

(1998) 09 PAT CK 0003

In the Patna High Court

Case No : Appeal from original decree No. 165 of 1986 (R)

Dhanai Majhi and Another

APPELLANT

Vs

Ranga Majhi and Others

RESPONDENT

Date of Decision : 23-09-1998

Acts Referred:

Constitution of India, 1950 — Article 366
Hindu Succession Act, 1956 — Section 2(2), 2(3)

Citation : (1999) 1 PLJR 605

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Advocate : M.M. Banerjee and A. Sen, for the Appellant; M. Shamim Akhter and D.C. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Deb, J.—This appeal has been preferred against the judgment and decree dated 20.9.1986 and 30.9.1986 respectively in Title Suit No. 51 of 1984 passed by the then 2nd Additional Subordinate Judge, Chaibasa dismissing the Plaintiffs-Appellants' suit for declaration of title and confirmation of possession and also for recovery of possession.

2. The case of the Plaintiffs is that their father Dhuma Majhi and a brother Batol Majhi @ Bajol Majhi, had this Batol Majhi had only one daughter namely Kandri Majhian who was married with Lusa Majhi. Defendant No. 1. Kandri Majhian died leaving behind four sons who are Defendant Nos. 2 to 5 and one married daughter Jhuri Majhian, Defendant No. 6. The Plaintiffs are the sons of Dhuma Majhi. According to the Plaintiffs, the lands in khata Nos. 4 and 5 of Mouza Pandugitti were the ancestral property of the father of the Plaintiffs and their uncle Batol Majhi. The father of the Plaintiffs became separate long before the last settlement of 1961 and the lands of the Plaintiff's father were recorded in the name of the Plaintiffs jointly under khata Nos. 39, 48 and 47. These lands are shown in Schedule-C, D and E of the plaint. According to the Plaintiffs, these

are also the ancestral property of both the brothers as mentioned above and they were recorded in the names of the Plaintiffs alone after the death of their father and their uncle having no male issue. Khata No. 49 plot No. 352 is Bandh while plot No. 353 is a Talab and those have been recorded jointly in the name of the Plaintiff and Kandri Majhian daughter of Batol Majhi. According to the Plaintiffs, these two plots are also in the exclusive possession of the Plaintiffs to the exclusion of the Kandri Majhian and she never enjoyed or possessed those two plots. As per the plaint case, father of Kandri Majhian, Batol Majhi died before 1961 and parties being Santhals and their succession being according to the customs married daughters are never allowed to succeed or inherit the properties of their father and these properties devolved on the agnates alone. Kandri Majhian married long before the last survey settlement of 1961 and during the settlement operation, Kandri Majhian requested the Plaintiffs to allow her to enjoy the usufruct of Schedule-B properties which belonged to her father and she gave an undertaking that the Plaintiffs would take possession over the land in Schedule B soon after her death. Only out of sympathy and affection. Kandri Majhian was allowed to possess Schedule-B lands. Regarding Schedule-F lands i.e. plot No. 353, which is a Tabal, which was recorded in the same of Kandri Majhian, daughter of Batol Majhi. Although, such entry was there in the survey settlement but it did not create any title to Kandri Majhian and those were being possessed by Kandri Majhian only on a permission being given to her by the Plaintiffs. After the death of Batol Majhi, according to the Plaintiffs, these Schedule B and F lands had reverted to the Plaintiffs alone to the exclusion of Kandri Majhian or her heirs. Kandri Majhian died in the year 1981. During her Shradh ceremony, the Defendants and other villagers requested the Plaintiffs to allow them to enjoy the Schedule B lands for three years as the Defendants had to spend much in the Shradh ceremony of their mother. The Plaintiffs acceded to the request of the Defendants and the Defendants were allowed to possess those lands on permission alone, but they failed to return back the lands and were asserting title over the Schedule B and Schedule F lands. The present suit has been filed for declaration of right, title and interest over Schedule B land and for recovery of possession in respect of Schedule B lands and for confirmation of possession in respect of Schedule B lands

3. Joint written statement have been filed by the Defendant Nos. 1 to 6 and has been contended, inter alia, that the suit as framed is not maintainable, that the same is barred by limitation, that the same is bad for disjointed for cause action etc. etc. According to the Defendants, although the parties are Santhals by caste but they have been Hinduised long back sufficiently and they are governed by Hindu law of inheritance. The genealogy given by the Plaintiffs is admitted. The land in khata Nos. 4 and 5 described in Schedule B of the plaint is asserted not to be the ancestral property of the father of the Plaintiffs. The said property, according to the Defendants, is the exclusive property of Kandri Majhian, daughter of Batol Majhi and the Plaintiffs father Dhuma Majhi or the Plaintiffs have got no right or title over that property. The said land during the days of

Abdul Settlement in the year 1927 was recorded in the name of Kandri Majhian and in 1961 it was also recorded under khata No. 36 in the sole name of Kandri Majhian during survey settlement operation. As regards Schedule F property, it has been contended that the suit properties is the joint property of Dhuma Majhi and Sangi Majhian, the widow of Batol Majhi and it was recorded as such under khata No. 26 of the Abdul Settlement in the year 1961, in the name of Kandri Majhian and the Plaintiffs having been half and half share. The recorded tenants are in joint possession of the tank and that they are possessing the same jointly having usufructs being divided as per shares. The Plaintiff's father and their uncle were separated long ago before the Survey Settlement operation of 1926-27. Batol Majhi died even prior to the Abdul Settlement. His property was exclusively inherited by his widow and daughter and as such Schedule B property was recorded in the name of his widow. As regards Schedule F property, the same was jointly recorded as the same was a tank which could not have been divided and as such in the present survey settlement also the same was recorded jointly in the names of Kandri Majhian and the Plaintiffs. As per the Defendants, they are possessing the lands as of their right and the Plaintiffs can have no right over those suit properties. They have specifically mentioned that the Santhais of the district of Singh hum had been sufficiently hinduised long before and the matter of inheritance and succession were being governed by the Hindu Law and not by any special racial custom. Even their religious ceremony are also like that of the Hindus. The daughters and widows always inherited the property of the father and the husband as like Hindus and the female inheritors are never being excluded from succession. It has been totally denied by the Defendants that either at the time of survey settlement in the year 1961 or after the death of Kandri Majhian, there was any settlement or permission of the Plaintiffs as alleged being given from the side of the Plaintiffs to the Defendants in possession of the suit land. They have also asserted that they are in possession of the lands as per their own right and Schedule F property being a tank was being possessed jointly by sharing the usufructs.

4. On the basis of the pleadings of the parties, following issues were framed:

(i) Has the Plaintiff any Cause of action or right to suit?

(ii) Is the suit as framed maintainable:

(iii) Whether the suit is barred by limitation and adverse possession?

(iv) Whether the property described in Schedule B of the plaint was ancestral property of Dhuma and Batol @ Bajal Majhi and whether after death of Baja! Majhi it was inherited by Dhuma and his successors-in-interests.

(v) Whether Dhuma or his sons have acquired any interest in the property described in Schedule B or they had absolute interest in the Schedule F property?

(vi) Whether the Schedule F property was in joint property of Sangi and Dhuma or ancestral property of the parties?

(vii) Whether the custom pleaded by the Plaintiffs was correct or the parties were sufficiently Hinduised to attract the provisions of Hindu Law?

(viii) To any other relief or reliefs the Plaintiffs may be entitled?

5. For and on behalf of the Plaintiffs, six witnesses have been examined including one of the Plaintiffs, Jitrai Majhi as P.W. 6. On behalf of the Defendants, several witnesses have been examined including Defendants No. 4, Bale Majhi as D.W. 4. Khatiyani and some revenue records and rent receipts have also been filed and exhibited in the case.

6. It may be mentioned here that an objection was raised in the year 1949 before the Deputy Commissioner regarding possession and inclusion of name of Kandri Majhian in the records of rights, but on finding the possession of Kandri Majhian, the said case was disposed of in favour of Kandri Majhian, finding her possession over the suit property.

7. The learned court below decided issue Nos. 4, 5 and 6 conjointly as they were inter related to each other and after considering the oral and documentary evidence and the legal aspect, it was held that Kandri Majhian, mother of the Defendants was the absolute owner of Schedule B property and that Schedule F property was joint property of Dhuma and Sangi Majhian and as such the Plaintiffs and Defendants have got joint interest over the Schedule F tank. Issue No. 7 has also been decided against the Plaintiffs as they failed to prove that they have got racial custom with regard to succession and that Hindu law regarding succession was not available to them, rather from the evidence the learned court below came to the finding that since long the parties have become Hinduised and as such succession in respect of Hindu law would be available and the female heirs are not excluded from succession. In view of the decisions in respect of the vital issues, as mentioned above, the learned court below decided other issues also in favour of the Defendants and against the Plaintiffs and as such dismissed the suit as a whole with costs.

8. Mr. A. Sen, the learned Counsel appearing on behalf of the Appellants has attacked the impugned judgment mainly on the legal aspect. According to him, admittedly the parties are Santhals and aboriginals and they are included as Schedule Tribes under the Constitution of India and according to him, even if Hindu law was applicable to them of being sufficiently Hinduised then also Hindu Succession Act of 1956 would not be applicable to the parties as per Section 2(2) of the Hindu Succession Act of 1956. His submission is that Santhals being Scheduled Tribe within the meaning of Clause 25 of Article 366 of the Constitution of India then the Hindu Succession Act of 1956 not being applicable, even if they were Hinduised then also the law of Succession prevailing amongst Hindus before 1956 would only be applicable and in the case the females have got only limited interest to the extent to getting maintenance from the property of their male predecessor and on their death it reverted back to the reversioners or to the agnates as the case may be. According to him, Hinduised Santhals

cannot get benefit of Hindu Succession Act, 1956 and he has drawn distinction between "sufficiently hinduised" and the word "hinduised" in. this respect His further submission is that the teamed court below committed error of law in putting the burden on the Plaintiffs regarding the case of being hinduised or not when the said burden should" have been put to the Defendants who had taken the plea in their pleadings.

9. Mr. Shamim Akhter, learned Counsel appearing on behalf of the Respondents has controverted the above submission of Mr. Sen by referring to the several old judgments of this Court (which would be referred at the time of discussion) to the effect that Santhals in the Chotanagpur Area had already been hinduised in total, both in their customs and the religious purposes and they are in fact now the Hindus and as such the expression of Hindu would be applicable to them notwithstanding regarding applicability of Hindu Succession Act, 1956. He has referred to Section 2(3) of the Act itself. His further submission is that since last several decades from the days of Abdul Settlement in the year 1925-27 the lands were in the name of females origins regarding the ancestral property could not be proved from the side of the Plaintiffs. A single statements made by a Defendant to the effect that the property is "BAPAUTI" would not take away the presumption of correctness of the Revenue records which are published long back and when in the year 1949 also the revenue records were maintained on the basis of the possession of the Defendants, the Plaintiffs after several decades cannot come up with plea of reversion.

His further submission is that the female heirs are also entitled to heir ship regarding self acquired property. Para-43 of the Mulla's Hindu Law and in the order of succession of self acquired property, widow comes as heir just after the sons and male heirs and then daughter also comes in succession and as such even if it is admitted for argument's sake that the property were ancestral property coming from Bajol and that Hindu Succession Act is not applicable then also Kandri Majhian and her mother Sangi Majhian were the heirs of their predecessors Bajol Majhi.

10. At the first point that the Santhals being aboriginals are not Hindus and not governed by the Hindu Law or the Hindu Succession Act, there was an attempt from the side of the Plaintiffs to prove that as per the custom amongst the Santhals, married daughters were always excluded" from the line of succession. In this respect Balram Majhi, P.W. 2 and Khela Soren, P.W. 3 and Anand Majhi, P.W. 5 have been examined. They made bald statements to the effects that as per their racial custom the married daughters have no right to inherit property.

P.W. 2 is a young man of 30 years. He admitted that the record of rights in the present case was prepared in the year 1927 and the same was in the name of Kandri Majhian in respect of Schedule-B property and Sangi Majhian, her mother in respect of Schedule F property. As to how their names being entered long back in the year 1926-27 belying the racial custom, could not be explained by him. P.W. 3 similarly could not give any instance whether a Santhal lady had been

deprived of her inheritance and the property went to the agnates. Similarly, he also could not say or give any instance when a married daughter is being dislodged from inheritance. Some specific instances were put to this witness regarding the village itself where widow and the married daughters were allowed to inherit. He simply stated about his ignorance. P.W. 5, Anand Majhi is an old man of 70 years. He hails from a different village and not of the village where the parties to the suit belonged. He simply stated that in his area amongst Santhals community, daughters are excluded from inheritance. In controvert their evidence aged defence witnesses have been produced. D.W. 1 is an old man of 60 years. He stated that he comes from the same community of Majhi. His wife Devika Majhian, daughter of Ramraj Majhi had inherited the property of her father. He gave the chronology saying that his father-in-law died leaving behind his wife as daughter and widow Sangri Majhian and after the death of Sangri Majhian, the whole property had been devolved by inheritance on his wife Devika Majhian. His such evidence could not be dislodged by any one from the side of the Plaintiffs. Similarly, D.W. 2, Budhram Majhi is another old man of 65 years. He has corroborated the statement of D.W. 1. D.W. 6 is also an old man and he has cited his own example showing that he being Santhal has"become hinduised long ago and is governed by Hindu Law. According to him, the father of his mother had a son who died and after the death of maternal grand father the entire property was inherited by his mother and he is in cultivating possession of the lands left by his mother.

11. On placing the evidence of both the sides on this point side by side, it could be found that the Plaintiffs' side miserably failed to prove the racial custom that the widow and the married daughters are excluded from the side of the inheritance. On the other hand, the defence witnesses could prove by cogent evidence that the racial customs amongst the Santhals have long been dropped and they are governed by the Hindu Law. The documentary evidence also supports the defence case. In the year 1926 even if the property belonged to Batol Majhi the same was inherited by his widow Sangi Majhian and married daughter Kandri Majhian. but there is no evidence to the effect that those properties were inherited properties. Those might be self acquired property also and the record of rights unless being rebutted by cogent evidence as to the presumption of its correctness. Moreover, it appears that in the year 1949 some objections were raised from the side of the Plaintiffs of their predecessors, but the said objection regarding the record of rights had been rejected and although long three decades have passed from that order, the Plaintiffs have not raised any objection.

12. Taking the other aspect, if the women inheritors are excluded from right to inheritance then their names never come in the record of rights. In the year 1926 when Abdul Settlement was in operation then the females had the limited interest in the ancestral property, if not self acquired. Then at that time they had the right of maintenance from the property only and to that extent a limited interest in the ancestral property but their names for such limited interest never

being recognized by the Revenue authorities to be incorporated in the revenue records. Thus, the question of limited, interest or that there was racial custom etc. could not be proved from the side of the Plaintiffs.

13. On legal aspect, in *Chunku Manjhi and Others Vs. Bhabani Majhan and Others*, , it was held by the Division Bench of this Court that aboriginals having non-Hindu origin can be hinduised so as to govern by Hindu law and for such proof of inheritance, it is required to find out from the evidence as to the customs in respect of marriage, death etc. Amongst the aboriginals, there is no custom of Shradh ceremony. Shardh , ceremony is prevalent amongst the Hindus with the convention of Pind-dans.

In the present case, the Plaintiffs have admitted that after the death of Kandri Majhian, there was Shradh ceremony which conclusively, with relation to the evidence from the defence side about the custom, belies the fact that the parties remained of their aboriginal culture and not being hinduised, rather they had been hinduised long before at least before 1926.

14. Similarly in *Baburam Rajeshwari Prasad Ojha and Others Vs. Deo Narain Sao and Others*, , a single Bench of this Court has held that whether the aboriginals have become hinduised or not depends upon the circumstances and can be proved only by evidence. Similarly, in *Budhu Majhi and Another Vs. Dukhan Majhi and Others*, , it has been held that statement by the parties that they are of Santhal origins cannot be said to be inconsistent with their having been Hindus. It was further held that even if the parties and witnesses regard themselves as being Santhals by caste, they cannot be debarred from giving evidence that they have become Hindus by lapse of time.

Adoption of Hinduism does not require any conversion or other ceremonies. It depends upon how their culture is being changed towards the Hinduism. In the Chotanagpur area, most of the Santhals by their culture have become Hindus as they perform puja etc. and also get their dead bodies burnt and cremated as like that of Hindus, following such ceremonies thereafter as is done amongst the ritual Hindus. This proves that the Majhis of the village where the land is situated have become hinduised not only from oral evidence but also from the record of rights prepared long back in the year 1926.

15. Thus, on the first point that the women inheritors are excluded from inheritance as per racial customs amongst the Santhals has got no validity in the eye of law and the Plaintiffs have failed to prove of their sticking to the Santhal customs in the matter of inheritance.

16. As regards Section 2(2) of the Hindu Succession Act, it is true that there is no Notification by the Central Government regarding application of this Act of 1956 amongst the Santhals and as such according to Mr. Sen, even if the parties have become hinduised then also the Act of 1956 would not be applicable and this Kandri Majhian or her mother Sangi Majhian can have only the limited interest for their maintenance and the property would be reversed to the

reversionary after their death.

17. I am not much convinced with the submission of Mr. Sen in respect of this particular case. Let us suppose for argument's sake that Act of 1956 is not applicable amongst the paries, although they have become hinduised as there was no Central Government Notification as required u/s 2(2) of the Hindu Succession Act. 1956, then also under para-43 of the Mullas Hindu Law, order of succession includes females amongst the Hindus also in respect of self acquired properties. There is no case that the property belonging to Bajol, predecessor of the Defendants was not a self acquired property. The widow as a predominant one when there is no son or male heirs and after widow it comes to a daughter and if it is considered as Streedhan property then also the same may come to daughter, if it is not otherwise stated in the year 1926, the name of Sangi and Kandri Majhian had been incorporated in the revenue records meaning thereby that even if it was a property of their father or husband the same had been devolved to them by right of inheritance as per the prevalent old Hindu Law of Succession. After the Act of 1937 Sangi's interest became almost absolute but those matters are not to be dealt with in the present case as it could be found that the revenue records were prepared in the name of Sangi and Kandri Majhian, meaning thereby those were their acquired properties and the same could not be dislodged, even though objections were raised long back in the year 1949.

18. Mr. Shamim Akhtar has referred to Section 2(3) of the Hindu Succession Act, 1956, wherein the expression "Hindu" has included a person who is not a hindu by religion but may be taken to be Hindu by virtue of the provisions contained in the Act. According to him, the parties might be Santhals once upon a time having their original titles, but they have changed their titles also by using Majhis and they have been included in the Hindu Community accepting their religions in toto and in that view of the matter, Hindu Succession Act of 1956 is definitely applicable to them.

19. Mr. Sen has very much relied on a decision of a single Bench of this Court as reported in Gopal Singh Bhumij Vs. Giribala Bhumij and Others . In that case distinction regarding Hindus out and out and becoming sufficiently hinduised has been dealt with. There in that case, it was the question whether the Santhals who were speaking Bengalis would be governed by the Dayabhag School of Hindu Law or by Mitakshara School of Hindu Law. It was held by the learned Single Judge by application of doctrine of Lex Loci that when the Hindus in Bihar are governed by Mitakshara School of Hindu Law then only because aboriginals became Hindus speaking Bengali cannot be held to be governed by Dayabhag School of Hindu Law being aboriginals of Bengal. That case does not come and support in favour of the Plaintiffs-Appellants.

20. Thus, I find and hold that the parties have become Hinduised by efflux of time and they are governed by Hindu law and as such when they become Hindus long before 1926 then they can be said to be governed by the Hindu Succession

Act, 1956 also.

21. Story has been created by the Plaintiffs to the effect that Kandri Majhian by request had taken possession of the Schedule B property. Question of such taking permission from the Plaintiffs does not arise as she was having the right of possession by virtue of her record of rights. In the year 1949 her record of rights and possession were challenged from the side of the Plaintiffs but that had been turned down. So, the question of her taking permission from the Plaintiffs to possess the land of Schedules B and F property has got no leg to stand, but still then the evidence had been adduced and it could be found that the witnesses had differed in their, evidence as to the time and place where such permission has been granted. There were two stories of permission. One being by Kandri Majhian herself and the other later on while after the death of Kandri Majhian, the Defendants took permission at the time of her Shradh ceremony, both these two stories have been inducted only to save the limitation as the Plaintiffs have got no limitation to come to the Court as the record of rights were of 1926 within the knowledge of Plaintiffs and their predecessors, but they have come to the Court only in the year 1984 So, the suit is definitely hopelessly barred by limitation. The story of permission is only a misconceived one and that too could not be proved by any cogent evidence from the side of the Plaintiffs.

22. An attempt has been made by Mr. Sen, by referring to the relaxation of limitation from 12 years to 30 years for the purpose of restoration of possession amongst the aboriginals as per provisions under the Chotanagpur Tenancy Act. But that extension of limitation cannot be made applicable in the present case. That was for the purpose of restoration of possession under the provisions of Chotanagpur Tenancy Act. Here right, title and interest is sought to be declared, denying the rights of the Defendants and as such general law of limitation would be applicable. The limited scope of Chotanagpur Tenancy Act for which the limitation had been extended can have no bearing in the present suit.

23. On going through the impugned judgment and scrutinizing the documentary and oral evidence on record, I am totally in agreement with the findings of the learned court below on different issues framed in the suit. I further find that the learned court below took pains in discussing all the points raised including the points of law and then arrived at his finding.

The points raised by Mr. Sen, appearing on behalf to the Appellants have got no force as per discussions made above and as such the appeal has got no force.

24. In the result, the appeal is dismissed with costs and the impugned judgment and decree of the learned court below is hereby affirmed.