
(1969) 07 OHC CK 0002
In the Orissa High Court
Case No : A.H.O. No. 1 of 1965

Lakhman Kumar Kar

APPELLANT

Vs

Mst. Basanta Kumari and Another

RESPONDENT

Date of Decision : 18-07-1969

Acts Referred:

Constitution of India, 1950 — Article 245

Hindu Womens Rights to Property (Extension to Agricultural Land in Orissa) Act, 1944
— Section 2

Citation : AIR 1970 Ori 43 : (1970) 36 CLT 72

Hon'ble Judges : S. Acharya, J;B.K. Patra, J

Bench : Division Bench

Advocate : B.K. Ray and B.H. Mohanty, for the Appellant; R.C. Misra and A.K. Padhi, for the Respondent

Final Decision : Dismissed

Judgement

Patra, J.—This is an appeal by the defendant against a decision of a learned Judge of this Court in Second Appeal No. 407 of 1963. The parties in this litigation are residents of the ex-State area of Gangpur now comprised in the district of Sundergarh. One Udhaba Kar, who was separate from his brothers, died in the year 1938 leaving behind Sunakha-dika, the widow of his pre-deceased son Krupa, the two daughters of Krupa who are the plaintiffs, Bikram who was Krupa's only son and the disputed properties. Bikram died on 11-2-1945 and Sunakhadia died in the year 1953. Thereafter litigation started in respect of the disputed properties between the plaintiffs who claimed the entire property for themselves and the defendant who is the grandson of one of the separate brothers of Udhab. The claim of the plaintiffs is that on the death of Udhab his entire properties devolved on his grandson Bikram as the Hindu Women's Rights to Property Act, 1937 (hereinafter referred to as the 1937 Act), which undoubtedly was in force in British India at the time of Udhab's death in 1938 was not in force in Gangpur State; that after Bikram's death in 1945 leaving behind him his two sisters, the plaintiffs, and his mother Sunakhadika,

these properties devolved on the mother who held the same as a limited owner and that on the latter's death in 1953 by which time the merger had taken place and the provisions of the Hindu Law of Inheritance (Amendment) Act, 1929 (hereinafter referred to as the 1929 Act) and the Hindu Women's Rights to Property Act 1937 had been brought into force in the ex-State area of Gangpur, the property devolved on the heirs of the last full owner, namely, Bikram; and that the plaintiffs being the sisters of Bikram became entitled under the 1929 Act to succeed to the entire properties. As the defendant had been given possession of the disputed properties by virtue of an order passed u/s 145 Cr. P. C., the plaintiffs asked for recovery of possession.

2. The substantial defence put forward on the defendant's side and which found favour with the learned trial Court is that by virtue of the provisions of the 1937 Act which, according to the learned Munsif, must be deemed to have been in force in the ex-State area of Gangpur by 1938 when Uddhab died, half of the interest in the suit property devolved on Sunakhadika (widow of a predeceased son) as a limited owner and the other half devolved on Bikram, the grandson. In 1945, when Bikram died, Sunakhadika succeeded as mother heir to Bikram's interest, and held it as a limited owner. When in 1953 Sunakhadika died, half of the interest in the property which Sunakhadika had inherited from Bikram devolved on Bikram's heirs who by then were his two sisters the plaintiffs, and the other half to which Sunakhadika had succeeded as limited heir of her deceased father-in-law Uddhab, devolved on the heir of Uddhab who by then, it is not disputed, was the defendant. In this view of the case, the learned Munsif passed a decree in favour of the plaintiffs only in respect of half of the suit property.

3. On appeal by the plaintiffs, the first appellate court gave the finding that the 1937 Act was not in force in the ex-State area of Gangpur at any time before 1st January, 1948 and consequently, the claim as put forward by the plaintiffs must succeed in toto. He, therefore, allowed the appeal. His view was confirmed in Second Appeal in the High Court.

4. Mr. B. K. Ray, appearing for the appellant strenuously contested the finding that the 1937 Act was not in force in the ex-State area of Gangpur since 1937, his contention being that our learned brother Das. J. failed to draw the proper inference from the list of laws in force in Gangpur State appended to the Administration Report of the State for the year 1946-47. Entry 10 of the list shows that "Hindu Law" was in force in the State. The contention of Mr. Ray is that "Hindu Law" as mentioned in the list must be construed to include all amendments effected to Hindu Law from time to time in the adjoining British Indian territory, and that so construed, it must be held that the provisions of the 1937 Act operated in the ex-State area of Gangpur right up from 1937 when it was made applicable to the British Indian territory. There cannot be any doubt that Hindu Law referred to in the Administration Report is the uncodified Hindu Law. The Indian Parliament which passed the 1937 Act was competent to

legislate only in respect of territories over which it had legislative control and Gangpur State was not one of such territories. Where a British Indian Law altered the existing uncodified Hindu Law of inheritance, the same did not automatically extend to any area which was not a part of British India. The then Ruler of the State in exercise of his legislative power could extend the operation of the Act to his territory but, it is conceded on the defendant's side, that this had not been done by the then Ruler of Gangpur. After the merger of Gangpur State with British India with effect from 1-1-1948, the Government of Orissa, as the delegated authority of the Central Government, in exercise of its powers under the Extra Provincial Jurisdiction Act 1947 made an order known as the Administration of Orissa States Order, 1948, for the purpose of governing the merged areas including the Gangpur State. By paragraph 4 of that Order, several enactments then in force in British India as specified in the Second Schedule to that Order were applied throughout the merged area and it was further provided that the enactments so applied would prevail in the merged territories notwithstanding anything to the contrary in the laws that were in force in those territories prior to the coming into force of that order. These laws so extended of which a list is given in the Second Schedule to the Order include the 1929 Act and the 1937 Act. It is, therefore, clear that these two enactments came into force in the Gangpur ex-State area only on 1-1-1948 and not before.

5. Another ingenuous argument put forward by Mr. Ray is this : He referred to Section 2 of the Hindu Women's Rights to Property (Extension to Agricultural Land in Orissa) Act 1944 (Orissa Act V of 1944) which may be quoted.

""2. The expression "property" in the Hindu Women's Rights to Property Act, 1937, as amended by the Hindu Women's Rights to Property (Amendment) Act, 1938, in its application to the State of Orissa shall include and shall be deemed always to have included agricultural land and the provisions of the said Act shall apply and shall be deemed always to have been applied to agricultural land in the said State accordingly."

This Act V of 1944 is one of the Acts mentioned in Schedule 2 referred to above. Mr. Ray, therefore, argues that in view of the retrospective operation given to the expression "property" as mentioned in Section 2 above, it must follow that notwithstanding the extension of the 1937 Act and Orissa Act V of 1944 to the ex-State area of Gangpur with effect from 1-1-1948, these two Acts must be deemed to be in force in the ex-State area of Gangpur since 1937 :

This argument appears to us to be so fantastic that it can be rejected outright for the simple reason that retrospective operation contemplated by Section 2 of the Act V of 1944 cannot take one back to the period anterior to the coming into force of the main Act itself.

6. The last argument advanced by Mr. Ray which is equally untenable is that even if the 1937 Act as amended by Act V of 1944 be held to have come into force in the Gangpur ex-State area with effect from 1-1-1948, still, in view of the

fact, that Sunakhadika was then alive and was in possession of the properties which at one time belonged to her father-in-law Uddhab, she must by virtue of the provisions of Section 3 of the 1937 Act be deemed to have succeeded as a limited heir to the properties of her father-in-law and that on her death in 1953, the properties would devolve on the heir of her father-in-law Uddhab. In making the submissions, Mr. Ray has completely overlooked that the last full owner in respect of these properties was not Uddhab but Bikram, and that Section 4 of the 1937 Act makes it quite clear that nothing in the Act shall apply to the property of any Hindu dying intestate before the commencement of the Act. There are large number of authorities in support of the proposition that the provisions of the 1937 Act are not applicable to a widow whose husband died prior to the coming into force of the Act. It is sufficient to refer in this connection to a Special Bench decision of this Court reported in *Moni Dei Vs. Hadibandhu Patra and Another*, .

7. All the contentions raised on behalf of the appellant fail. We would accordingly dismiss the appeal with costs.

Acharya, J.

8. I agree.