwa Uraon and Another Vs. Karueluous Uraon and Others, , I have held that in view of Section 2(2) of the Act, the provisions of Hindu Succession Act, 1956, shall not apply to the members of Scheduled Tribe in the matter of inheritance and succession.

22. In Gopal Singh Bhumij Vs. Giribala Bhumij and Others this Court held as follows:

There can not be any doubt that it is possible that aboriginals of non-Hindu origin

can become sufficiently Hinduised so that in the matter of inheritance and succession they are prima, facie governed by the Hindu Law, except so far as any custom at variance with such law is proved. Reference in this connection may be made to *Chunku Manjhi and Others Vs. Bhabani Majhan and Others*, .

However, the question as to whether the parties are "Hinduised out and out or have "become" sufficiently "Hinduised" are question of fact. The burden of proof is initially upon the Plaintiff to show that the parties have become sufficiently "Hinduised" so as to be governed in the matter of succession and inheritance by any School of Hindu Law.

23. In that case a question was raised as to whether in view of Section 2(2) of the Hindu Succession Act the same would have any application in respect of any Scheduled Tribe, and it was held that the parties were not sufficiently Hinduised and, thus, they would be governed by their customary laws.

24. Again in a decision in *Arjun Soren and Ors. v. Negi Santhal* reported in 1990 (1) B.L.J. 682, I have held as follows:

Mr. P.K. Sinha, the learned Counsel appearing on behalf of the Appellant, in support of the appeal, raised a short question. He submitted that even assuming that the parties to the suit were sufficiently Hinduised but in view of Sub-section (2) of Section 2 of the Hindu Succession Act, 1956, the provisions thereof can not have any application to the members of Scheduled Tribes. According to the learned Counsel, in that situation, the partition must be held to be governed by their customary law. The learned Counsel in this connection has placed strong reliance upon a decision of the Supreme Court in the case of *Shastri Yograpurushdasjee v. Muldas Bhumdardas Vaisya and Anr.* reported in 1966 S.C. 1119 . It was further submitted that the decision of Division Bench of this Court in *Langa Manjhi and Others Vs. Jaba Majhian and Others*, can not be relied upon as a precedent. In this case the aforementioned question does not strictly arise for consideration as it has come in evidence that the father of Plaintiff died prior to the coming into force of the said Act. Thus, the matter of inheritance will be governed by Hindu Law as existing prior to the coming into force of the said Act. However, as the learned Counsel for the parties have addressed me the re-mentioned question at great length it is necessary to consider the said question.

From a plain reading of Sub-section (1) of Section 2 of the said Act it is evident that the application of the said Act has been extended to the classes of persons enumerated therein. Sub-section (2) of Section 2, however, provides a non obstante Clause as a result whereof the application of the said Act is excluded, so far as the members of any Scheduled Tribes within the meaning of Clause 25 of Article 366 of the Constitution are concerned. In terms of Sub-section (3) of Section 2 of the said Act, the expression "Hindu" in any portion of the said Act shall be construed as if it had included a person who though not a Hindu by religion is a person to whom this Act applies by virtue of the provisions as contained in that Section.

In other words, by reasons of Sub-section (3) of Section 2 of the said Act the said Act applies to those persons who although not a Hindu by religion but has been brought within the purview of the said Act in view of the extended applicability of the said Act in terms of Sub-section (1) of Section 2 thereof.

At this juncture, it may be mentioned that Section 2 of the said Act, is in pari materia with the similar provisions of Hindu Marriage Act, 1955 and Hindu Adoptions and Maintenance Act.

Except the decision of mine in an unreported case (Daudwa Uraon and Anr. v. Karueluous Uraon and Ors.) the counsel for the parties have not drawn my attention to any other decision directly covering the point at issue. Clause 25 of Article 366 of the Constitution reads as follows:

In this Constitution unless the context otherwise requires the following expressions have the meaning hereby respectively assigned to them i.e. to say "Scheduled Tribes" means such tribes or tribal communities or parts of groups within such tribes or tribal communities as are deemed under Article 342 be Scheduled Tribes for the purposes of this Constitution.

Article 342 which occurs in part XVI of the Constitution reads as follows:

(1) The President may with respect to any State or Union territory and where it is a State, after consultation with the Governor thereof by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under Clause (1) any tribe or tribal community or part of or groups within any tribe or tribal community but save as aforesaid a notification issued under the said Clause shall not be varied by any subsequent notification.

In view of the fact that the parties to the suit conceded before the trial court that they are Adibasis and thus members of Scheduled Tribe, which findings have not been challenged before this Court, the case has to be judged as to whether the provisions of the Hindu Succession Act, 1956, apply to the case of the parties to the suit or not.

The learned trial court in his judgment dated 10.1.1989 has merely held that the parties have sufficiently been Hinduised, Sub-section (2) of Section 2, Hindu Succession Act, 1956, as noted hereinbefore provides for a non obstante clause.

The question, therefore, arises for consideration is as to whether in view of the said provision a member of a Schedule Tribe would be governed by the provisions of the Hindu Succession Act, 1956, if he is otherwise a Hindu by religion in any of its form or developments, although, it is found that the parties

are members of Scheduled Tribes.

A Member of Scheduled Tribes even if he is a Hindu, is excluded from the operation of the said Act, by reason of Sub-section (2) of Section 2 thereof. It is one thing to say that the parties have been Hinduised, sufficiently or otherwise and would thus be governed by Hindu Law for the purpose of succession or inheritance but it would be another thing to contend that even Hindu Succession Act shall apply to them. The non obstante Clause provided for in Sub-section (2) of Section 2 of the Act is absolutely clear and is of wide amplitude. It is well known canon of interpretation that a statute has to be construed *exceribus actus* i.e. within the four corners of the statute. It is also well known that normally a non-obstante Clause has to be given its full effect.

Reference in this connection may be made to *Lilly Stella Rodrigues v. Girija Bai and Ors.* reported in AIR 1969 Mys 100. Sub-section (2) of Section 2 of the said Act, in my opinion, exclude the applicability thereof in respect of the members of Scheduled Tribes who are covered by Clause 25 of Article 366 of the Constitution. The very fact that the Central Government has been conferred with the power to otherwise direct by a notification is a clear pointer to the fact that the Parliament in its wisdom thought it fit to make the said Act inapplicable to the members of the Scheduled Tribes, but considered that if the Central Government is of opinion that the provisions of the said Act should be made applicable to the members of the Scheduled Tribes, it may do which opinion may be formed by the Central Government taking, into consideration their upliftment, educational development and economical and other social developments.

In *Municipal Corporation, Indore and Ors. v. Smt. Ratnaprabha and Ors.* reported in AIR 1977 S.C. 308 while construing a non obstante clause, the Supreme Court held as follows:

As has been stated, Clause (b) of Section 138 of the Act provides that the annual value of any building shall "notwithstanding any thing contained in any other law for the time being in force" "be deemed to be the gross annual rent for which the building might" reasonably at the times of the assessment be expected to be let from year to year". While therefore, the requirement of the law is that reasonable letting value should determine the annual value of the building, it has also been specifically provided that this should be so "notwithstanding any thing contained in any other law for the time being in force". It appears to us that it would be proper interpretation of the provisions of Clause (b) of Section 138 of the Act to hold that in a case where the standard rent of a building has been fixed u/s 7 of the Madhya Pradesh Accomodation Control Act, and there is nothing to show that there has been fraud or collusion, that would be its reasonable letting value, but where this is not so and the building has never been let out and is being used in a manner where the question of fixing its standard rent does not arise, it would be permissible to fix its reasonable rent without regard to the provisions of Madhya Pradesh Accomodation Control Act, 1961. This view will, in our opinion, give proper effect to the non obstante Clause (b)

with due regard to its other provision that the letting value should be reasonable.

In this view of the matter, I have no hesitation to hold that the provisions of Hindu Succession Act, 1956, have no application to the case of the parties.

25. It was further held:

However, the matter does not rest there. Although, the provisions of Hindu Succession Act, 1956 may not have any application in view of the statutory exclusion thereof in the case of members of the Scheduled Tribes but still the parties having been sufficiently Hinduised, in the matter of inheritance and succession, they would be governed by the Hindu Law i.e. the law as prevailing before coming into force of the Hindu Succession Act.

26. In view of the fact that the provision of Hindu Succession Act have no application in relation to the parties, it must be held that the parties would be governed by Old Hindu Law as it then stood.

27. In that view of the matter, upon the death of Sakila Manjhi, the properties devolved upon his widow as a limited owner.

28. As the Hindu Succession Act does not apply in case of the parties, the Defendant No. 1's mother continued to be a limited owner on the date when she transferred her interest in respect of three plots by reason of the aforementioned deed of sale dated 25.9.1980 (Ext. 3). It is not the case of the Defendants that the alienation was made by the widow either with the consent of the reversioner or for any legal necessity.

29. It is well known that a limited owner has no power to alienate the properties except for religious and charitable purposes or other purposes amounting to legal necessities.

30. Section 182 of Mulla's Principles of Hindu Law states as follows:

those who deal with a person who has only a limited interest in the property and who proposes to dispose of a larger interest are prima facie bound to make out the facts which authorize such a disposition. The power of a widow or other limited heir to sell or mortgage the estate inherited by her is a limited and qualified power, she is at perfect liberty to dispose of her own life-interest in the estate, but if she proposes to alienate the corpus of the estate either by way of sale or mortgage, the purchaser or mortgagee is bound to inquire into the necessity for the sale or mortgage. If the sale or mortgage is impeached, the burden lies on him to prove-

(a) either that there was legal necessity in fact; or

(b) that he made proper and bonafide inquiry as to the existence of the necessity, and did all that was reasonable to satisfy himself as to the existence of the necessity.

If he proves that there was a necessity in fact, the alienation will be upheld, even

though the necessity was brought about by the mismanagement of the limited heir, unless it be shown that he himself contributed to the mismanagement.

31. The Defendants in the written statement neither pleaded nor proved the aforementioned fact which was absolutely necessary in order to enable the learned trial court to negative the contentions of the Plaintiffs-Appellants.

32. It is now well known that if the alienation of properties is made by a limited owner without legal necessity or without consent of the reversioners, the same is not binding upon the reversioner.

33. Thus, it is absolutely clear that upon the death of the widow, the properties so alienated devolved upon her reversioners.

34. In view of the admitted geneology of the parties, there can not be any doubt that the Plaintiffs are the next reversioneries of the widow of Sakila Manjhi. In this view of the matter, the suit filed by the Plaintiffs must succeed on this ground alone.

35. In the result, this appeal is allowed and the judgment and decree of the learned court below is set aside. However, in the facts and circumstances of the case, the parties shall pay and bear their own costs throughout.