
(2009) 04 OHC CK 0008
In the Orissa High Court

Khirodini Mohapatra and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 16-04-2009

Acts Referred:

Hindu Succession Act, 1956 — Section 12, 14

Citation : AIR 2009 Ori 176 : (2009) 108 CLT 625 : (2009) 1 OLR 1104 Supp

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—The orders dated 8th August, 1985 and 9th October, 1998 passed by the Deputy Director, Consolidation of Holdings, Sambalpur in Appeal Case No. 75 of 1984 (Annexure-3) and the Joint Commissioner, Settlement and Consolidation, Sambalpur in Consolidation Revision Case No. 799 of 1988 (Annexure-4) respectively are assailed in this writ application.

2. Bereft of unnecessary details, the short facts necessary for appreciating the inter se disputes are stated hereinbelow:

One Chakradhara was the common ancestor of the contesting parties. Jadumani and Kasinath were his two sons. Jadumani died leaving behind his son Purnachandra. Suryamani is the wife of Purna Chandra and is impleaded as opposite party No. 5 to this writ application, Kasinath the 2nd son of Chakradhara died leaving behind his wife Ambika and son Lalsaheb. Khirodini, petitioner No. 1 is the widow of Lalsaheb. Chakradhara was admittedly the absolute owner of the properties in dispute. Purna Chandra, husband of Suryamani (opposite party No. 5) died before his grand father Chakradhara. After the death of Chakradhara, Jadumani and Kasinath, his two sons possessed the disputed properties along with others. While matter stood thus, Purna Chandra died, consequently the properties were managed by Jadumani and Kasinath. For maintenance of Suryamani, the widow of Purna Chandra, a deed of

settlement was executed and registered on 3rd November, 1951 by the members. By virtue of the said settlement deed, some of the properties were allotted in favour of Suryamani towards her maintenance. According to the terms and conditions of the deed of settlement, Suryamani was to enjoy the disputed land during her life time for her substance, but she was prevented to alienate the same by way of sale, gift, mortgage, exchange or otherwise. The major settlement record of rights reveals that the properties were jointly recorded. After the mouza, where the disputed lands were situated, was brought within the fold of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972, hereinafter to be called as "the Consolidation Act", in short, land register was prepared and published. Assailing the said recording, objection cases being Objection Case Nos. 3356/1353, 2910/907, 2307/904, and 3404/1401 were filed by different persons. For the sake of convenience, all the cases were clubbed together by the Consolidation Officer, Attabira. Out of the said cases, Objection Case Nos. 3356/1353 and 2910/907 relate to partition of lands appertaining to Hal Khata No. 974. On the other hand, Objection Case No. 2307/904 and 3404/907 relate to mutation of plots of lands out of the said holding.

The main controversy raised before the Consolidation Officer was with regard to the lands, which were allotted in favour of Suryamani (opposite party No. 5) towards her maintenance under the deed of settlement. According to opposite party No. 5, the lands which were allotted to her for the purpose of maintenance in the year 1951 became her absolute properties after the Hindu Succession Act, 1956 came into force. It is averred that in consonance with Section 14 of the Hindu Succession Act, limited right of a Hindu female over properties allotted to her towards maintenance after her husband expired became absolute after enforcement of 1956 Act. The said contention was opposed by the contesting parties. It is submitted that as the properties were settled by a deed of settlement in consonance with Section 14(2) of the Hindu Succession Act, the restrictions imposed would continue.

The Consolidation Officer after hearing all the parties held that the properties having been settled upon opposite party No. 5 by means of a registered deed, in consonance with Sub-section (2) of Section 14 of the Hindu Succession Act, she will have no right to alienate the same during her life time and the restrictions imposed by registered deed shall prevail. On the basis of such conclusion, all the cases were disposed of by a common judgment.

Suryamani (opposite party No. 5) filed an appeal u/s 12 of the Act before the Deputy Director, Consolidation of Holdings, Sambalpur assailing the order dated 2-4-1984 passed by the Consolidation Officer, Attabira in Objection Case No. 3356. According to the petitioners, the properties having been settled in the year 1951 by a registered deed of settlement, towards her maintenance, she became the absolute owner and acquired valid right, title and interest over the same in consonance with Section 14(1) of the Hindu Succession Act, 1956. The Deputy

Director after discussing the inter se disputes came to the conclusion that in consonance with Section 14(1) of the Hindu Succession Act, 1956, the limited right created in favour of Suryamani (opp. party No. 5) became absolute and she acquired a valid right, title and interest in respect of the properties, which were settled in her favour towards her maintenance and set aside the order passed by the Consolidation Officer and directed to record the same in her favour.

Lalsaheb and others assailed the order passed by the Deputy Director before the Joint Commissioner, Settlement and Consolidation in Consolidation Revision No. 799 of 1988 filed u/s 36 of the Act. During the pendency of the appeal, Lalsaheb having died he was duly substituted by her legal heirs.

The Joint Commissioner after hearing learned Counsel for the parties and after perusing the registered deed of settlement arrived at a conclusion that the claim is squarely covered u/s 14(1) of the Hindu Succession Act, 1956. According to the Joint Commissioner, limited right of a widow over the property, became absolute, after commencement of the Hindu Succession Act, 1956. It was further held that as Suryamani (opposite party No. 5) was in continuous, uninterrupted and peaceful possession of the lands, which were settled in her favour towards her maintenance by registered settlement deed executed in the year 1951 till the commencement of the Hindu Succession Act, 1956, and had acquired valid right, title and interest over the same, bereft of the restrictions imposed by the deed. The said order, as stated above, is assailed in this writ application.

3. In course of hearing, mainly two points were urged before this Court. (1) The lands having been settled in favour of Suryamani (opposite party No. 5) by a registered deed of settlement executed in the year 1951 and as she was possessing the same in consonance with the said deed, the case would be squarely covered under Sub-section (2) of Section 14 of the Hindu Succession Act, 1956 and Suryamani can never acquire absolute right over the properties settled by a deed executed in 1951. The second contention is with regard to maintainability of one writ application against the common order passed in several objection cases.

4. So far as the first point is concerned, there is no dispute with regard to the fact that Suryamani is the widow of Purna Chandra, who pre-deceased his father Jadumani and grand father Chakradhara. Further, admittedly there was no partition of the joint family properties belonging to Chakradhara by metes and bounds between his two sons Jadumani and Kasinath. Suryamani (opposite party No. 5) was the only survivor so far as Jadumani's branch is concerned, whereas Khirodini the present petitioner No. 1, her late husband Lalsaheb and others belong to the branch of Kasinath. There is no dispute that by a registered deed of settlement dated 3rd November, 1951, the disputed properties were allotted to Suryamani in lieu of her maintenance and she was in possession of the said lands and out of usufructs thereof she was maintaining herself till the enactment of the Hindu Succession Act, 1956.

5. On the basis of the aforesaid facts, the moot question, which needs determination is as to whether Sub-section (1) or Sub-section (2) of Section 14 of the Hindu Succession Act, will be applicable to the present case. For the sake of brevity and better understanding. Section 14 of the Hindu Succession Act, 1956 is quoted hereinbelow:

14. Property of a Female Hindu to be her absolute property.- (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation : In this sub-section, "property" included both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in Sub-section (1) shall apply to any property acquired by way of gift or under a Will or any other instrument or under a decree or order by a civil Court or under an award where the terms of the gift, Will or other instrument or the decree, order or award prescribe a restricted estate in such property.

6. Under the Hindu law, before commencement of the Act, 1956, separate rules existed for devolution of a women's property. Prior to the Act, a female Hindu possessed two kinds of property : (1) Stridhan, (2) Hindu Women's Estate. Over Stridhan property, women had full ownership and on her death it devolved on her legal heirs. So far as the property which she acquired as women's estate, her position was that of owner, but her power of alienation was limited. On her death, such property devolved not on her own heirs, but upon the next heirs of the last full owner. This concept, however, was abolished by Section 14 of the Hindu Succession Act. By virtue of Section 14 Hindu Women's Estate was abolished and it conferred on the women absolute ownership over all her property howsoever acquired by her. A reading of Sub-section (1) of Section 14 makes it clear that any property possessed by a female Hindu whether acquired before or after the commencement of the Act shall be held by her as full owner. The word "possessed" used in the section means, "right to possess" and not (only) actual physical possession as has been held by the Supreme Court in the case of Dr. Mahesh Chand Sharma Vs. Smt. Raj Kumar Sharma and others, .

7. The property which was set apart for maintenance of a Hindu widow and which was in her possession prior to commencement of Hindu Succession Act, 1956 became her absolute property within, the meaning of Sub-section (1) of Section 14 of the Act. In the case of Vijay Pal Singh and another Vs. Deputy Director of Consolidation and others, , the Supreme Court held that where a widow was in

possession of a property when 1956 Act came into force, her limited estate would be enlarged into absolute right.

8. In the case of *Gullapalli v. Vishmalapala*, AIR 1978 SC 362 the Supreme Court observed that where a widow was placed in possession of certain joint family property in lieu of her right to maintenance, her right to the property in question became enlarged into an absolute estate u/s 14(1). The Supreme Court explaining the amplified scope of Section 14(1) has observed that where some property was given to a Hindu widow by way of her maintenance under a settlement or award, by the members of a joint Hindu family, that property shall become her absolute property, if she was in possession of that property in lieu of her pre-existing right of maintenance, and her limited rights would be blossomed into full ownership rights and she would be entitled to alienate the same.

9. The rule that the property howsoever acquired by a female Hindu shall be her absolute property as per Sub-section (1) of Section 14, is subject to the provision of Sub-section (2) of the said Section. According to the said sub-section, the woman does not become the absolute owner of the property acquired by gift, will or any other instrument, decree or order of a Civil Court or an award, if such gift, will, instrument, decree, order or award gives her only restricted right. The purpose and legislative intention which surfaces from a combined reading of Sub-section (1) and (2) of Section 14 is that, it attempts to remove the disability which was imposed by the customary Hindu law on acquisition of rights by a female Hindu but it does not enlarge the right which she gets under will etc, giving her a limited estate

10. Divergent opinions prevailed with regard to right of a Hindu widow vis-a-vis the properties possessed by her towards maintenance was set at rest in the case of *V. Tulasamma and Others Vs. Sesha Reddy (Dead) by Lrs.*, , Paragraph 62 of the said judgment reads as follows:

62. (1) The Hindu female's right to maintenance is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognized and enjoined by pure Shastric Hindu Law and has been strongly stressed even by the earlier Hindu jurists starting from Yajnavalkya to Manu. Such a right may not be a right to property but it is a right against property and the husband has a personal obligation to maintain his wife and if he or the family has property, the female has the legal right to be maintained therefrom. If a charge is created for the maintenance of a female, the said right becomes a legally enforceable one. At any rate, even without a charge the claim for maintenance is doubtless a pre-existing right so that any transfer declaring or recognizing such a right does not confer any new title but merely endorses or confirms the pre-existing rights.

(2) Section 14(1) and the Explanation thereto have been couched in the widest possible terms and must be liberally construed in favour of the females so as to

advance the object of the 1956 Act and promote the socioeconomic ends sought to be achieved by this long needed legislation.

(3) Sub-section (2) of Section 14 is in the nature of a proviso and has a field of its own without interfering with the operation of Section 14(1) materially. The proviso should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by Section 14(1) or in a way so as to become totally inconsistent with the main provision.

(4) Sub-section (2) of Section 14 applies to instruments, decrees, award, gifts, etc. which create independent and new titles in favour of the females for the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognize pre-existing rights. In such cases a restricted estate in favour of a female is legally permissible and Section 14(1) will not operate in this sphere. Where, however, an instrument merely declares or recognizes a pre-existing right, such as a claim to maintenance or partition or share to which the female is entitled, the sub-section has absolutely no application and the female's limited interest would automatically be enlarged into an absolute one by force of Section 14(1) and the restrictions placed, if any, under the document would have to be ignored. Thus where a property is allotted or transferred to a female in lieu of maintenance is allotted or transferred to a female in lieu of maintenance or a share at partition, the instrument is taken out of the ambit of Sub-section (2) and would be governed by Section 14(1) despite any restrictions placed on the powers of the transferee.

(5) The use of express terms like "property acquired by a female Hindu at a partition", "or in lieu of maintenance", "or arrears of maintenance", etc. in the Explanation to Section 14(1) clearly makes Sub-section (2) inapplicable to these categories which have been expressly excepted from the operation of Sub-section (2).

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(Emphasis supplied)

11. The principle enunciated in the aforesaid decision has been reiterated in a number of decisions later, but has never been departed from. In the case of Bai Vajia (Dead) by Lrs. Vs. Thakorbbhai Chelabhai and Others, the Supreme Court observed as follows:

The claim to maintenance, as also the right to claim properly in order to maintain herself, is an inherent right conferred by the Hindu law and, therefore, any property coming to her in lieu of maintenance is merely in recognition of the claim or right which the widow possessed from before. It cannot be said that such a right has been conferred on her for the first time by virtue of the documents concerned and before the existence of the documents, the widow had no vestage of claim or right at all.

12. In the case of Mangat Mal v. Punni Devi AIR 1996 SC 1712, it was held that:

Maintenance necessarily must encompass a provision for residence; maintenance is given so that the lady can live in the manner, more or less, to which she was accustomed. The concept of maintenance must therefore, include provision for food and clothing and the like and take into account the basic need of roof over her head. Provision of residence may be made either by giving a lump sum in money or property in lieu thereof. It may also be made by providing for the course of the lady's life a residence and money for other necessary expenditure. Where provision is made in this manner by giving life interest in property for the purpose of residence, that provision is made in lieu of a pre-existing right to maintenance and the Hindu lady acquires for more than the vestage of title, which is deemed sufficient to attract Section 14(1) of the Hindu Succession Act, 1956.

13. In the case of State of M.P. and Others Vs. Sanjay Kumar Pathak and Others, the Supreme Court reiterated the law once again.

14. A cumulative reading of all the decisions leads to an irresistible conclusion that the provision of Sub-section (2) of Section 14 shall apply only where the properties acquired by a female Hindu for the first time as a grant without any pre-existing right under a gift, will, instrument, decree, order or award, the terms of which prescribe restricted estate in the property, whereas in consonance with Sub-section (1) of Section 14, any property given to a female Hindu in lieu of her maintenance before commencement of the Hindu Succession Act, would become her absolute on the commencement of the Act provided the said property was possessed by her.

15. In the case in hand, it would be very much evident that after the death of the husband, the surviving heirs settled certain lands in her favour towards her maintenance by registered settlement deed executed in the year 1951. Opposite party No. 5 was in possession of the said lands and was maintaining herself out of the usufructs. Thus, she would become the absolute owner thereof after commencement of the 1956 Act in consonance with the provisions of Sub-section (1) of Section 14. In other words the provision of Sub-section (2) of Section 14 of 1956 Act is not applicable to the case in hand. The first contention thus stands answered.

16. So far as the other contention, i.e. maintainability of one appeal against the common order passed in several objection cases as well as one revision and one writ application is concerned, it appears that the said plea was not raised by the petitioners either before the appellate authority or before the Joint Commissioner. Law is well settled that the plea of maintainability of a case has to be raised at the very threshold, that is at the earliest opportunity. In the instant case, the objection was raised neither before the appellate authority nor in revision. Though the parties took active part in both the forums and in fact, the petitioner had also filed one revision. That apart, as has been stated earlier, two of the objection cases were with regard to partition and the other two were with regard to mutation of the lands. The issues in each of the cases were completely

different though the cases were clubbed together and disposed of by one order. The subject matter of the objection cases were different, so also the issues. Thus, the decision of one of the four objection cases tried and decided together will not operate as res judicata as has been held by the Supreme Court in the case of Ramagya Prasad Gupta and Others Vs. Murli Prasad and Others, . Further, Consolidation Revision No. 799/88 was disposed of by the Joint Commissioner, Settlement and Consolidation in the year 1998. This writ application was filed in the year 2000. The delay of near about two years has not been explained. Considering all these facts and as the point of law raised by the parties required to be answered in the interest of substantial justice.

17. After going through the impugned orders, Annexures-3 and 4, this Court is satisfied that the Deputy Director and the Commissioner, Consolidation have not committed any error and the conclusions arrived at are in consonance with law and do not suffer from any infirmity and deserves no interference by this Court. The writ application is, accordingly, dismissed. No costs.