
(1958) 03 PAT CK 0009
In the Patna High Court
Case No : A.F.O.D. No. 132 of 1950

Lateshwar Jha and Others

APPELLANT

Vs

Mt. Uma Ojhain and Others

RESPONDENT

Date of Decision : 28-03-1958

Acts Referred:

Hindu Succession Act, 1956 — Section 14, 14(2), 4(1), 6, 8
Hindu Womens Right to Property Act, 1937 — Section 3(2), 3(3)

Citation : AIR 1958 Patna 502 : (1958) 6 BLJR 645

Hon'ble Judges : Raj Kishore Prasad, J

Bench : Single Bench

Advocate : A.C. Roy, for the Appellant; B.B. Sen, for the Respondent

Final Decision : Dismissed

Judgement

Raj Kishore Prasad, J.—In this appeal by defendants 1 to 7 from the decision of the Court below decreeing the plaintiff's suit for partition, we are concerned only with defendant No. 8, who is respondent No. 1 to the appeal.

2. The facts leading to the present appeal may shortly be put as below :

3. There was one Babuji Jha, who had two sons; (1) Ramdhari Jha whose grandson is the plaintiff, and (2) Bachan Jha who died leaving behind five sons, namely, defendants 1 to 3 and two other sons, who are now dead, (1) Achki Jha whose widow is defendant No. 8 and (2) Sibbu Jha whose widow is defendant 9. Defendants 4 to 6 are the sons of defendant No. 1. Defendant No. 7 is the son of defendant No. 2.

4. The plaintiff claimed partition in respect of his moiety share in the properties under partition, and, the remaining moiety share belonged admittedly to the defendants. Defendants 1 to 7 compromised with the plaintiff agreeing to divide trio suit properties according to the plaintiff's claim. Defendants 8 and 9, the two widows of the two deceased brothers of defendants 1 to 3 contested the suit claiming 1/10th share each in the properties under partition by virtue of the

Hindu Women's Rights to Property Act, 1937. Their defence was that their husbands died in a state of separation from defendants 1 to 3, and, that they died after the passing of the Hindu Women's Rights to Property Act, 1937, and, therefore, they were entitled to enjoy the respective shares of their husbands in separation from the other defendants.

5. The Court below negated the defence of defendants 8 and 9 that their husbands died in a state of separation from the other defendants, and, found that there had been no separation in the family of the defendants before the suit. The learned Additional Subordinate Judge, who decided the suit in the Court below, however, held that Achaki Jha and Sibu Jha, husband of defendants 8 and 9, died after the passing of the Hindu Women's Rights to Property Act, 1937 in 1938 and 1948 respectively, and, therefore, defendants 8 and 9 were entitled to their husbands' share which was 1/5th each in half of the properties under partition, that is, each had 1/10th share in the properties under partition. On these findings, the learned Judge of the Court below decreed the plaintiff's suit in terms of the compromise as against defendants 1 to 7 and further orders that 1/5th share of each of the defendants 8 and 9 will be separated from half of the properties given to defendants 1 to 7. He accordingly, passed a preliminary decree for partition. From this decree, the present appeal has been presented by defendants 1 to 7 against defendants 8 and 9.

6. During the pendency of the appeal in this Court, defendant No. 9, the widow of Sibu Jha, compromised with the plaintiff, and, therefore, now we are left only with defendant No. 8, and, accordingly, Mr. A.C. Roy, who appeared for the appellants, confined his appeal only to the claim of defendant No. 8. Mr. A.C. Roy contended, in the first instance, that the finding of the Court below that Achaki Jha died in the year 1938 was not supported by any evidence; on the other hand, it was against the evidence on the record. He strongly relied on Exts. A and A(1) and contended on the basis of the same that Achki Jha died in or about the year 1932, long before the passing of the Hindu Women's Rights to Property Act, 1937. (After reviewing the evidence on this point his Lordship continued). In my opinion, therefore, the Court below has correctly come to the conclusion that Achki Jha died sometime in 1938 after the passing of the Hindu Women's Rights to Property Act, 1937, and, therefore, she was entitled to a share representing her husband's share in the properties under partition. I would, therefore, overrule the first contention of Mr. A.C. Roy.

7. Mr. B.B. Sen, who appeared for defendant No. 8--respondent No. 1, however, contended that, even assuming that Achaki Jha, husband of defendant No. 8, died before 1937, that is, before the passing of the Hindu Women's Rights to Property Act, 1937, as alleged by defendants 1 to 7, even then, so ran his argument, defendant No. 8 would be entitled to a share representing her husband's share in view of the Hindu Succession Act, 1956 (Act No. XXX of 1956). He further contended that if Achki Jha died in 1938 after the Hindu Women's Rights to Property Act, 1937, then under this Act of 1937 defendant

No. 8 got only a limited interest known as the Hindu Women's estate, but after the passing of the Hindu Succession Act, 1956, she becomes the full owner thereof, and, thus gets an absolute right to the share of her husband. Mr. Sen, therefore, contended that whether Achki Jha, husband of defendant 8, died before or after the Hindu Women's Rights to Property Act, 1937, makes no difference in law, because defendant 8 in either case would be entitled to one-tenth share representing her husband's interest in the joint family property under partition.

8. Mr. A.C. Roy, on the part of the appellants, refuted the above contentions of Mr. Sen, and, argued that the Hindu Succession Act, 1956, will not apply to the present case, because admittedly Achaki Jha, husband of defendant No. 8, died before the passing of the present Act, and, before it came into force in 1956. We, therefore, contended that defendant No. 8 was entitled only to maintenance from defendants 1 to 7, and, even if her husband died after 1937, she would get a limited interest known as Hindu Women's estate in respect of her husband's share, and, not an absolute estate as contended on her behalf. Mr. Roy, therefore, submitted that if Achaki Jha, husband of defendant 8, died before the Act of 1937, defendant 8 gets no share, even under the present Act of 1956, and, she gets only a right to claim maintenance and as such, he argued the date of death of Achaki Jha is the turning point in the case.

9. Two questions, therefore, emerge from the arguments presented at the Bar for our determination :

First, if Achaki Jha, husband of defendant 8, died in 1938, whether his widow, defendant No. 8, in respect of her husband's interest in the joint family property which devolved on her under the Hindu Women's Rights to Property Act, 1937, becomes full owner thereof, getting an absolute interest and not only a limited interest therein, in view of the Hindu Succession Act, 1956? and,

Second, if Achaki Jha died before 1937, does his widow, defendant No. 8, get her husband's interest in the joint family property under partition, under the Hindu Succession Act, 1956?

10. I proceed now to examine the above mentioned two questions.

11. It is not disputed, and could not be disputed that under the Hindu Women's Rights to Property Act, 1937, by virtue of Section 3(3) of the Act, any interest devolving on a Hindu widow under the provisions of Section 3 shall be the limited interest known as a Hindu Women's estate, provided however that she shall have the same right of claiming partition as a male owner. There is, therefore, no doubt that till before the passing of the Hindu Succession Act, 1956, u/s 3(2) of the Act of 1937 when a Hindu male governed by the Mitakshara law died having at the time of his death an interest in a Hindu joint family property, his widow got only a limited interest, which was the same interest as her husband had in the joint family property. With the passing of the Hindu Succession Act, 1950, which would hereafter be referred to as "the Act", the Hindu Women's Rights to

Property Act, 1937 has now been repealed by Section 31 of the Act. The first question then is : Has defendant 8 now become full owner of the 1/5th share of her husband in the moiety share in the joint family properties under partition, which she acquired before the Act of 1956 under the new repealed Act of 1937?

12. The answer to this first question will rest on the interpretation of Sections 4 and 14 of the Act of 1956. The relevant provisions of the Act, which are material for the purpose of the decision of the present question, and, which have been relied upon by the parties are Sections 4, 6 and 14 of the Act. The material provisions of these sections of the Act may be quoted in extenso below :

"4. Over-riding effect of Act -- (1) Save as otherwise expressly provided in this Act.-

(a) any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter of which provision is made in this Act.

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.

(2) xx xx xx xx" "6. Devolution of interest in coparcenary property--When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act;

Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation 1.--For the purpose of this section, the interest of a Hindu Mitakshara coparcenary shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

Explanation 2. xx xx xx" "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" includes both movable and immovable property acquired by a female Hindu by inheritance or demise, 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) xx xx xx xx"

13. Section 4(1) of the Act provides the overriding effect of the Act. It lays down that save as otherwise expressly provided in this Act, any text, rule or interpretation of Hindu law or any custom, or usage as part of that law, or any other law in force immediately before the commencement of this Act shall cease to have effect, and to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act. Section 6 deals with devolution of interest in coparcenary property when a male Hindu dies after the commencement of the Act. Section 6 of this Act does not in any way interfere with the special rights of those who are members of a Mitakshara coparcenary, except to the extent that it seeks to ensure a female heir if any, who would be entitled to succeed under the provisions of this Act to a rightful share in the property of such a coparcenary. Section 14 provides that 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. The explanation attached to Section 14(1) further explains what is meant by the word "property" used in Section 14(1).

14. On reading Sections 4(1) and 14(1) of the Act, therefore, it is manifest that Section 14, unlike Section 6, is retrospective, and, u/s 14(1) any property possessed by a female Hindu even if acquired before , the Act, shall be held by her as full owner thereof, and not as a limited owner.

15. In the instant case, if Achaki Jha died after the new repealed Act of 1937, even men the interest of defendant 8 which she had by virtue of Section 3(2) and (3) of the Act of 1937, and which must be deemed to be possessed by her, and which she acquired before the Act of 1956 will become u/s 14 of the Act her absolute property and such interest of her in the property shall be held by her as full owner and not as a limited owner. Her erstwhile limited interest will, therefore, ripen into an absolute interest.

16. Mr. Roy, however, contended that Section 14(1) of the Act would come into play only when a Hindu male dies after the commencement of this Act, and not when he dies before it as is the case here.

17. Mr. Sen refuted this contention, and, relied on Section 8 of the Act and submitted that where the Act has intended that any provision of the Act should apply prospectively and not retrospectively, such an intention has been specifically expressed therein as is to be found in Section 6 of the Act which specifically provides for a case where a male Hindu dies after the commencement of the Act.

18. In my judgment, the contention of Mr. Sen is well founded and must prevail.

Sections 6 and 14 of the Act, if read side by side, will make the point clear. Section 6 on its plain language is prospective and not retrospective. Section 14 does not contain the words "after the commencement of the Act" which are to be found in Section 6. Section 14, on the other hand, contains the words "whether acquired before or after the commencement of this Act", from which it is plain that Section 14 is made expressly retrospective. Section 14 is not hedged by any restrictive condition such as is to be found in Section 6 of the Act. In my opinion, therefore, Section 14 will apply to the present case also.

19. The above view gets support from a Bench decision of this Court in *Ram Ayodhya Missir and Others Vs. Raghunath Missir and Others*, , to which I was also a party. It was held therein that Section 14 is made expressly retrospective and the statute declares that 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.

20. For these reasons, I overrule the contention of Mr. Roy and uphold that of Mr. Sen, and hold that if the husband of defendant No. 8 died after the passing of the Hindu Women's Rights to Property Act, 1937, in 1938, then also by virtue of Section 3 (2) of the Act of 1937 defendant No. 81 got the same interest in the property as her husband himself had, and, therefore, although her interest under the Act of 1937 was a limited interest, it became her absolute property after the passing of the Act of 1956 at the commencement of which the disputed property in respect of which the partition is sought by defendant 8 was possessed by her.

In this view of the matter, defendant 8 must be held to be the full owner thereof and not as a limited owner, and, as such, she would be entitled to a partition of her share. I would, accordingly, answer the first question posed by me in the affirmative.

21. I now proceed to consider the second question mentioned earlier.

22. Even if it be assumed that the husband of defendant No. 8 died before 1937 before the Hindu Women's Rights to Property Act, 1937, came into effect, even then the interest of her husband in the joint family property under partition, who admittedly died intestate, shall devolve upon her, because she is the only heir entitled to the property of her husband by virtue of Section 8(a) read with class I of the schedule of the Act of 1956. Section 8 (a), and class I of the schedule of the Act of 1956 are in these terms :

"8. General rules of succession in the case of males -- The property of a male Hindu dying intestate shall devolve according to the provision of this Chapter :--

(a) firstly, upon the heirs, being the relations, specified in class 1 of the schedule

(b) xx xx xx" "THE SCHEDULE

(See Section 8)

HEIRS IN CLASS I AND CLASS II CLASS I

Son; daughter; widow; xx xx xx"

23. In the present case it is admitted that Achki Jha died intestate and issueless leaving behind only his widow, defendant No. 8 and no other heir included in class I of the schedule of the Act.

24. Mr. Roy, however, contended that Section 8 is prospective and not retrospective, and, therefore, the general rules of succession in the case of Hindu males will not apply to a case where the male Hindu dies before the Act. He relies on the words "dying intestate" occurring in Section 8 of the Act, and, contends that the use of these words clearly indicates that the Legislature intended to apply Section 8 of the Act only when a male Hindu dies after the commencement of the Act, and, not when he dies before it. In my opinion, this contention of Mr. Roy cannot be sustained.

25. If we read Section 8 along with Section 6, it would be clear that if the intention of the legislature would have been to apply it prospectively, and not retrospectively also, it was expected that the words "after the commencement of this Act" which occur in Section 6 would have been inserted in Section 8 also. The omission of the words "after the commencement of this Act" in Section 8 is very significant.

26. The crucial question, therefore, is: What is the meaning of the words "dying intestate" occurring in Section 8 of the Act? Do they mean that Section 8 would apply even if the male Hindu dies intestate before the commencement of the Act, as contended for by Mr. Sen, or, do they mean that it should apply only when the male Hindu dies intestate after the commencement of the Act, as contended by Mr. Roy?

27. Mr. Sen developed his argument by saying that the words "dying intestate" meant only that the male Hindu should have died intestate irrespective of the time when he died either before or after this Act. In support of his contention, he relied on a decision of a Single Judge of the Calcutta High Court in Hiralal Roy Choudhury Vs. Kumud Behari Roy Choudhury, , which does support his contention.

28. The question as to what the words "dying intestate", which occurred also in the Hindu Law of Inheritance (Amendment) Act, 1929, before its repeal by Section 31 of the Act of 1956, connote came up for consideration before their Lordships of the Privy Council in AIR 1946 173 (Privy Council) . Mr. M.R. Jayakar, who pronounced the unanimous opinion of the Board, observed :

"In the argument before their Lordships, reliance was placed upon the words, dying intestate, in the Act" us connoting the future tense, but their Lordships agree with the view of the Lahore High Court in Shakuntala Devi v. Kaushalya Devi ILR Lah 356 : AIR 1936 Lah 124 (D), that the words are a description of the status of the deceased and have no reference and are not intended to have any reference to the time of the death of a Hindu male. The expression merely

means, in the case of intestacy of a Hindu male."

29. In my opinion, the above observations of their Lordships of the Privy Council apply with equal force, rather a fortiori, here also.

30. In my judgment, therefore, Section 8 will apply to all cases where a male Hindu dies intestate leaving behind his property, irrespective of the time of his death, and, the words "dying intestate" used in Section 8 are a mere description of the status of the deceased, and, have no reference and are not intended to have any reference to the time of the death of a Hindu male.

The only essential requisite for the application of Section 8 is that the male Hindu should have died intestate, leaving behind his property, and, then in such a case of succession ab intestate, the property of his will be governed by Section 8 of the Act. It follows, therefore, that Section 8 is also retrospective, and, would apply to all cases of intestacy of a Hindu male, without having any reference to the time of the death of such a Hindu male, and the property of such a deceased male Hindu will devolve on his widow, if she is the only heir of his amongst the heirs mentioned in class 1 of the schedule of the Act.

31. For these reasons, the contention of Mr. Sen is well founded, and must prevail.

32. I, therefore, hold that whether Achki Jha, the husband of defendant No. 8, died before 1937, or after 1937 but before 1956 is quite immaterial, because, in either case, defendant No. 8 will have absolute title to the interest of her husband in the coparcenary property, and she will be the full owner thereof, it will be her absolute property, and, therefore, she is entitled to ask for partition of her 1/10th share in the properties under partition, which means 1/5th in the moiety share belonging to the defendants; who are the descendants of Bachan Jha, the second son of Babuji Jha. The Court below has rightly decided the suit and directed a partition of the share of defendant No. 8. The decision of the court below is, accordingly, affirmed.

33. In the result, the appeal fails, and, is dismissed with costs.