
(1996) 09 OHC CK 0029

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1368 of 1990

Krushna Panda

APPELLANT

Vs

Smt. Godabari alias Sundari Panda and Others

RESPONDENT

Date of Decision : 20-09-1996

Acts Referred:

Hindu Succession Act, 1956 — Section 14

Citation : (1997) 83 CLT 116 : (1997) 1 OLR 60

Hon'ble Judges : P.C. Naik, J;Dipak Misra, J

Bench : Division Bench

Advocate : N.C. Pati, A.K. Nanda, B.K. Nayak and B. Sahoo, for the Appellant; S. Mishra (2), S. Mantry, R.C. Rath and A.K. Mishra (opp. party No. 1) and Addl. Standing Counsel (Opp. parties No. 2 to 4), for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.—Challenge is with regard to the order passed by the Commissioner of Consolidation the revisional authority under the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (hereinafter referred to as the Act) reversing the orders passed by the original and the appellate authority namely, the Consolidation Officer and the Deputy Director by the present writ petitioner

2. The facts which emerge from the averments in the writ application are that one Sagar Panda was the common ancestor and after his death, his two sons Nidhi and Chakradhar became the owners in possession over the disputed properties, appertaining to C. S. Plot Nos. 1087, 1784, 1703, 2057, 2092, 2565, 2094 and 1734. They were amicably separated and there was severance of status. Chakradhar died issueless leaving behind his wife Saria. Nidhi died leaving his son Bansi. Sundari is the only survivor from Bansi's branch. Chakradhar had expired prior to 1928, and as there was already severance of joint family status, name of Saria was recorded in 1928 settlement of record-of-rights as she had 8 annas interest in the property .By virtue of a registered sale

deed dated 6-1-1965, she transferred the disputed properties and delivered possession thereof to the present petitioner. The petitioner in his turn had sold a portion of the suit properties to Gouranga Panda, the son of opp. party No, 1.

3. During consolidation operation, the petitioner instituted objection case No. 1331/82 u/s 9(3) of the Act, claiming for recording L. R. Plot Nos. 1233, 2007, 2294, 2334, 2933, 2335 and 1986 in his favour. There are other claimants who had prayed for recording their names on the basis of their purchase from the present petitioner. The claim of the petitioner was resisted by the opp. party No. 1 on the ground that the suit property was the property of Sagar, and Chakradhar having died prior to 1928, his wife had no alienable interest.

After stating the decision of the authorities and submissions of counsel for both sides, the Hon"ble Court held :

6. The admitted factual position is that the properties belonged to Nidhi and Chakradhar. After death of Chakradhar, name of Saria was recorded in the record-of rights. The entry in the record-of-rights was not questioned for six decades. No evidence has been adduced by the opp. party No. 1 to prove that the suit property was the joint ancestral property of Nidhi and Chakradhar. The branch of Nidhi enjoyed the properties belonging to Nidhr and Saria exclusively dealt with her property. It is relevant to state here that for considerable length of time, Saria had independently executed documents in favour of many purchasers, and one such document she had executed in favour of Gouranga Panda, son of opp. party No. 1 in the year 1976. The factual scenario as emerges makes crystal clear that the suit property was not joint ancestral property and Saris had exclusive title to the same.

7. True it is, entry in the record-of-rights does not create or extinguish the title, but it has its presumptive value in the case in hand when the entry in R. O. R. has gone unchallenged for almost 60 years and there is no rebuttable evidence in the present proceeding, it is enormously difficult to accept the submission of the learned counsel for the opp. party No. 1 that the property was joint ancestral property and there was no severance of status. On the contrary, coupled with other evidence on record, it leads to the irresistible conclusion that there was severance of status and Saria had exclusive ownership.

8. The whole factual backdrop can be analysed from another aspect. Saria's name was recorded in 1928-30 settlement and that gives rise to a presumption that she was in possession of disputed land. Her possession, at no point of time has been disputed. In the year 1965, she sold the land in favour of the petitioner and gave delivery of possession. The finding of the Consolidation Officer is that Sundari is in possession of half share of the properties only and not in possession in respect of Sana's interest The son of the opp. party No.1, as indicated earlier on. had purchased a portion of the land from the present petitioner and possession was delivered. Thus, it beomes plain as day that Saria was in possession from 1928 onwards till she alienated her interest in the year 19o5.

Therefor, it said that she was in possession in the year 1956 .By virtue of her possession, in the year 1956, by operation of law in terms of Section 14 of the Hindu Succession Act. her inchoate right became an absolute right and she became the full owner of the land in question. In this regard , we may profitably refer to the decisions rendered in the case of Seth Badri Prasad Vs. Srimati Kanso Devi, , Vaddeboyina Tulasamma and Ors. v. Vaddeboyina Sesha Reddi(dead) by L. Rs AIR 1977 SC 1944(Vaddeboyina Tulasamma and Ors. v. vaddeboyina sesha reddy(dead) by L.Rs. reported in Gulwant Kaur and Another Vs. Mohinder Singh and Others, reported in Vijay Pal Singh and another Vs. Deputy Director of Consolidation and others, . We may profitably refer to the decision rendered in the case of vaddiboyina Tulasamma (supra) wherein their Lordships observed as follows:

"?.. it will, therefore, be seen that Sub-section (1) of Section 14 is large in its amplitude and covers every kind of acquisition of property by a female Hindu including acquisition in lieu of maintenance and where such property was possessed by her at the date of commencement of the Act or was subsequently acquired and possessed, she would become the full owner of , the property.

4. Now, Sub-section (2) of Section 14 provides that 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 of 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. This provision is more in the nature of a proviso or exception to Sub-section (1) and it was regarded as such by this Court in Seth Badri Prasad Vs. Srimati Kanso Devi,",

In the said decision, it has been pronounced thus :

".....It is, therefore, clear that under the Sastric Hindu Law a widow has a right to be maintained out of joint family property and this right would ripen into a charge if the widow takes the necessary steps for having her maintenance ascertained and specifically charged on the joint family property and even if no specific charge is created, this right would be enforceable against joint family property in the hands of a volunteer or a purchaser taking it with notice of her claim The right of the widow to be maintained is of course not a jus in rem since it does not give her any interest in the joint family property but it is certainly jus ad rem. i. e. a right against the joint family property. Therefore, when specific property is allotted to the widow in lieu of her claim for maintenance, the allotment would be in satisfaction of her jus ad rem, namely, the right to be maintained out of the joint family property. it would not be a grant for the first time without any pre-existing right in the widow. The widow would be getting the property m virtue of her pre-existing right, the instrument giving the property being merely a document effectuating such pre-existing right and not making a grant of the property to her for the first time without any antecedent right or title. There is also another consideration which is very relevant to this issue and it is that even if the instrument were silent as to the nature of the

interest given to the widow in the property and did not, in so many terms, prescribe that she would have a limited interest, she would have no more than a limited interest in the property under the Hindu law as it stood prior to the enactment of the Act and hence a provision in the instrument "prescribing that she would have only a limited interest in the property would be to quote the words of this Court in *Nirmnal Cband's Case*, C.A. No. 609 of 1955, D/21-1-1969 (SC) (supra) "merely recording the true legal position"" and that would not attract the applicability of Sub-section (2) but would be governed by Sub-section (I) of Section 14. The conclusion is therefore, inescapable that where property is allotted to a widow under an instrument decree, order or award (which) prescribes a restricted estate for her in the property and Sub-section (2) of Section 14 would have no application in such a case."

In this context, the view expressed by the apex Court in the case of *Jagannathan Pillai Vs. Kunjithapadam Pillai and Others*, is as follows :

"5. On an analysis of Section (1) of the Hindu Succession Act, 1956, it is evident that the Legislature has abolished the concept of limited ownership in respect of a Hindu female and has enacted that any property possessed by her would thereafter be held by her as a full owner. Section .14(1) would come into operation if the property at the point of time when she has an occasion to claim or assert a title thereto Or in other words, at the point of time when her right to the said property is called into question. The Segal effect of Section 14(1) would be that after the coming into operation of the Act there would be no property in respect of which it could be contended by anyone that a Hindu female is only a limited owner and not a full owner. (We are for the moment not concerned with the fact that Sub-section (2) of Section 14 which provides that Section 14(1) will not prevent creating a restricted estate in favour of a Hindu female either by gift or will or any instrument or decree of a Civil Court or award provided the very document creating title unto her confers a restricted estate on her. There Is nothing in Section 14 which supports the proposition that a Hindu female should be in actual physical possession or in constructive possession of any property on the date of the coming into operation of the Act. The expression "possessed" has been used in the sense of having a right to the property or control over the property. The expression "any property , possessed by a Hindu female whether acquired before or alter the commencement of the Act. on an analysis yields to the following in pretation :

(1) Any property possessed by a Hindu female acquired before the commencement of the Act will be held by her as a full owner thereof and not as a limited owner.

(2) Any property possessed by a Hindu female acquired after the commencement of the Act will be held as a full owner thereof and not as a limited owner."

9. Similar view has also taken by the apex Court In case of *Smt. Gulwant Kaur and Anr. v. Mohinder Singh and Ors.* (supra) wherein their Lordships ruled thus:

" 3. It is obvious that Section 14 is aimed at removing restrictions of limitations on the right to a female Hindu to enjoy, as a full owner, property possessed by her so long as her possession is traceable to a lawful origin, that is to say, if she has a vestige of a title. It makes no difference whether the property is acquired by inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance or by gift or by her own skill or exertion or by purchase or by prescription or in any other manner whatsoever. The explanation expressly refers to property acquired in lieu of maintenance and we do not see what further title the widow is required to establish before she can claim full ownership u/s 14(1) in respect of property given to her and possessed by her in lieu of maintenance. The very right to receive maintenance is sufficient title to enable the ripening of possession into full ownership if she is in possession of the property in lieu of maintenance."

10. Recently in the case of Vijay Pal Singh and another Vs. Deputy Director of Consolidation and others, , it has been lucidly expressed by the apex Court in the following terms :

"Where it was established that husband of the widow was separated from his brothers and was in possession of his share of property and after his death in the year 1910, his widow's name was mutated and continued in the record-of-rights, her limited estate would be enlarged into absolute right by operation of Section 14(1) of Hindu Succession Act as she was in possession when the Act came into force,....."

(Quoted from the placitum)

11. On consideration of the factual matrix in the present case and applying the ratio laid down by the aforesaid decisions we have no hesitation in holding that the limited right of Saria blossomed into absolute right, after the Hindu Succession Act came into force.

12. In view of our preceding analysis, we have not adverted to deal with the contention advanced in respect of acquisition of title, by adverse possession as our definite conclusion is that Saria had alienable interest at the time of sale and the petitioner being a lawful purchaser from her, the order passed by the revisional authority in allowing the revision petitions by Annexure-3 is unsustainable and we accordingly, quash the same.

The writ application is accordingly allowed. There shall be no order as to costs.

P.C. Naik, J.

13. I agree.