

(1984) 03 MP CK 0013
In the Madhya Pradesh High Court
Case No : S.A. No. 890 of 1977

Birambai Krishak and another

APPELLANT

Vs

Bhojraj and others

RESPONDENT

Date of Decision : 31-03-1984

Acts Referred:

Constitution of India, 1950 — Article 43

Citation : (1986) MPLJ 551

Hon'ble Judges : C.P. Sen, J

Bench : Single Bench

Advocate : N.S. Kale, for the Appellant; K.M. Agarwal for Respondent Nos. 1, 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

C.P. Sen, J.

This is plaintiffs" second appeal against dismissal of their suit for possession and mesne profits by the Courts below.

It is not in dispute that the deceased Malechha Kalar owned Kh. Nos. 46, 79, 81/2, 83 and 102, area 6.67 acres in village Telin Satti, Tahsil Dhamtari, district Raipur. He died in the year 1937-38 leaving behind his widow Peelabai, the original defendant No. 2 who died during the pendency of the appeal before the lower appellate Court, and five daughters, i.e. Gomtibai, Godawaribai, Birambai, Brijbai and Radhabai. Out of the five daughters two were already married and the remaining three were living with their mother and they were minors at that time. Within one year Peelabai married Mangan younger brother of her deceased husband and she got the suit lands mutated in her name as Peelabai wife of Mangan. She alone remained in possession and cultivation thereof. Bhojraj, defendant No. 1, is the son born to Peelabai through Mangan. By registered sale-deed dated 10-2-1964, Peelabai transferred the suit lands to Bhojraj for a consideration of Rs. 2000/-. By that time all the five daughters were married but

they made a claim over the suit lands and the matter was amicably settled by Peelabai by paying Rs. 200/- to each of her four daughters and Bhojraj transferred 58 acres of land out of the suit lands to the other daughter Gomtibai. The present suit has been filed by the third and youngest daughters Birambai and Radhabai against Bhojraj, Peelabai and the remaining three daughters saying that since Peelabai remarried, she was divested of the suit lands which she inherited from her former husband and the same came to be inherited by the daughter. However, to defeat their claim, Peelabai transferred the suit lands to Bhojraj by a bogus sale-deed. They claimed possession and mesne profits. In their joint written statement Bhojraj and Peelabai contended that although Peelabai was divested of the suit lands on her re-marriage, she being in adverse possession since then, she has perfected title by adverse possession and the daughters have no right, title or claim over the same; besides all the daughters having settled their dispute with Peelabai, the present suit is not tenable. Their stand has been supported by defendants 3, 4 and 5, Gomtibai, Godawaribai and Brijbai. According to them, the daughters have no claim over the suit lands and in order to avoid any future dispute each of them were paid Rs. 200/- and the matter settled. The Courts below found that on the re-marriage Peelabai was divested of the suit lands which came to be inherited by the five daughters but Peelabai has perfected her title by adverse possession and, therefore, daughters have lost their claim over the same. So the suit has been dismissed.

The following two substantial questions of law have been framed:

- (1) Whether the finding regarding adverse possession is vitiated by non-consideration of the admissions of Mst. Peelabai?
- (2) Whether Mst. Peelabai could prescribe adverse possession of the suit property against her minor daughters?

The Privy Council in *Lachmeshwar Singh vs. Manwar Hussain* (19 I.A. 48) has held that the question whether the possession is adverse or not, though often one of fact, may also be question of law or mixed question of law and fact. The Supreme Court in *Shree Meenakshi Mills Ltd. vs. I.T. Commi.* (1957 S.C. 49) has held-

Thus, for deciding whether the defendant has acquired title by adverse possession, the Court has firstly to find on an appreciation of the evidence what the facts are. So far, it is a question of fact, It has then to apply the principles of law regarding acquisition of title by adverse possession, and decide whether on the facts established by the evidence, the requirements of law are satisfied. That is a question of law. The ultimate finding on the issue must, therefore, be an inference to be drawn from the facts found, on the application of the proper principles of law, and it will be correct to say in such cases that an inference from facts is a question of law. In this respect, mixed questions of law and fact differ from pure questions of fact in which the final determination equally with the finding or ascertainment of basic facts does not involve the application of any

principle of law. The proposition that an inference from facts is one of law will be correct in its application to mixed questions of law and fact but not to pure questions of fact.

Here, admittedly when Peelabai remarried Mangan within one year of the death of Malechha she was divested of the suit lands. This Court in *Manabai vs. Chandanbai* (AIR 1954 Nag. 284) has held-

Both under the Act and otherwise under the Hindu Law a widow on remarriage forfeits her right to her deceased husband's property, even though the customary law of the caste to which she belongs sanctioned such remarriage.

At that time out of the five daughters of Peelabai through Malechha, two of them, i.e. Gomtibai and Godawari were already married while rest three, i.e. plaintiffs Birambai and Radhabai and defendant No. 5 Brijbai were minors and in the custody of their mother Peelabai. According to Mulla, in Article 43, as between the daughters, inheritance goes first to daughters who are unmarried, next to daughters who are unprovided for, i.e. indigent and lastly, to daughters who are married and enriched. So on remarriage of Peelabai, suit lands came to be inherited by the three daughters only, i.e. the plaintiffs and the defendant No. 5 who were unmarried. So the suit lands became the property of these three daughters under the men prevailing Hindu Law of inheritance. Since Peelabai was the guardian of the three minor daughters, she in her fiduciary capacity could not assert an adverse title against the minors. The suit lands were mutated in the name of Peelabai wife of Mangan after the death of Malechha and she continued to cultivate the same even after she was divested of her title on remarriage. But this would not give her tide adverse to her minor daughters, who became the owners. She was cultivating the same on behalf of the minors. Under the circumstances whether she acquired adverse title or not is a question of law. The Supreme Court in *Mst. Aliaria vs. Chhannu* (1973 U.J.S.C. 317) has held that where a person starts managing the property of a minor as his agent and continues to manage the same even after the minor has become a major, he cannot acquire a tide to the property by adverse possession, although he continues to be in possession for more than 12 years after the minor attains majority. Bhojraj alone started acquiring adverse title since the time of the sale on 10-2-1984 but the suit being filed in 1972 adverse title was not perfected.

Peelabai (D.W.4) admitted that after the death of Malechha, suit lands were enjoyed by herself and her daughters. She also admitted that at that time Gomtibai and Godawari were already married and rest three daughters were living with her and they were married 4-5 years thereafter. She has been assuring her daughters that the profits from the property of Malechha would be used for their maintenance and for their marriage. She had also prevailed upon Bhojraj to give 58 acres of land to Gomtibai in lieu of her claim. She also paid Rs. 200/- to each of her remaining four daughters to satisfy their claims. Bhojraj (D.W.1) also admitted that plaintiff Radhabai was a minor and in the guardianship of her mother till she was married. However out of three daughters,

fourth daughter Brijbai (D.W. 12) has disowned any claim over the suit lands. So she is not entitled to any share in the suit lands. It is true that the two plaintiffs also received Rs. 200/- each as is evident from the receipts Exs. D-1 and D-3, but in the absence of registered relinquishment deeds, their title to the suit lands cannot be extinguished and they are entitled to two-third share in the suit lands. But in fairness each of them has to return Rs. 200/- to Bhojraj. On return of the amounts. Bhojraj has to put them in possession over two-third portion of the suit lands.

Accordingly the appeal is partly allowed. The judgments and decrees of the Courts below are set aside and the plaintiffs' claim is decreed to the extent of two-third share of the suit lands. The papers be sent to the revenue authorities for effecting a partition by metes and bounds of the revenue paying lands. But this would be after repayment of Rs. 400/- by the plaintiffs to defendant No. 1. Under the circumstances the parties to bear their own costs throughout.