



According to the plaintiffs after the death of Mirja Kuri, widow of Ganga Puri, in the year 1947, the properties in suit had devolved on them who were the next reversioners at that time and that Musammam Chama Kumari had no interest in those properties, nor had she any right to alienate the same in favour of defendants 1 to 9.

2. The suit was contested by the transferee defendants who pleaded inter alia, that the plaintiffs had no cause of action to bring the present suit. According to them, after the death of Mirja Kuri, Musammam Chama Kumari had rightly come in possession of the properties in suit and she had every right to sell them. It was further pleaded that in any event the two transfers were to hold good at least till the life time of Mt. Chama Kumari.

3. Defendant No. 10 filed a separate written statement wherein she asserted that the two sale deeds in favour of defendants 1 to 9 had been brought into existence after practising fraud on her. She admitted that the lands in suit have all along been in possession of the plaintiffs.

4. The learned Subordinate Judge came to the conclusion that the Hindu Women's Right to Property Act, 1937 (Act XVIII of 1937) applied to this case even though Ganga Puri had died in 1921 and as such the plaintiffs were not the heirs as long as Musammam Chama Kumari was alive. On this view of the matter, the learned Subordinate Judge dismissed the suit with costs. The plaintiffs thereafter came up in appeal before this Court.

5. The appeal had come up for hearing before a learned Single Judge of this Court who has been pleased to refer to it to be heard by a Division Bench.

6. Learned counsel for the appellants contended before us that on a plain reading of the various Sections of the Hindu Women's Right to Property Act, 1937, it is quite apparent that the Act did not apply to the present case. He submitted that Ganga Puri had died in 1921. The provisions of the Act, therefore, could not be made applicable to the present case. Learned counsel for the appellants thereafter placed before us the decision of the Special Bench of the Orissa High Court in the case of *Moni Dei v. Hadibandhu Patra*, AIR 1955 Orissa 73, which had overruled the previous decision of the same Court in the case of *Radhi Bewa and Another Vs. Bhagwan Sahu and Others*, , on which reliance had been placed by the learned Subordinate Judge.

Learned counsel for the appellants next contended that the decision of their Lordships of the Judicial Committee in the case of AIR 1946 173 (Privy Council) , where the words "dying intestate" as mentioned in the preamble of the Hindu Law of Inheritance (Amendment) Act, 1929, had been interpreted to be as mere descriptive of the status of the deceased, does not apply to the Hindu Women's Right to Property Act, 1937. because u/s 4 of this Act it has been specifically provided "Nothing in this Act shall apply to the property of any Hindu dying intestate before the commencement of this Act".

He submitted that the words "dying intestate before the commencement of this Act" are not to be found in Act II of 1929. Therefore, the interpretation given by their Lordships of the Judicial Committee to the words "dying intestate" will not apply to the interpretation of the words "dying intestate before the commencement of this Act." He submitted, therefore, that as Musammat Chama Kumari had no interest in the properties in suit any transfer made by her could not affect the plaintiffs' interest. According to him, his clients were entitled to a declaration of their title and recovery of possession of the properties in suit.

7. Learned counsel for the transferee respondents contended, on the other hand, that the provisions of the Hindu Women's Right to Property Act, 1937 (Act XVIII of 1937 amended by Act XI of 1938) should not be limited to the property left by Hindu males only. According to him, the word "Hindu" used in different sections of the Act may include a Hindu female also. In my opinion, there is no scope for this argument. The sections of the Act make it clear that inheritance to the property left by a Hindu male only was to be governed by the provisions of the Act. In my opinion, the Hindu Women's Right to Property Act could not have been applicable if in fact the properties in suit had been the Stridhan properties of Musammat Mirja Kueri. But, as admittedly the properties in suit were the properties left by Ganga Puri on his death in 1921, it had passed to his widow, Musammat Mirja Kueri in her capacity of a limited owner for her life only. The properties in suit, therefore, cannot be deemed to be the absolute properties of Musammat Mirja Kueri.

8. Learned counsel for the transferee respondents also contended that though the Hindu Women's Right to Property Act was not retrospective, yet Ganga Puri will be deemed to have survived in the body of his widow and he will be deemed to have died only in 1947, when his widow, Musammat Mirja Kueri, died. According to the learned counsel, Musammat Mirja Kueri was nothing more than the projection of Ganga Puri himself, that is to say, she was, for the purposes of inheritance, to be considered as her husband himself.

9. In my opinion, there is no substance at all in this argument of learned counsel for the transferee respondents. The entire law of inheritance, old or new, defining the right of a Hindu widow to inherit the properties of her husband, is based on the conception that the widow has a different entity than that of her husband. If this were not so, then the son, grand-son and great grand-son could not have inherited the properties prior to the widow of a deceased Hindu. If a male Hindu dying physically before his widow be deemed to have survived in the body of his widow and be considered to be alive for the purpose of deciding the question of inheritance, then his son, grand-son and great grandson would not inherit his property as long as the widow is alive; but that is not so.

10. It may, however, be mentioned that learned counsel for the transferee respondents did not contend that Act XVIII of 1937 was retrospective. He simply urged that the inheritance will be deemed to have opened after the death of Mt. Mirja Kueri in 1947 as if the properties in suit were her properties, and the

question of heirship would be decided on the basis of Act XVIII of 1937 only. As I have stated above, the properties in suit were not the absolute properties of Mt Mirja Kueri and, therefore, this argument has no force.

11. Learned counsel for the transferee respondents also argued that Act XVIII of 1937 would apply to this case as that Act was in force when the inheritance opened in 1947. In support of his argument, he placed before us the following preamble to the Hindu Law of Inheritance (Amendment) Act (Act II of 1929):

"An Act to alter the order in which certain heirs of a Hindu male dying intestate are entitled to succeed to his estate".

12. In my opinion, the analogy of the interpretation of the provisions of Act II of 1929 cannot be applied to the interpretation of the provisions of the Act XVIII of 1937 on account of the clear provisions made in Section 4 of Act XVIII of 1937 which leaves no room for doubt that the Act was applicable only if the Hindu male had died after the enforcement of the Act and not before that.

13. In my opinion, the contentions raised on behalf of the appellants are well founded and must prevail. I hold, therefore, that the plaintiffs have established their title to the properties in suit and that they are also entitled to recover possession of the same. They are further entitled to the issue of a permanent injunction against the defendants restraining them from interfering with the possession of the plaintiffs.

14. The result is that the judgment and decree passed by the Court below are set aside, the suit succeeds and this appeal is allowed with costs throughout payable by the transferee defendants 1 to 9.

U.N. Sinha, J.

15. I agree.