

(1984) 07 PAT CK 0023

In the Patna High Court

Case No : Appeal from Appellate Decree No. 281 of 1977

Gourhari Mandal (dead) substituted by his heirs Kamla Kant
Mandal and Others APPELLANT

Vs

Chimanta Bala Dasi and Others RESPONDENT

Date of Decision : 06-07-1984

Acts Referred:

Citation : (1985) PLJR 618

Hon'ble Judges : S. Ali Ahmad, J

Bench : Single Bench

Advocate : S.B. Ghoshal and S.R. Pathak, for the Appellant; Chittaranjan Sinha No. 1, for the Respondent

Judgement

S. Ali Ahmad, J.—The defendant is the appellant in the appeal arising out of a suit for partition where the plaintiff-respondent has prayed for partition of her 1/5th share in the suit property. Shortly stated the case as put forward by the plaintiff, was that the suit property originally belonged to one Mathan Mandal who died leaving behind a son Gourhari Mandal (defendant No. 1), the plaintiff (widow of the predeceased son) and three daughters who are defendant Nos. 2 to 4 besides a widow. The widow also died leaving behind the plaintiff and defendant Nos. 1 to 4 as her heirs. It was further said that the parties were governed by Dayabhag School of Hindu Law and as such the share of the plaintiff was 1/5th in the suit property. It was also said that the plaintiff was feeling inconvenience in the joint possession and as such was obliged to file the present suit giving rise to this appeal.

2. Defendant No. 2 one of the daughters of Mathan Mandal filed a written statement supporting the case of the plaintiff in toto. The suit, however, was contested by defendant No. 1 Gourhari Mandal son of Mathan Mandal. He did not dispute the genealogy. His case was that the parties were governed by the Mitakshara law as applicable to the Hindus in Bihar. It was said that the parties were residing in the District of Santhal Parganas and when Mathan Mandal died

in jointness with Gourhari Manual (defendant No. 1) the two had 1/2 share each. Further it was said that on the death of Mathan Mandal his widow came in possession of the share of her husband but when she died then 1/2 share was inherited by the plaintiff and the four defendants in equal proportion. Thus, according to this defendant, the share of the plaintiff was only to the extent of 1/10th.

3. The two courts below accepted the case of the plaintiff and held that the parties were governed by Dayabhag School of Hindu Law. According to them, therefore, the plaintiff had 1/5th share and the suit was decreed as prayed for.

4. Mr. Ghoshal, learned counsel for the appellants challenged the view taken by the learned courts below. According to him the parties were governed by Mitakshara Law since they are residing in Santhal Parganas within the State of Bihar.

5. It is significant to note that in the plaint it was stated that the parties were governed by Dayabhag School of Hindu Law, but in the written statement filed by defendant No. 1 this fact was denied and it was said that the parties were governed by Mitakshara School of Hindu Law which was prevalent in the District of Santhal Parganas.

6. The evidence adduced on behalf of the plaintiff-respondent shows that Gangadhar Mandal, father of Mathan Mandal migrated from Birbhum, District West Bengal to the District of Santhal Parganas and settled there. This evidence has been accepted by the courts below. The position, therefore, is that the law which was applicable to the ancestors of the parties at the time of migration will continue to govern them until it was denounced by them and the local law was adopted. The onus to establish denunciation of the law of the place from where the parties migrated lies on the person who asserts. In this case no evidence has been led that the parties denounced Dayabhag law and adopted Mitakshara law. In absence of such evidence the presumption is that Dayabhag School of Hindu Law will continue to govern the parties. If any authority is required in support of the proposition that I have just observed then reference may be made to the case of Sri Chandra Choor Deo and Others Vs. Bibhuti Bhushan Deva,

7. From what I have discussed above, it is patent that the courts below were correct in holding that the parties were governed by Dayabhag School of Hindu Law. They were also, therefore, correct in holding that the share of the plaintiff-respondent No. 1 was 1/5th in the suit property. For the reasons stated above, I see no reason to interfere with the judgments and decree under appeal and the same is, therefore, dismissed but without costs.