
(1957) 08 PAT CK 0013
In the Patna High Court
Case No : A.F.A.D. No. 829 of 1952

Julam Missir and Others

APPELLANT

Vs

Pradip Missir and Others

RESPONDENT

Date of Decision : 21-08-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 101
Evidence Act, 1872 — Section 4
Hindu Succession Act, 1956 — Section 14, 15
Transfer of Property Act, 1882 — Section 52

Citation : AIR 1958 Patna 115

Hon'ble Judges : Sahai, J

Bench : Single Bench

Advocate : A.K. Mittar, for the Appellant; Kailash Rai and B.K. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Sahai, J.—This appeal by defendants Nos. 1 to 4 arises out of a suit for declaration of the title to, and recovery of possession over, properties, described in schedules B, C and D attached to the plaint. The plaintiffs have also filed a cross objection.

2. Defendant No- 5 is the widow of one Ramkhelawan. Plaintiff No. 1 the father of plaintiff No. 2 is Ramkhelawan's brother.

3. Defendant No 1 had executed a mortgage bond (exhibit 4/b) in respect of the property described in Schedule D in favour of Ramkhelawan on the 24th July, 1933. On the 29th October, 1945, defendant No. 5 executed a receipt (exhibit F) in favour of defendant No. 1 acknowledging payment of the dues under that mortgage bond. On the same date, defendant No. 5 executed a bharna bond (exhibit 4/a) in respect of the property described in Schedule C in favour of defendants Nos. 2 and 3. On the 4th February, 1946, defendant No. 5 executed a sale deed (exhibit B) in respect of the property described in Schedule B in favour

of defendant No. 4. These facts are not in dispute.

4. Shortly stated, the plaintiffs' case is that that Ramkhelawan died in a state of jointness with them and that the documents referred to above are invalid because defendant No. 5 had no right to execute them and also because she executed them without consideration and without any legal necessity.

5. The common defence of defendants Nos. 1 to 4 is that Ramkhelawan had separated from the plaintiffs before his death that defendant No. 5 inherited the properties left by Ramkhelawan that he had a right to execute the aforesaid documents, and that the plaintiffs' case relating to want of consideration and legal necessity is wrong. Defendant No. 4 has further alleged that the property described in schedule B which was covered by the sale deed (exhibit B), was the self acquired property of Ramkhelawan and that the plaintiffs had in any event, no right to that property.

6. The Courts below have found that Ramkhelawan died in a state of jointness with the plaintiffs, and that defendant No. 5 executed the receipt (exhibit F) and the bharna bond (exhibit 4/a) without any consideration or legal necessity. The lower appellate Court has further found that the defendants Nos. 2 and 3 did not make any bona fide enquiry about the existence of legal necessity before entering into the transaction evidenced by the bond (exhibit 4/a). Both the Courts below have also come to the conclusion that the property described in Schedule B was acquired by the joint family in the name of Ramkholawan, that defendant No. 5 executed the sale deed (exhibit B) for consideration and legal necessity and that title to half of the Schedule B property, therefore, legally passed to defendant No. 4.

7. It appears that the suit was instituted on the 17th April, 1946, and defendant No. 5 executed a deed of surrender (exhibit 8) on the 3rd September 1946, relinquishing her entire right, title and interest in the properties left by her husband, Ramkhelwan in favour of th(c) nearest reversioner. In view of this deed of surrender, the Courts below have passed a de-cree for possession in favour of the plaintiffs an respect of the Schedule C and D properties and half of the Schedule B property.

8. Appearing on behalf of the appellants, Mr. Mitter has raised two points. The first point is that the lower appellate Court should have held the entire schedule B property to be the separate property of Ramkhelawan and it has erred in not attaching due weight to the fact that, after Ramkhelawan's death the name of defendant No. 5 was mutated in register D in respect of that property in its entirety.

9. In support of this argument, he has relied upon an observation of Sir Madhavan Nair in Mt. Inder Kuer v. Mt. Pirthipul Kuer AIR 1945 P.C. 128 (A). The observation relates to the mutation of a widow's name in place of that of her husband and is as follows:-

"This instance of mutation strongly supports the view that Sheo Singh before his death must have become separate in estate from Mathura Singh for, if they were joint, mutation would in the normal course be in the name of Mathura Singh and not in the name of the widows."

Mr. Mitter's argument is that, in view of the provisions of the Hindu Women's Right to Property Act, 1937 defendant No. 5 was entitled to be mutated in respect of the properties held by her husband only and that she could not be mutated in respect of the entire joint family properties in which the share of her husband at the time of his death was only half.

10. He has contended that the fact that she was mutated in respect of the entire Schedule B property is a fact which, in accordance with the observations of their Lordships must be held to show that her husband separately acquired the whole of that property, and other members of the joint family had no concern with it. I am unable to accept this contention. The observations quoted above do not show that the mere fact that a widow's name is mutated in place of that of her husband is conclusive proof of the fact that her husband was separate from other members of the family though it is a circumstance which strongly supports that view. This circumstance has to be considered along with other circumstances. The learned District Judge has in this case, considered some other circumstances including the circumstance that the sale deed standing in Ramkhelawan's name was produced by the plaintiffs. After careful consideration and in spite of mutation of the name of defendant No. 5 in place of that of Ramkhelawan he has been unable to hold that the entire property was acquired by Ramkhelawan alone. I do not think that he has committed any error of law in this respect. The finding which he has arrived at is a finding of fact and is binding upon this Court in second appeal.

11. The second point which Mr. Mitter has urged is based upon the Hindu Succession Act, 1956. He has drawn my attention to Section 14 of that Act which provides that a female Hindu shall hold any property which she possesses as full owner and not as a limited owner, irrespective of whether she acquired that property before or after the commencement of this Act. He has submitted that, in view of this section, a woman holding property is no longer a limited owner but a full owner and there is, therefore no question of there being a reversioner. On this basis, he has further argued that the plaintiffs suit on the allegation that they are reversioners must fail in respect of both schedules B and C properties. In support of his arguments, he has drawn my attention to Ram Ayodhya Missir and Others Vs. Raghunath Missir and Others, In that case a Bench of this Court had to consider the effect of Sections 14 and 15 of the Hindu Succession Act, 1956. Their Lordships observed.:

"The effect of these sections is that the plaintiff in the present case is no more a reversioner and that the estate of Mosammatt Parkalo Kuer is not a limited estate but an absolute estate and that the plaintiff has no vested interest in the property nor has he a right of reversion or any kind Of spes successionis. If that

is the effect of Sections 14 and 15 of the Statutes, it must be taken that the plaintiff has no right to bring a suit for a declaration that the sale deed executed by Mosamatt Surcha Kuer in favour of defendants 2 and 3 was a farzi or collusive document or that there was no legal necessity.'"

12. This decision has been followed in the unreported case of Mt. Janki Kuer v. Chhathu Prasad First Appeal No. 304 of 1948, disposed of on 23-7-1957: ((S) Mt. Janki Kuer and Others Vs. Chhathu Prasad and Others, . It is, therefore, clear that a woman becomes full owner of a property which she acquires on inheritance or otherwise.

13. Mr. Kailash Rai, appearing on behalf of the respondents, has however, contended that the very basis on which Mr. Mitter has founded his argument is absent in the sense that the plaintiffs have not prosecuted this suit in the capacity of reversioners. He has pointed out that the plaintiffs got their plaint amended and thereafter they made a prayer for recovery of possession, in their favour on the ground that they had become owners of the properties in dispute on surrender made by the widow, defendant No. 5. He has submitted that the widow made the surrender on the 3rd September, 1946, and divested herself of her entire interest in the properties left by her husband long before the Hindu Succession Act of 1956, came into force on the 17th June, 1956 and hence she cannot be held to have become an absolute) owner of those properties in accordance with the provisions of that Act.

Mr. Mitter has replied that the deed of surrender cannot affect the defendants' rights because the surrender having been made by a party to the suit during its pendency the doctrine of lis pendens will apply. This argument seems to me to proceed upon a misconception of the nature and implication of the doctrine of surrender by a Hindu widow. A Hindu female now acquires an absolute estate under the Hindu Succession Act, 1956 in any pro-party which she possesses. Before the Act came into force, she acquired only a limited estate which constituted an obstruction between the last full owner and the next full owner. By means of surrender she could effect the removal of that obstruction and destruction of her estate. It operated as her self effacement and complete renunciation amounting to her civil death.

14. Lord Dunedin, who delivered the judgment of the Judicial Committee in Ranga-sami Gounden v. Nachiappa Gounden 46 Ind App 72: AIR 1918 PC 196) (D), bserved as to the nature of surreder as follows:--

"It is the effacement of the widow an effacement which in other circumstances is effected by actual death or civil death which opens the estate of the deceased husband to his next heirs at that date."

15. In Prafulla Kamini Roy Vs. Bhabani Nath Roy, , Page J. observed at page 1038 (of ILR Cal) : (at p. 129 of AIR).

"The estate which passes to a Hindu widow by way of inheritance from her

husband subsists until it is determined by the happening of some event which, according to the principles of Hindu law, puts an end to it. It is settled law that one of the events which effect the determination of a widow's estate is the surrender of her entire interest in the inherited property to the next reversioners."

16. This view was accepted by a Bench of the Calcutta High Court in *Ram Krishna Prodhan Vs. Sm. kousalya Mani Dasi and Others*, . D. N. Mitter J. stated at page 214 (of Cal WN) : (at p. 695 of AIR) :

"We think the logical consequence of the doctrine of surrender which means a self effacement of the widow and amounts to a civil death -and complete extinguishment of the title of the widow in her husband's estate is that all prior alienations in excess of her powers are liable to be challenged immediately on her civil death I just as they could be impeached after she had died". "

It is obvious that the words which I have underlined (here into " ") are important as showing what surrender implies.

17. A full Bench of the Bombay High Court has considered and followed the decisions referred to above in *Natvarlal Punjabhai and Others Vs. Dadubhai Manubhai and Another*, . in that case Chagla C. J. has observed.

"As I shall presently point out and as the later decisions of the Privy Council make it clear, the basic principle of surrender is the destruction by the widow by her voluntary act of her life interest in her husband's estate."

18. He has again observed at page 59 of the report.

"I should again like to emphasise that a surrender by a Hindu widow according to Hindu law is not so much a transfer or an assignment of her life interest to the next reversioners as a renunciation in favour of the next reversioners. The significance of renunciation is very different from the significance that attaches to the conception of a transfer or an assignment."

19. It is perfectly from the decisions cited above that surrender by a Hindu widow did not amount to a transfer or assignment of her interest in the properties held by her as a limited owner, but it amounted to her complete removal of herself in so far as the estate was concerned. To all intents and purposes, therefore, surrender of her interest by a Hindu widow had to be treated in so far as the property left by the last full owner was concerned, as if her natural death had taken place. Hence, it cannot be held that by making the surrender, defendant No. 5 "transferred or otherwise dealt with" the properties in dispute within the meaning of Section 52 of the Transfer of Property Act.

That being so, it is manifest that the surrender made by defendant No. 5 is not hit by the doctrine of *lis pendens* embodied in that section. It follows that the surrender became effective as soon as it was made and defendant No. 5 having already effected her civil death, ceased to have any interest whatsoever in the

properties in dispute. The plaintiffs then ceased to be reversioners and became absolute owners of those properties. In these circumstances it cannot be held that defendant No. 5 became the owner of the properties when the Hindu Succession Act of 1956 came into force Or that the plaintiff's suit is liable to fail.

20. There being no merit in any of the two points raised by Mr. Mitter the appeal is dismissed with costs. Mr. Kailash Rai has not pressed the cross objection, and that is also, therefore, dismissed but without costs.