
(1992) 01 CAL CK 0035
In the Calcutta High Court
Case No : S.A. No. 5 of 1976

Harish Chandra Mondal and Another

APPELLANT

Vs

Sm. Menoka Bala Dasi and Others

RESPONDENT

Date of Decision : 15-01-1992

Acts Referred:

Evidence Act, 1872 — Section 138, 21
Hindu Succession Act, 1956 — Section 14(1)

Citation : (1992) 1 CALLT 418 : (1992) 2 ILR (Cal) 76

Hon'ble Judges : Jyotirindra Nath Hore, J

Bench : Single Bench

Advocate : S.B. Bakshi and Anath Nath Mondal, for the Appellant; Haradhan Banerjee, Amitabha Pyne and S.R. Karmakar, for the Respondent

Final Decision : Dismissed

Judgement

Jyotirindra Nath Hore, J.—This is an appeal against the judgment and decree dated 5.6.75 passed by the learned Additional District Judge, 6th Court, Alipore in Title Appeal No. 192 of 1974 reversing those of the learned Munsif, 2nd Court, Baruipur in Title Suit No. 276 of 1959 dated 22.1.74.

2. The facts of the case are briefly as follows :

The suit property—two danga plots and a homestead land in one block—originally belonged to one Ramanath Naskar, who died leaving his wife Bhubaneswari Dasi, one son Bankubehari and two daughters Haramoni (mother of the plaintiff) and Menoka Bala, defendant-respondent No. 1. Ramanath had also left a little more than six bighas of paddy land subject to a mortgage. All the lands were inherited by the son who died unmarried leaving the mother as sole heiress. Bhubaneswari thus inherited the suit lands as a limited owner. She had during the lifetime of the son sold away the paddy lands to the eldest daughter subject to the mortgage as guardian of the minor son. Subsequently on 17.9.47, she executed a kobala for the suit lands in favour of the younger daughter Menoka (defendant No. 1) with recitals of legal necessity. Menoka had been living in the homestead

with the mother along with her children. Bhubaneswari died in the homestead on 25.5.59. The Hindu Succession Act had come into operation on 17.6.56. The elder daughter (plaintiffs' mother) had in the meantime sold away the paddy land to other persons. On 17.9.59, the elder daughter's sons filed the instant suit claiming 2/5th share in the suit lands as reversioners of their maternal uncle Bankubehari and for recovery of possession after partition on the averments that the alienation of the suit lands in favour of defendant No. 1 Menoka by the mother was not justified by legal necessity and was not binding on the plaintiffs. When this suit was filed, the elder daughter Haramoni was alive. She died on 13.12.64. The younger daughter and her sons (defendants in the instant suit) filed a suit against the plaintiff's mother and the transferees from her for recovery of their shares in the paddy lands which had been alienated by the mother. But that suit ultimately failed. During the lifetime of the mother, the elder daughter filed a suit against the younger daughter for declaration that the alienation of the suit lands in favour of the younger daughter was not justified by legal necessity and was not binding on her. She withdrew the suit after the death of the mother and then her sons filed the instant suit.

3. The defence of defendant Nos. 1 and 2 was that the alienation of the suit lands in favour of the defendant No. 1 by the mother was justified by legal necessity but it was not an out and out sale. It was intended to be a loan transaction. Possession of the suit lands all along remained with the mother Bhubaneswari who acquired absolute interest on the enforcement of the Hindu Succession Act and having failed to repay the loan she sold away suit lands absolutely to defendant No. 1 by a kobala dated 2.3.59 and so the plaintiffs had no right to challenge the alienation dated 17.9.47 which was not an out and out sale.

4. As regards the second kobala dated 2.3.59 executed by Bhubaneswari in favour of the defendant No. 1 for the suit lands the plaintiff's case was that Bhubaneswari had no saleable interest in the suit lands on 2.3.59 and that it was a fictitious and collusive document which had no legal consequence. She had parted with possession in the suit lands in favour of the defendant No. 1 since the date of the kobala dated 17.9.47.

5. The suit had originally been decreed by the Trial Court. The Appellate Court set aside the decree and remanded the suit for fresh hearing and disposal. The Trial Court again decreed the suit. The Appellate Court confirmed the decree. The High Court allowed the second appeal and remanded the suit to the Trial Court for amendment of the plaint consequent upon the death of the plaintiff's mother. The plaintiff's then amended the plaint claiming their shares in the suit lands as heirs of their mother. The Trial Court again decreed the suit to the extent of 2/5th share on the findings that the kobala dated 17.9.47 in favour of defendant No. 1 was an out and out sale but the alienation was not justified by legal necessity of Bhubaneswari and the plaintiffs as reversioners of the last full male owner, namely, their maternal uncle were not bound by that alienation and that

defendant No. 1 did not get absolute interest in the suit lands u/s 14(1) of the Hindu Succession Act. As regards the second kobala dated 2.3.59, the finding of the learned Munsif is that it had no legal effect as Bhubaneswari had no saleable interest in the suit land when she executed the second kobala.

6. The lower appellate Court accepted the finding of the Trial Court that the kobala dated 17.9.47 (Ext. A/1) was an out and out sale and not a loan transaction and that the second kobala dated 2.3.59 (Ext. A) had no legal effect. Relying upon a Full Bench Decision of the Delhi High Court in Chinti etc. Vs. Daultu etc., that possession of a female donee in pursuance of a gift deed executed by her mother would not be characterised as illegal or of trespasser and she being a female Hindu "possessed" of the property on the date Hindu Succession Act came into force became an absolute owner u/s 14 of the Act, the lower appellate Court has, however, held that respondent No. 1 Menoka became absolute owner of the suit lands upon the commencement of the Hindu Succession Act, 1956 even assuming that the alienation in her favour by her mother Bhubaneswari was without legal necessity. He has further held that the disputed sale dated 17.9.47 was for legal necessity and as such binding on the reversioners. He has, therefore, set aside the judgment and decree of the trial Court and dismissed the suit. Being aggrieved, the plaintiffs have preferred this second appeal.

7. Mr. Bakshi, learned Advocate for the appellant has raised two points before me. Firstly, it has been contended that Menoka who is an alienee from a Hindu widow did not acquire limited estate or widow's estate and was not a limited owner who could get any benefit u/s 14 of the Hindu Succession Act, 1956 inasmuch as a female Hindu possessed of the property on the date the Act came into force could become absolute owner only if she was a limited owner. Secondly, the finding of the lower appellate Court that there was legal necessity for the disputed alienation suffers from infirmity in view of the specific admission of Menoka in her deposition in the previous suit.

8. The first contention of Mr. Bakshi must be accepted. The Full Bench decision of the Delhi High Court in 5m. Chinti's case (supra) on which the lower appellate Court has relied has been overruled by the Supreme Court in Kalawatibai Vs. Soiryabai and others, . The Supreme Court has held that a female Hindu possessed of the property on the date the Hindu Succession Act, 1956 came into force could become absolute owner only if she was a limited owner. The legislature did not intend to extend the benefit of enlargement of an estate to any or every female Hindu irrespective of whether she was a limited owner or not. The explanation to Section 14 was appended to widen the meaning of property by adding to it the inherited property and the property which came to be possessed by a female Hindu in the manner mentioned in it. Its effect was that a female Hindu became absolute owner not only in respect of inherited property but even of property received by way of gift or on partition or in lieu of maintenance etc. provided she was a limited owner. And not that it enlarged

estate of even those who were not limited owners. Any other construction would militate against the otherwise clear meaning of Sub-section (1). It has further been held that an alienee from a Hindu widow prior to 1956 did not acquire limited estate or widow's estate nor she was a limited owner who could get any benefit u/s 14 of the Act. It was not even a life estate except loosely, as the right to continue in possession was not related with her span of life but of the transferor, i.e. the Hindu widow. A Hindu widow succeeding or inheriting any property from her husband or as widow of pre-deceased son, held limited interest known as Hindu Widow's estate prior to coming into force of 1956 Act, under the Hindu Women's Right to Property Act, 1936. Since such an estate could not be alienated under Hindu law except in certain circumstances and for specific purpose the holder of the estate was known as the limited owner. The expression "limited owner" thus could not be understood, except as it was interpreted and understood in Hindu law. The limited ownership of female Hindu in Hindu Law arose as a matter of law. Thus if prior to 1956 any alienation was made by a Hindu widow of Widow's estate prohibited by law or being beyond permissible limits, it stripped the widow of her rights and she could not acquire any rights u/s 14. And so far as alienees were concerned, it could utmost create temporary and transitory ownership precarious in nature and vulnerable in character open to challenge if any attempt was made to cloud reversioner's interest. Her possession may be good against the world, her right in property may not be impeachable by the widow but her interest qua the reversioner was to continue in possession at the maximum till the lifetime of her donor or transferor. A female alienee did not become limited owner or holder of a limited estate as understood in Hindu Law. And the alienation without legal necessity could be assailed by the reversioner. If the alienation was valid i.e. it was for legal necessity or permitted by law then the donee or transferee became an owner of it and the right and title in the property vested in her. But if it was contrary to law, as in the case of gift of entire estate, then it could not bind the reversioner who could file a suit after the death of the widow. And the alienee cannot claim to have acquired title to the property under the gift deed. Not had she become a limited owner under Hindu Law which could mature into full ownership when the Act came into force. In fact, such possession was not backed by any title as against by reversioner which could preclude her from bringing the suit for declaration. In view of this decision of the Supreme Court it must, therefore, be held that Menoka, an alienee from the Hindu widow who was a limited owner, was not a limited owner and could not acquire absolute title in the property after commencement of the Hindu Succession Act and the right of the reversioner for an action against her would not be barred, if the transfer was not for legal necessity.

9. So the question of legal necessity becomes very important in this case. This brings us to the second contention raised by Mr. Bakshi. The learned lower appellate Court has considered the entire evidence and all the facts and circumstances of the case and upon a proper appreciation of the same has

arrived at the conclusion that Bhubaneswari had no sufficient means to support herself and there was legal necessity for transfer of the suit property. This finding does not suffer from any legal infirmity and this being a finding of fact is final and cannot be called in question in second appeal. The contention of Mr. Bakshi that the lower appellate Court ought to have relied upon the admission of Menoka in the previous suit cannot be accepted on two grounds. Firstly, Menoka was not confronted with the so called admission and given an opportunity to explain the same. The appellant cannot, therefore, take advantage of the so called admission. Secondly, the statement in the previous suit that there was no legal necessity and that Bhubaneswari had sufficient means to support herself of Menoka who was defendant in that suit and interested in frustrating the transfer made by Bhubaneswari in favour of the elder sister of Menoka is clearly a purposive one which has been proved to be false by other evidence and the facts and circumstances of the case as pointed out by the lower appellate court. As there was legal necessity for the transfer, it was valid under law and binding upon the plaintiffs reversioner.

10. The appeal is, therefore, dismissed and the judgment and decree of the lower appellate court except the finding that Menoka became an absolute owner of the suit property under the provisions of Section 14 of the Hindu Succession Act even if there was no legal necessity, are confirmed.