

(1953) 07 PAT CK 0003
In the Patna High Court
Case No : A.F.A.D. No. 1979 of 1948

Harihar Sahu and Others

APPELLANT

Vs

Tikait Sheo Prasad Singh Deo and Others

RESPONDENT

Date of Decision : 15-07-1953

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 80, 81
Evidence Act, 1872 — Section 114, 35

Citation : AIR 1954 Patna 173 : (1953) 1 BLJR 531

Hon'ble Judges : Misra, J

Bench : Single Bench

Advocate : B.C. De and A.K. Chatterji, for the Appellant; L.K. Chaudhury, K.N. Varma, Padmanand Jha and S.K. Choudhury, for the Respondent

Final Decision : Dismissed

Judgement

Misra, J.—This is an appeal on behalf of defendants 4 to 9 arising out of a suit brought by the plaintiff-respondent for a declaration that the plaintiff had the right to resume the properties in suit described in the schedule of the plaint and that the defendants were mere trespassers, because they had no right to continue in possession after the death of Shambhunath Singh who was the last lawful holder of the interest in suit.

The case of the plaintiff was that the suit properties which are comprised in six khewats were carved out of Baranda estate which is held by the plaintiff and which is impartible in character. According to the custom of the family, the Law of primogeniture prevails in respect of succession to the estate and the junior members are granted certain properties to be held so long as there are legitimate heirs of the original grantee of the property. On death, however, of the grantee and on the failure of the legitimate heirs to the estate, whenever that event might happen, the property was liable to resumption to the original estate. According to the plaintiff, this is one of many such estates which are found in the Division of Chota Nagpur. The plaintiff's case is that up to the year 1932 there

were lawful holders of the estate, and it was only after the death of the last lawful holder Shambhunath that, by virtue of death in various branches of the family of the Khorposdar, namely, Krishna Singh the original grantee, there was a complete failure of legitimate lineal descendants of Krishna Singh which gave the cause of action for the plaintiff to bring a suit to resume the estate in terms of the family custom and the grant made to Krishna Singh.

2. The appellants were impleaded as purchasers of certain portions of the property in the year 1875 in execution of a decree against one Maninath Singh, one of the descendants of Krishna Singh. The other persons who were impleaded as defendants were either illegitimate descendants of Krishna Singh or who held other portions of the property in suit in some other right.

3. The defence raised in the case was among others, that the Baranda estate held by the plaintiff was not an impartible estate but an ordinary Hindu joint family property subject to the right of division in Hindu law, and that there was no complete failure of legitimate descendants of Krishna Singh, because defendant 1 Harihar Singh was a son of Balram Singh born in lawful wedlock and that the plaintiff's case that Balram Singh as well as his son Harihar Singh was illegitimate was false and fraudulent.

The learned Subordinate Judge of Ranchi who decided the suit accepted the plaintiff's case and decreed the suit holding that the Baranda estate is an impartible property governed by the law of primogeniture, as also that Balram Singh and Harihar Singh were both illegitimate and that Deonath Singh died without leaving any legitimate child whatsoever. The defendants being aggrieved by that filed an appeal in the Court of the learned Judicial Commissioner of Ranchi who affirmed the judgment of the learned Subordinate Judge. He came to a concurrent finding of fact that Deonath Singh died without leaving any legitimate son and that Balram Singh, the father of defendant Harihar Singh, was really illegitimate and Harihar was also illegitimate so that there was complete failure of the legitimate lineal descendants of Krishna Singh after the death of Shambhunath Singh who alone was the last legitimate surviving descendant of Krishna Singh. That event took place in 1932, and as such, the plaintiff's suit which was within twelve years of that was in time and that the plaintiff had a cause of action to bring a suit for resumption of the property in suit.

Mr. B. C. De appearing on behalf of the appellants in this Court has raised two points; (1) that the finding of the learned Judicial Commissioner on the point of the character of the estate is not a sustainable finding in law, and (2) that likewise the finding on the point of legitimacy of Balram Singh and Harihar Singh is an erroneous finding in law.

He contends that so far as the finding on the character of the estate is concerned, it is based upon a conclusion with regard to a custom prevailing in respect of the estate where the well known criterion with regard to a custom derogatory of the general law has not been kept in view. The criterion is well

known, being that the custom must be ancient, continuous, invariable and reasonable and governed by other elements which have been decided by the Courts from time to time. His argument is that this could be proved only with reference to a large number of instances in the past where dispute with regard to succession arose, and that a particular view with regard to succession or inheritance prevailed which gave rise to a certain custom in respect of the family and which would be the basis of a finding of primogeniture as in this case. In any event even if a well known tradition of the family is held to be the basis, as Lord Davey, held in --"Garuru-dhwaja Pershad v. Sagarandhwaja Pershad" 23 All 37 (PC) (A) then there must be a well known tradition deposed to by persons who by their character, integrity and acquaintance with the family practice are competent to depose to the existence of such a tradition of the family. Neither of these two had been kept in view by the Courts below in arriving at the conclusion regarding custom in the present case, and, therefore, the finding is not correct in law.

I am afraid this argument cannot succeed, because the Courts of fact in the present case have taken into consideration the evidence, both oral and documentary, to find that the estate held by the plaintiff is governed by the law of primogeniture.

4. The first and foremost document relied upon by them is the entry made in the record-of-rights in respect of the property in suit where with slight variations here and there, it is distinctly stated that these are "kabilzapti" properties on failure of legitimate descendants of the original grantee. Mr. De's contention is that it is the primary mistake committed by the Courts below in so far as they relied upon the entries in the record-of-rights, because the record-of-rights in respect of these entries is not admissible in evidence, and as such no reference should have been made to them.

Mr. Choudhury on behalf of the respondents, however, has drawn my attention to a number of decisions, namely, -- "Srinath Ray v. Maharaja Pratap Udai Nath Sahai Deo" AIR 1923 PC 217 (B), -- AIR 1931 5 (Privy Council) and -- AIR 1931 30 (Privy Council) wherein it has been distinctly held that an entry made to the effect that certain properties were resumable on certain conditions carried with them the presumption of correctness and unless rebutted, could prevail. As a matter of fact, the Court below, if anything, have erred on the side of the appellants in so far as they relied upon these documents only as admissible documents. The learned Judicial Commissioner has not at all proceeded upon the footing that the entries in the record-of-rights really carry with them a presumption of correctness, in which event the burden will lie on the defendant to show that the entries are incorrect.

In any view, there can be no substance in Mr. De's contention that the entries are not admissible in evidence, and the decisions have made it clear that not only they are admissible, but they have a much higher value, namely, that such entries carry with them the presumption of correctness and will prevail until

rebutted by proper evidence. My attention has been drawn to Section 80, Chota Nagpur Tenancy Act, upon which Mr. De relies, in support of his contention, and also to the Calcutta Gazette Notification No. 4164 L. R. published in the gazette dated 11-11-1903 at page 1762, Part I, for the proposition that the entries are with regard to primogeniture or kabilzapti properties which do not constitute an incident of the properties and as such, there can be no presumption attaching to such entries. Even apart from the decisions, it would be difficult for me to hold in terms of Section 80, Chota Nagpur Tenancy Act, because I find that Section 81, el. (j), refers to special conditions and incidents, & there is a similar reference made in the gazette notifications as to what entry is made with regard to the survey records of Chota Nagpur. It is, however, unnecessary to refer in detail to this argument in view of the conclusive decision of their Lordships of the Judicial Committee to which I have made reference before.

5. The Courts below considered other evidence as well with regard to the testimony given by persons who are competent to speak to the practice of the family whose evidence along with the documentary evidence was considered in detail by the Courts below and acted upon to come to the conclusion that the estate of which the plaintiff is the owner and by virtue of which he has brought the present suit is an impartible estate, This contention on behalf of the appellants is, therefore, rejected.

6. With regard to Mr. De's argument on the point of legitimacy it is that the learned Judicial Commissioner was influenced by an admission made by the mother of the defendant Harihar Singh that Harihar Singh was illegitimate and so was the father of Harihar Singh, namely, Balaram Singh. It is contended that this admission was made by the widow of Balram Singh long after the purchase of the property by the present appellants and, as such, it will not bind them. But Mr. Choudhury on behalf of the defendants-respondents has brought to my notice the fact that the present appellants purchased the property not from Balram Singh but from another person who was a descendant of Krishna Singh, namely, Maninath Singh. In that view of the matter Mr. De's contention that any admission made by the vendor prejudicial to the vendee long after the purchase of the property could not bind the vendee, strictly speaking, does not arise, because Balram Singh is not the vendor of the appellants nor is he a person from whom the interest of the appellants is derived.

Apart, however, from the admission by Balram's widow, Mosammat Tusumani, the Courts below took into account the evidence led on behalf of the defendants as well as on behalf of the plain tiff, and after a detailed consideration recorded a finding that Balram Singh was an illegitimate son of Deonath Singh. This is a clear finding of fact, and I am afraid in spite of some general criticisms made with regard to the reasoning of the learned Judicial Commissioner it is binding upon me in second appeal and cannot be disturb ed. This contention also fails. These are the only two points which have been raised on behalf of the appellants, both of which are pure questions of fact. They having failed, the

appeal must be dismissed. There will be no order as to costs of this Court.