
(1995) 11 PAT CK 0042

In the Patna High Court

Case No : Second Appeal No. 442 of 1992

Jhabu Mahto and Others

APPELLANT

Vs

Shankar Mahto and Others

RESPONDENT

Date of Decision : 29-11-1995

Acts Referred:

Citation : (1995) 11 PAT CK 0042

Final Decision : Dismissed

Judgement

B.L. Yadav, J.—Whether the widow's right for maintenance in an earlier compromise decree prior to the enforcement of the Hindu Succession Act, 1956 (for short the Act) would operate as res-judicate after the Act was enforced, and whether an earlier life estate of a widow would blossom into full ownership in view of Section 14 of the Act, are short but significant questions of law for determination in the present Defendant's Second Appeal preferred u/s 100 of the Code of Civil Procedure, 1908 (for short the Code) in a suit for declaration of rights over Schedules A and B properties and for partition of half share over Schedules C and D properties.

2. The case of the plaintiff as set up in the plaint is that the plaintiff is adopted son of Smt. Khudi Mahtain. One Guhi Mahto and Thakur Mahto were two brothers. Thakur Mahto died leaving behind his widow Khudi Mahtain, who inherited the properties left by her husband and continued in possession till enforcement of the Act. As the present defendants-appellants were interfering with her possession she filed a suit No. 60 of 1945, in which compromise was arrived at on 15.10.1946 that she would be entitled only to a right of maintenance. But on the enforcement of the Act in view of Section 14 thereof she became absolute owner and the compromise decree giving her right to maintenance only would not operate as res judicata or even as estoppel. Smt. Khudi Mahtain adopted the plaintiff-respondent as her son and deed of adoption was also executed and registered, but as the defendants-appellants were trying to create trouble on the basis of the compromise decree, hence the necessity

arose to file the instant suit.

3. The suit was contested by the defendants-appellants denying the plaint allegation and alleged that Smt. Khudi Mahtain was only entitled to life estate or maintenance and she cannot become the absolute owner and the adoption deed was illegally executed and the suit was liable to be dismissed.

4. The Trial Court decreed the suit and defendants' First Appeal met the same fate. This is how defendants-appellants have come in Second Appeal before this Court.

5. Shri S.S. Dwivedi, learned Senior Counsel, appearing for the appellants contended that Section 14 of the Act does not confer absolute right on Khudi Mahtain as she was bound by the terms of compromise, which would operate as res judicata. Substantial question of law about interpretation of Section 14 of the Act was involved. Courts below erred in decreeing the suit. He leaned heavily on Bai Vajia (Dead) by Lrs. Vs. Thakorbbhai Chelabhai and Others, , Jagannathan Pillai Vs. Kunjithapadam Pillai and Others, and Thota Sesharathamma and Another Vs. Thota Manikyamma (Dead) by Lrs. and Others, .

6. A caveat was filed on behalf of the plaintiff-respondent by Sri Subro Sanyal, Advocate, who was also heard. He refuted the submissions of the learned Counsel for the appellants and urged primarily that earlier compromise decree would not operate as res judicata as there cannot be estoppel against statute and that life estate in favour of Smt. Khudi Mahtain in an earlier compromise decree would be converted into a full-fledged ownership in view of Section 14 of the Act and that the findings of the Courts below were perfectly correct and no substantial question of law was involved. He placed reliance on Gumpha (Smt) and Others Vs. Jaibai, .

7. Learned Counsel for the parties agreed that the Second Appeal may be decided on merits without record.

8. Only two questions emerge for considerations-

(i) Whether the compromise decree in Title Suit No. 60 of 1945 by which the right of maintenance was alone given to Smt. Khudi Mahtain, would operate as res judicata and

(ii) Whether life estate granted to a widow on compromise would blossom into absolute ownership in view of Section 14(1) of the Act?

9. As regards first question suffice it to say that rights of the parties are not decided on merits in a decree for compromise. Consequently, if a decree is passed without contest that would not operate as res judicata. It may at the best operate as estoppel but there shall be no estoppel against a statute. There is another aspect that by virtue of statutory provision of Section 14 of the Act special full rights have been conferred on female Hindu in respect of any property possessed by her. Even though earlier compromise decree may operate as

estoppel but in such matters where statute has brought about tremendous change, rather revolution in the concept of old Hindu Law that a Hindu widow on the death of her husband used to get only a limited right as to maintenance, etc. and not a right of full-fledged ownership. The compromise decree could not operate as a *res judicata* it is well-settled principle now.

10. In *Bai Vajia (Dead) by Lrs. Vs. Thakorbhai Chelabhai and Others*, it has been ruled that limited ownership was *sine qua non* for applicability of Sub-Section (1) of Section 14 of the Act. It is undoubtedly a pre-existing right in property and it can be enforced by the Widow who can get a charge created for her maintenance either by an agreement or by a decree from the Civil Court. The expression "possessed" used by the legislature in Section 14(1) in my opinion is if the widest possible amplitude and includes the state of owning a property even though the widow is not in actual or physical possession of the property. It was thus ruled that even a female might not be in actual physical possession of the property but never the less she would become a full owner. In this case the widow even though was entitled to maintenance under the compromise decree in T.S. No. 60 of 1945 but that compromise decree would not even have the effect of estoppel, in view of the statutory change engrafted u/s 14(1) of the Act.

11. Recently in *Magat Mal v. Punni Devi* AIR1995 SC 3885, their Lordships of the Apex Court ruled that even though a compromise decree before the enforcement of Hindu Succession Act, 1956, might have become final and made only the provision for residence by giving her life interest in the property and some money for other comforts but life interest of the widow, after enforcement of the Act, in view of Section 14(1) of the Act would bloom into full ownership.

12. In *Jagannathan Pillai Vs. Kunjithapadam Pillai and Others*, was a case pertaining to interpretation of Section 14 of the Hindu Succession Act in which it was ruled that even though the widow might have lost possession when the Act came in force and if she regains possession after enforcement of the Act, she would become the absolute owner. In other words, the limited ownership of a Hindu female would enlarge into an absolute estate or full ownership of the property in question, even though she was not in possession on the date of enforcement of the Act.

13. *Gumpha (Smt) and Others Vs. Jaibai*, was a case where recently the Apex Court (Hon"ble R. M. Sahay, J) has very succinctly enumerated case law on the subject and ruled that the limited estate of Hindu widow would enlarge into the full-fledged ownership in view of Section 14 of the Act.

14. Under para-10 of the judgment of the 1st Additional District Judge, Dumka it has been specifically indicated that Schedules A and B properties were recorded in the name of Khudi Mahtain and so far Schedule C and D was concerned, both properties jointly stand recorded in the name of Guhi Mahto and also in the name of adoptive mother of the plaintiff-respondent. Smt. Khudi Mahtain was in possession over Schedules A and B properties and she was in joint possession

with Guhi Mahto, the other co-sharer in Schedule C and D properties after the enforcement of Hindu Succession Act, 1956. The suit was correctly decreed primarily on the basis of the provision of Section 14 of the Act to the extent of exclusive right and title in Schedule A and B properties and upon 1/2 share in Schedule C lands etc. and the same decree has been correctly maintained.

15. There appears no dispute that Smt. Khudi Mahtain possessed the properties in dispute to the extent she claimed relief. The expression "possessed" is not to be interpreted in a limited sense, rather it is an expression more comprehensive than a simple possession. The Parliament wanted that life estate of a Hindu female must blossom into full ownership and with that object Section 14(1) was enacted. In *Thota Sesharathamma v. Thota Manikyathamma* (supra) it was held by the Apex Court that Hindu Succession Act revolutionized the status of a Hindu female and Section 14(1) was a tool to undo past injustice to enable her to have equal status with that of a male Hindu. Section 14(2) of the Act is substantially in the nature of a proviso and it only indicated that where property was acquired without there being any pre-existing right by a Hindu female just like acquisition by gift, etc. in such situation Section 14(1) would not apply. But in the instant case there was certainly pre-existing right prior to the enforcement of the Act as a limited owner and that would, in my humble opinion, blossom into rights of a Hindu female.

16. In my opinion, both the Courts below after having considered the entire evidence on record have held that Smt. Khudi Mahtain was a limited owner, hence after enforcement of the Act, in view of Section 14(1) she would become a full owner and as an adopted son plaintiff would inherit that right after her death.

17. u/s 100 of the Code for making interference by the Second Appellate Court after C.P.C. Amendment, 1976 there must be substantial question of law involved and that question must have been incorrectly decided. In the instant case the correct interpretation of Section 14(1) of the Act is certainly the substantial question of law but that question of law has been correctly decided by the Courts below. There would be no jurisdiction for interference "in the second appeal u/s 100 of the Code. In my opinion, the suit has been correctly decreed by the Courts below.

18. Consequently, this Second Appeal fails and the same is dismissed summarily at the stage of hearing under Order XII, Rule 11 of the Code of Civil Procedure.