
(1967) 03 PAT CK 0005
In the Patna High Court
Case No : L.P.A. No. 44 of 1962

Harnandan Singh and Others APPELLANT
Vs
Musammat Maharani Kuer and Others RESPONDENT

Date of Decision : 21-03-1967

Acts Referred:

Citation : (1968) 16 BLJR 503

Hon'ble Judges : R.L. Narasimham, C.J;A.B.N. Sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.L. Narasimham, C.J.—This is a Letters Patent Appeal from the judgment of U.N. Sinha, J. in First Appeal No. 455 of 1959. The learned Judge dismissed the appeal on the preliminary ground that on the death of one of the appellants, namely, Maheshwari Kuer, all her legal representatives were not brought on record and that consequently the appeal became incompetent.

2. There were two plaintiffs in the suit. Plaintiff No. 1 is Maharani Kuer, who claims to be the widow of one Bhaju Singh. Plaintiff No. 2 is one Rupia Kuer, who claims to be the daughter of one Dhanpat Singh, who died leaving a widow Musammat Chamela Kuer who is also dead. According to these two plaintiffs, there were four brothers, namely, Chamari Singh, Deo Singh, Bhaju Singh and Dhanpat Singh, who had partitioned their ancestral properties and thus were entitled to 4 annas shares each., Bhaju Singh's share devolved on his widow, plaintiff No. 1, and Dhanpat Singh's share devolved on his daughter, plaintiff No. 2, after the death of his widow. The disputed properties were sold away in execution of a mortgage decree by the creditor who subsequently made transfers of) portions of the same to various persons. The suit was contested by defendant No. 4, Maheshwari Kuer, and by defendants 8 to 15. Defendant No. 8 was one Sital Singh. Their, main defence was that the afore said four brothers were joint, that the mortgage decree was binding on all of them and that the title of the brothers to the property was completely extinguished by the mortgage sale.

3. The trial court decreed the plaintiffs' suit. Maheshwari Kuer was appellant No. 1 and Sital Singh was appellant No. 2. They both died during the pendency of the appeal, Maheshwari Kuer having died on the 15th June, 1960, and Sital Singh on the 10th February, 1960. On the 6th September, 1960, one Harnandan Singh, who is one of the sons of Maheshwari Kuer, filed a petition for substitution, saying that the heirs of Maheshwari Kuer formed a joint family, that he was the karta of the family and that he represented the entire estate of the family. It was, however, admitted that Maheshwari Kuer left other heirs also, namely, three daughters, Chando Devi, Bhusni Devi and Subja Devi, and a daughter of a pre deceased son, named Sobaya Devi and also the children of another son Sia Saran who died within a few months after Maheshwari Kuer's death. An objection was taken to the substitution of the name of Harnandan Singh in place of Maheshwari Kuer on the ground that he did not represent the entire estate; but the court, on the 19th October, 1961, directed his substitution, leaving open, however, the question as to whether the appeal would become incompetent due to the non-substitution of other heirs of Maheshwari Kuer. This question, therefore, came up for final decision before the learned Single Judge.

4. As regards deceased appellant No. 2, Sital Singh, it was urged that his four sons were already on record as appellants 4 to 7 and hence their substitution was not necessary. It was, however, admitted that he left two daughters also, but these two daughters, namely, Manaka Devi and Misraj Devi, filed affidavits saying that they have no concern with the estate of their father and that their brothers were in possession of the entire estate and managing the same.

5. The learned Single Judge held that the estate of Sital Singh was fully represented by his four sons who were already on record. As regards Maheshwari Kuer, however, he held, replying on some decisions of the Patna High Court, that her son Harnandan Singh did not represent the entire estate and that the omission to implead her other heirs, namely, her daughters and deceased sons' children, might result in the passing of two contradictory decrees. Hence he thought that the entire appeal was incompetent and must be dismissed.

6. The law as to what will be the effect of omission to implead some of the heirs of the deceased appellant on the appeal as a whole has been laid down in several judgments of the Supreme Court, but it is unnecessary to discuss them in detail here. It is sufficient to say that the latest judgment in *Dolai Molliko and Others Vs. Krushna Chandra Patnaik and Others*, applies fully to the facts of the present case. There also on the death of the appellant during the pendency of the appeal his widow and major son were brought on record, but three other heirs of his, namely, a minor son, a married daughter and an unmarried daughter, were not brought on record. The question, therefore, arose as to whether the omission to bring these heirs of the appellant on record would be fatal to the appeal. Their Lordships observed at page 51 as follows:

This is not a case where a plaintiff or an appellant applies for bringing the heirs of the deceased defendant or respondent on the record; this is a case where one

of the appellants died and his heirs have to be brought on record. In such a case there is no question of any diligent, or bona fide enquiry for the deceased appellant's heirs must be known to the heirs who applied for being brought on the record. Even so we are of opinion that unless there is fraud or collusion or there are other circumstances which indicate that there has not been a fair or real trial or that against the absent heir there was a special case which was not and could not be tried in the proceeding, there is no reason why the heirs who have applied for being brought on record should not be held to represent the entire estate including the interests of the heirs not brought on the record.

These observations apply with full force here. Harnandan Singh claimed to be the karta of the joint family and as such representing the estate of the deceased Maheshwari Kuer. There is no allegation of fraud or collusion, nor is it stated that there was no fair or real trial. It is also not alleged that as against the daughters and children of the predeceased sons of Maheshwari Kuer there was any special case which was not and could not be tried in this litigation. The essential question ultimately for consideration in the litigation is whether the four brothers, Chamari Singh, Daso Singh, Bhaju Singh and Dhanpat Singh, were joint or separate and whether the mortgage decree would bind all of them and their heirs. The heirs of Maheshwari Kuer who were not substituted could not have a special case in respect of this vital issue. Under these circumstances, following the aforesaid judgment, it must be held that Harnandan Singh, who was substituted in place of Maheshwari Kuer, represented her estate fully.

7. It is true that the daughters of Maheshwari Kuer, namely, Chando Devi, Bhusni Devi and Subja Devi, also filed affidavits supporting the claim of their brother Harnandan Singh to represent the estate, but a counter-affidavit has been filed challenging the correctness of these affidavits and also the identity of the deponents. It is unnecessary to decide this point here and the learned Singh Judge also did not base his decision on the affidavits said to have been filed by the daughters of Maheshwari Kuer. The essential question was whether Harnandan Singh, who claimed to be the karta of the joint family, could adequately represent the estate of Maheshwari Kuer. On that point, for the reasons already mentioned, the answer must be in the affirmative, in view of the recent judgment of their Lordships of the Supreme Court.

8. So far as appellant Sital Singh's estate is concerned, the learned lower court rightly held that his four sons who were already on record fully represented the estate. His daughters also filed affidavit supporting this view. We are not here concerned with the question as to whether by filing mere affidavits these daughters could validly surrender their interest in their father's estate. But these affidavits have great value in showing that there is no fraud or collusion, that there is nothing to show that there will not be a fair trial and that these daughters did not have a special case which was not and could not be tried in a proceeding in which the sons of Sital Singh (i.e. their brothers) alone were on record.

9. For these reasons, therefore, the appeal is allowed, the judgment of the learned Single Judge is set aside and First Appeal No. 455 of 1959 is restored to file to be heard on merits according to law. There will be no order for costs.

A.B.N. Sinha, J.

10. I agree.