

(1987) 05 PAT CK 0033

In the Patna High Court

Case No : Appeal From Original Decree No. 32 of 1975 (R)

Daudwa Uraon and Another

APPELLANT

Vs

Karueluous Uraon and Others

RESPONDENT

Date of Decision : 12-05-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Hindu Succession Act, 1956 — Section 2(2)

Citation : (1988) PLJR 603

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : P.K. Sinha and D.K. Sardar, for the Appellant; A.K. Chattarjee, for the Respondent

Judgement

S.B. Sinha, J.—In this appeal, the defendants are the appellants. The plaintiffs/respondents filed the suit claiming inter alia the following reliefs.--

(a) That the plaintiffs' title over the suit lands may be declared against the whole world and the properties of Lachu Uraon s/o. Charwa Oraon may also be declared in favour of the plaintiffs after the death of the said defendant No. 4.

(b) That the cost of the suit may be awarded to the plaintiffs till realisation of the same with interest.

(c) That any further relief or reliefs be granted to the plaintiffs to which the plaintiff may be found entitled and the court deem fit and proper.

The facts of the case are not much in dispute. The parties proceeded on the basis that they claim through Karma and Charwa. The genealogical table necessary for this purpose is set out hereinbelow:---

2. The genealogical table as referred to in the judgment is not in dispute except to the extent that after the death of Karva the property devolved upon Chara and after Chara's death, the property devolved upon his widow Mosst. Jhugu. The

said Mosst. Jhugu died on 25.4.1970 leaving behind a daughter and defendants 5 to 7. Nathu, according to the case of the defendants, was Gharjamai of Mosst. Jhugu.

3. Mr. P.K. Sinha, learned counsel for the appellants has contended that the learned court below has wrongly taken into consideration the custom prevalent in the Oraon and his case would be covered by Hindu Succession Act, 1956. However, in view of the provisions of subsection (2) of section 2 of the Hindu Succession Act, this point has no merit at all,

4. Mr. P.K. Sinha, thereafter, submits that assuming for the sake of argument that the judgment on fact is correct, the judgment cannot be sustained in view of the fact that a definite pleading was made in the written statement that Nathu was ghardamad of Chara and Jhugu. He referred to the celebrated book of Oraons of Chotanagpur by Sri S.C. Roy for the purpose of showing that in certain circumstances ghardamad do inherit the properties, if certain conditions precedent therefor exist.

5. In "The Oraons of Chotanagpur" the author Sri S.C. Roy has stated as follows:--

An Oraon owner of lands who has no sons may have recourse to either of two contrivances to make a show of continuing his family after his death; He may either adopt a son to himself or take into his house a "prospective son-in-law". If the adopted son belongs to his own clan and khunt, and has been adopted on the other agnates of the owner agreeing in the presence of the Panch to forego in his favour their claim to inheritance, such adopted son acquires the full rights of a son; otherwise he is only entitled to inherit the rajhas lands of the adoptive father. A ghardijoa son-in-law (adopted as such before marriage) can, in no case, inherit the Bhunhari lands of his deceased father-in-law, although the rajhas lands, by reason probably of the small value that came to be attached to them and in consideration of the labour expended by the ghar-dijoa over them, go to him, unless the deceased has left a brother or a brother's son who was joint in mess and property with the deceased at the time of his death.

6. Both the parties led evidence on the aforementioned question and, as a matter of fact, an issue with regard to non-joinder of Nathu Oraon was also framed, it appears that the court below has not considered the aforementioned issue in its proper perspective. Although in paragraph 21 it has been stated that this issue has also not been pressed at the time of hearing, but, it appears that he began discussion of issue No. 6 along with issue No. 5 in paragraph 9 of the judgment. The very fact that the parties led evidence on the issue as to whether Nathu was ghardamad or not; in my opinion, the said question could not have been decided in absence of Nathu.

7. The question as to whether the claim laid by defendants 5 to 7 is false or not, is wholly irrelevant for the purpose of deciding the question as to whether Nathu was a necessary party. The very fact, that in paragraph 16 of the judgment, the

learned court below has also criticised Nathu's examination as a witness, further fortifies that Nathu even according to the learned court below have made a substantial contribution for the decision of this case. I am, therefore, of the view that in absence of Nathu suit could not have been proceeded with as he was a necessary party and/or in any event a proper party.

8. As the parties have led detailed evidence and as in view of the fact that defendant Nos. 5 and 6 do not claim the lands independently, the case is remitted back for deciding the said question in its proper perspective with liberty to the plaintiff, if so advised, to file an application under Order I Rule 10 of the CPC for impleading Nathu as a party to the suit. If such an application is filed, the court below will implead Nathu as a party and proceed to decide the case afresh in accordance with law. In the result, this appeal is allowed and the case is remitted back for fresh decision in accordance with law. In the circumstance, there will be no order as to costs.