

(2001) 12 OHC CK 0024
In the Orissa High Court
Case No : Civil Appeal No. 5 of 1996

Kshiti Sundari Nanda @ Kshiti Nanda	APPELLANT
Vs	
Fani Bhusan Nanda	RESPONDENT

Date of Decision : 19-12-2001

Acts Referred:

Family Courts Act, 1984 — Section 19
Hindu Adoptions and Maintenance Act, 1956 — Section 22

Citation : AIR 2002 Ori 104 : (2002) 93 CLT 257

Hon'ble Judges : Pradipta Ray, J; A.S. Naidu, J

Bench : Division Bench

Advocate : B.P. Ray, for the Appellant; S.P. Mishra, for the Respondent

Final Decision : Allowed

Judgement

A.S. Naidu, J.—This is an appeal u/s 19 of the Family Courts Act filed by the plaintiff-appellant challenging the judgment and order dated the October 25, 1995 passed by the Judge, Family Court, Rourkela, dismissing Original Suit No. 54 of 1994.

2. Shorn of unnecessary details, the facts in short, which are necessary for effectual adjudication of the inter se disputes are as follows:

Original Suit No. 54 of 1994 was filed by the appellant u/s 22 of the Hindu Adoption and Maintenance Act, 1956, praying for issuance of a direction to the defendant-respondent to pay a sum of Rs. 3000/- per month towards maintenance till her death. It is averred by the plaintiff that she was the legally married wife of Late Jagamohan Nanda, the brother of the defendant. The marriage was solemnised at Rajabati Sahi according to the customs prevalent in the locality, when she was a minor. She lost her husband during her minority and all along stayed with her parents. However, she visited her in-law's house on festive occasions and also took active part in the family functions. Unfortunately, she lost her parents and she was constrained to reside in her parent's house, as

the defendant, who inherited the entire joint family properties, was not prepared to accommodate her. The defendant also refused to bear her day-to-day expenses nor did he provide her shelter, food, clothings etc.. It is averred that the defendant also did not accept the requests made by the village head-man and other relatives. Though, initially, the defendant provided some food and fuel at the end of each month, as per the direction of the local Bhadrals, subsequently he stopped it. According to the plaintiff, she is entitled to her legitimate share in the properties of her husband. It is alleged that the entire properties of the common ancestor Dhirsan Nanda, who had only two sons being, the defendant and the Late Husband of the plaintiff, have been inherited and enjoyed by the defendant alone. The compensation received from the State Government under the provisions of the Orissa Estates Abolition Act was received by the defendant alone and no amount was paid to the plaintiff. On the basis of the aforesaid averments, the plaintiff claims that she is entitled to half share in the properties described in schedules "A", "B", "C" and "D" of the plaint. It is also alleged that, as she has got no source of income and is unable to meet her day-to-day requirements, a direction should be issued to the defendant to pay her Rs. 3000/- per month. She also prayed for some other consequential reliefs.

3. After receiving notice, the sole defendant appeared and filed a written statement repudiating the allegations made by the plaintiff. According to the defendant, the plaintiff had never married his late brother Jagamohan Nanda nor she has any connection with the family. It is also alleged that she is not the daughter of Late Laxman Satapathy. It is stated that she is aged about 62 years and as she is not the married wife of Late Jagamohan Nanda, she is not entitled to any relief under the Hindu Adoption and Maintenance Act, 1956. According to the defendant, his brother Jagamohan Nanda expired at the age of 13 or 14 in the year 1945 and that the plaintiff was never married to him nor the plaintiff, at any time, attended any function of the family. The other averments in the plaint are also specifically denied, so also the relief claimed.

4. On the basis of the aforesaid pleadings, the trial court framed four issues. In order to substantiate her case, the plaintiff examined two witnesses and exhibited three documents. On the other hand, the defendant examined two witnesses and exhibited two documents. The trial court, after discussing the oral and documentary evidence, arrived at a finding that the plaintiff was not the legally married wife of Late Jagamohan Nanda. Alternatively, it was held that the plaintiff being a pre-Act widow and as Late Jagamohan possessed no property, the plaintiff's succeeding to any share in the property does not arise. She is also not entitled to get any maintenance. It was also held that, as the defendant did not inherit any estate of the deceased husband of the plaintiff, he is not liable to maintain the plaintiff. The trial court taking exception to the fact that the suit was filed in the year 1994, though the plaintiff became widow in the year 1940 or 45 i.e. after lapse of about 54 years, dismissed the suit. The said judgment and decree is assailed in this appeal.

5. Mr. B.P. Ray, learned counsel for the appellant, in course of argument drew our attention to the final order dated February 6, 1976 passed by the Tahasildar, Bonai, in O.L.R. Ceiling Case No.89 of 1973. From the said order of the Tahasildar, it appears that a local enquiry was conducted by the Amin and it was found that the joint family owned Ac.75.18 decimals of lands. Out of the said lands, Ac.29.22 decimals equivalent to Ac.9.33 standard acres stood recorded jointly in the names of the plaintiff-appellant and the defendant-respondent. In order-sheet, the Tahasildar has clearly observed as follows :

"Shri Fanibhusan & Smt. Kshiti Nanda widow of Jagamohan own only 9/33 st. acres which is less than one ceiling. Hence there is no surplus land with him."

The order-sheet of Ceiling Case No. 89/1973 as well as the final order dated 6.2.1976 were in know of Fanibhusan, the defendant-respondent, in as much as, his signature appears in the order-sheet. The certified copy of the order is filed and marked as Ext.2 in the court below.

At the other hand, Mr. S.P. Mishra, learned Advocate for the respondent, submitted that the marriage itself is void and that the plaintiff-appellant has absolutely no share in the property. She is an imposter and the trial court has rightly dismissed the suit.

6. The certified copy of the record-of-rights in respect of the land pertaining to Khata No. 17 of Mouza Pandirisila (Ext.1) clearly reveals that the total lands stood recorded in the name of Late Dambarudhar Nanda, Fanibhusan Nanda (respondent) s/o Dhirsan Nanda and Kshiti Nanda (appellant), wife of Jagamohan Nanda and stood recorded under the Rayati status. Similarly, Ext. 3, the certified copy of the record-of-rights published on 12th September, 1975 also reveals that the lands are jointly recorded in the names of Fanibhusan Nanda and Kshiti Nanda. The genuineness of the said documents is not disputed. Further, admittedly no appeal or revision has been filed challenging the said order passed by the Tahasildar in the Ceiling Surplus case as well as the recording of names made in the R.O.R. vide Exts. 1 and 3.

7. The plaintiff-appellant who has been examined as p.w.1 has given vivid description about the marriage. It is stated that she got married to Jagamohan Nanda according to then prevailing customs when she was only eight year old. Jagamohan, expired before she could become major and after death of Jagamohan the defendant is in possession of the joint family properties. Though the defendant cross-examined her in extenso, but could not dislodge the factum of marriage between the plaintiff and Jagamohan. The other oral evidence also supports the case of the plaintiff that she was married to Late Jagamohan. The said oral evidence gets fortified and corroborated by the documentary evidence which clearly reveals that in presence of the defendant, the joint family lands were recorded jointly in favour of the plaintiff and the defendant on the basis of the settlement made by the defendant. The order passed by the Tahasildar clearly reveals that, both of them jointly owned and possessed Ac.9.33 decimals.

The clear and unambiguous admission made by the defendant, coupled with other evidence makes it abundantly clear that the plaintiff was married to Jagamohan and she is the joint owner in respect of at least Ac.9.33 decimals of land as has been held by the Tahasildar in the O.L.R. Ceiling Surplus Case, Ext.1. The said lands are in exclusive possession of the respondent.

It is well settled that a witness may lie, but a document will never. Here is a case where the name of the plaintiff finds place in all the settlement records where she has been described as widow of Late Jagamohan. The defendant has also admitted before the revenue authorities that, the plaintiff is a member of the family and, accordingly, on unit of share was granted in the O.L.R. Ceiling Case. Taking into consideration the oralas well as the documentary evidence of the case, we are not persuaded to accept the submission made by Mr. Mishra that the plaintiff is an imposter. Thus, we disagree with the finding arrived by the trial court and hold that the plaintiff is the legally married wife of Late Jagamohan and she is entitled to maintenance from out of the joint family estate.

8. In the result, we set aside the findings arrived at by the trial court. Admittedly, the appellant is an old lady of 68 years and is at her fag end of life. She would not be in a position to cultivate the lands or manage the properties. Taking into consideration the entirety of the case, we direct that the respondent shall pay a sum of Rs. 2000/- (rupees two thousand) per month to the plaintiff till her death. The said amount shall be paid in the first week of every month.

In view of the peculiar circumstances of the case, we also direct that the plaintiff, a pre-Act widow shall not alienate or create any interest in the properties in respect of any outsider. The civil appeal is accordingly allowed. No cost.

Pradipta Ray, J.—I agree

9. Appeal allowed.