

(1935) 11 PAT CK 0011
In the Patna High Court

Latur Rai and Another

APPELLANT

Vs

Bhagwan Das and Others

RESPONDENT

Date of Decision : 11-11-1935

Acts Referred:

Citation : AIR 1936 Patna 80

Hon'ble Judges : Mohammad Noor, J; Macpherson, J

Bench : Full Bench

Judgement

Mohammad Noor, J.—The suit out of which this appeal has arisen was instituted by the appellant Keshwar Rai and his cousin Latur Rai (now dead) for a declaration that certain deeds of transfer executed by Mt. Laruan, defendant 5 a Hindu widow, be declared void and possession of the properties conveyed by those deeds be delivered to them, or, in the alternative, a declaration be made that those transfers would not be binding upon them on the death of the widow they being the next reversioners of her husband.

2. There were three brothers, Bhaju, Kishun and Bishun. Bhaju had a son, Latur, who was plaintiff 1 and who died during the pendency of the present appeal. Kishun also had a son, Keshwar, plaintiff 2 who is the sole appellant before us. Bishun died childless leaving two widows, Usri and Laruan (defendant 5). Usri died in 1914. Laruan executed three deeds in respect of some of the properties which are the subject-matter of the present suit. One was a deed of sale dated 26th July 1918 in respect of four annas share of tauzi 20884 of village Imadpur in favour of defendant 1. By a second deed dated 4th September 1928, she purported to dedicate the remaining twelve annas of this tauzi in favour of the idol, defendant 2 under the Shebaitship of defendant 1. By a third deed dated 5th September 1928, she transferred 17 katas of some milkana land to her sister's husband, defendant 3. These are the three deeds which the two plaintiffs sought to avoid. The plaintiff's case was that Kishun, the father of plaintiff 2, and Bishun the husband of defendant 5, were joint: therefore nothing was inherited either by Usri or Laruan and the deeds were inoperative and plaintiff 2,

Keshwar son of Kishun got all the properties by survivorship and he claimed immediate possession of the properties. There was however, as I have said, an alternative prayer that in case it be found that Keshwar, the plaintiff 2 was not entitled to immediate possession, a declaration be made that the alienations by Laruan would not on her death be binding upon the plaintiffs, the reversioners of her husband.

3. The trial Court gave the plaintiffs a modified decree in respect of the third deed, namely, the sale of 17 kathas of malikana land in favour of defendant 3. It held that Keshwar was not joint with Bishun, and the sale of this land not being for legal necessity, would not be binding on the plaintiffs after the death of Laruan. With regard to the other two alienations, the suit was dismissed. In respect of the four annas share of Imadpur, the learned Munsif found that two annas of it was acquired by the two widows themselves under a private sale and the remaining two annas was also acquired by them in execution of a mortgage decree, the mortgage being in favour of Bishun, their husband. As it was admitted that the parties were governed by the Mithila law under which the widows took an absolute estate, in the movable properties of their husband, the learned Munsif held that the money and the mortgage debt were absolutely vested in them; and therefore the properties (4 annas of the tauzi) which they acquired out of the moveable properties, namely the money, belonged to them absolutely. Therefore the deed in respect of the four annas was valid and could not be questioned by the reversioners. Regarding the dedication of the twelve annas share of the tauzi in favour of the idol, it is to be noted that according to the recital in the deed and the case stated in the written statement of defendant 2 the real dedication was by Bishun himself who was a devotee of the asthal and the mahant, namely defendant 1, was his spiritual guru and the lady simply completed the dedication by executing a deed.

4. The learned Munsif found that the story of the dedication of this property by the husband of Laruan was not established. He however treated the deed as an independent dedication by Laruan herself, and upheld it on the ground that it was within her competence to dedicate a small portion of her husband's estate for the benefit of his soul and the property dedicated being about one-fifth of the entire estate of the husband, the deed was valid. On appeal the decree and the findings of the learned Munsif have been upheld by the learned Subordinate Judge. The plaintiffs have preferred this second appeal. There was a question whether this appeal has abated to any extent in consequence of the death of Latur. The point has not been pressed. Moreover the surviving plaintiff, Keshwar, is now the only next reversioner to Bishun, the husband of Laruan, and is alone entitled to maintain the suit. Therefore there has been no abatement to any extent whatsoever. Coming to the appeal itself, it will be clear from what I have stated before, that it is confined to two transactions: (1) the sale of four annas of Imadpur in favour of defendant 1 and (2) the dedication of twelve annas of it in favour of defendant 2.

5. The learned Advocate for the appellants has attached the findings of the Courts below in respect of the first property on three grounds; first, that the mortgage debt due to Bishun was not a moveable property and therefore the 2 annas purchased in execution of the mortgage decree did not absolutely belong to the widows second, that the widows amalgamated the shares they purchased with their husband's estate; and third, that on Usri's death Laruan got only life estate and the appellant is the next heir to it as being the nephew of Usri's husband. It was contended that assuming that the entire four annas was, the absolute property of the two widows, the share of Laruan was only two annas. The remaining two annas belonged to Usri and on her death it was inherited by Laruan as an heiress to Usri's stridhan and she had only a life interest in it and the alienation to the extent of two annas therefore should be held to be not binding upon the plaintiff.

6. Regarding the first point, the finding of the Court below is, in my opinion, correct. No doubt a mortgage is an interest in the immovable property but the mortgage debt in consideration of which the two annas of the tauzi was purchased was a moveable property. The share was simply a security for that debt. I now take up the second and third points. It is not disputed that according to Mithila law a widow takes an absolute right in the moveable properties left by her husband. As the 4 annas of the tauzi was purchased by the widows with the money which has been held to be their absolute property, it belonged to them absolutely. Now the question is whether the two widows having purchased this 4 annas share made it a part of their husband's estate. This is a question of fact, and the finding of the Courts below seems to be against it. Therefore this 4 annas of the tauzi remained absolute estate of the widows.

7. The next question is about the position of Laruan in respect to the 2 annas which belonged to Mt. Usri. The appellant's contention, as I have said, is that it being Usri's stridhan, Laruan got only a life estate therein as an heiress to stridhan. Mr. Manohar Lal who appeared on behalf of the respondents, on the other hand, contended that the two widows took the moveables of their husband jointly and on the death of Usri, Laruan got the whole of the 4 annas by Survivorship with an absolute power of disposal as a moveable of her husband and not as stridhan, and it should be treated as other properties of the husband with only this exception that she had an absolute power over it. He argued that if there are more than one widow and one of them does not dispose of her share in the moveable, on her death the undisposed of portion goes to the surviving widow as an absolute property. He further argued that if it be held that moveables inherited by a widow are her stridhan then under the rule of Mithila law Usri's 2 annas share devolved upon the plaintiffs themselves, they being the nephews of Usri's husband but as they did not lay any claim to that share for so many years, their right became barred by limitation: Laruan having taken possession of that share without any right whatsoever, her possession was adverse to the plaintiff and this possession ripened into title after the statutory period and she got an absolute power of disposal over that share also.

8. The first question which arises, is whether the moveable property which a widow inherits from her husband is or is not her stridhan? Mr. Manohar Lal referred us to Vivada Chintamani and urged that the list of stridhan, as given in that book, is exhaustive and is confined to what may be called technical stridhan, and moveable property inherited from the husband does not come in the list. Now Vivada Chintamani has not given any definition of stridhan but has simply enumerated them according to smriti writers. In my opinion the list given there is not exhaustive. It has been held that properties over which a Hindu lady has an absolute power of disposition comes within the generic term stridhan. This was the view taken in *Bachha Jha v. Jugmon Jha* (1886) 12 Cal 348, which was a case under the Mithila law. The learned Judges of the Calcutta High Court following the decision of the Privy Council in *Brij Inder Bahadur Singh v. Janki Kuer* (1877) 5 IA 1, seems to have laid down that the property on which a Hindu lady has a complete power of disposition is her stridhan. Therefore, there is no doubt that this four annas which was acquired, by these two ladies constituted their stridhan.

9. The next point is who succeeded to the 2 annas of Usri on her death. Reliance was placed again on Vivada Chintamani in support of the proposition that a co-widow is not an heiress to her childless co-widow. Now Vivada Chintamani, while enumerating the heirs to stridhan of a childless widow, stops at the husband in case her marriage was performed according to one of the unapproved forms, and at parents in case the marriage was in one of the unapproved forms. Who is to succeed the former in the absence of her husband has not been definitely stated. From the discussion in *Bachha Jha v. Jugmon Jha* (1886) 12 Cal 348, and *Mohan Prasad Narayan Singh v. Kishun Singh* (1894) 21 Cal 344. Dr. Gooroodass Banerjee in his well-known treatise on "The Hindu Law of Marriage and Stridhan" seems to have deduced the proposition that after the husband the property of a childless Hindu female will go to the groups of heirs specified in the text of Brihaspati. It was argued that as husband's nephew is mentioned in Brihaspati's text while the widow is not, therefore, the plaintiffs were preferential heirs. The question was exhaustively examined in this Court in *Kamla Prasad v. Murli Manohar* 1934 Pat 398, where the same argument was advanced that the heirs specified by Brihaspati will have preference over those not mentioned by him. After consideration of various authorities now available it was held that after the husband comes in his nearest kinsmen though not mentioned in the text. *Bachha Jha v. Jugmon Jha* (1886) 12 Cal 348, was held to be good law. The text of Brihaspati was also under consideration in *Bai Kesser Bai v. Hansraj Morarji* (1906) 30 Bom 431, where their Lordships of the Judicial Committee held that the husband's widow is an heiress to the stridhan though not mentioned by Brihaspati, she being the sapinda of her husband. That decision was not based upon any peculiar doctrine of Mayukh law but on the authority of the Mitakshara. Mithila law is the law of Mitakshara except in a few matters where it specifically differs from it. It is clear, therefore, that on the death of Usri half of the four annas share, namely, two annas of this tauzi, came to Musammat Laruan as an

heiress to the stridhan. Now the question is whether she took an absolute estate in it or only a life estate. It is not necessary to discuss this point. Assuming that she took only a life estate there was legal necessity for her to sell it. There is a finding of fact by both the Courts below that out of Rs. 450 which formed the consideration of the four annas share Rs. 223 was taken in cash and Rs. 227 was set-off in satisfaction of the previous debts due from Mt. Laruan. The handnotes were produced which the learned Subordinate Judge seems to have accepted as genuine and to have held that this loan was taken in order to perform the Gaya sradh of Bishun and Mt. Usri. Therefore, the sale, at any rate to the extent of half, i.e., 2 annas was for a legal necessity and that covered the share of Usri. Mr. Das however contended that as the legal necessity was only for the sale of half, that is, two annas, the sale was valid to the extent of the share of Laruan only and not the share of Usri. I see no reason why it should be so. Both the widows were under religious obligation to perform the sradh of their husband, and if Usri did not perform it in her lifetime, it was the duty of Laruan to perform it. I think, that, on the whole, the transfer of this four annas share was valid and the decree of the Courts below is correct, though entirely upon the grounds on which they have passed it.

10. The next alienation to be considered is the dedication of the twelve annas of this tauzi in favour of defendant 2 the idol. Now, it is needless to consider whether, in the circumstances of the case the dedication of a fifth of the property of the husband was justified. Mr. Das contended that the finding that the dedicated property was only one-fifth of the estate is based upon no evidence. I do not wish to discuss that as, in my opinion, there is no dedication by the lady at all. The document, if correctly read, is not a document of dedication but an acknowledgment that a dedication had already been made by the husband. This story was found not to be true by both the Courts below. Bishun died in 1903. This document what is called samarpannama--did not come into existence for twenty-five years. It was executed in 1928. If Bishun had dedicated this property, to the idol there is no reason why the execution of a document should have been delayed for twenty-five years and why no effort was made to take a document from the two widows jointly when Usri was alive, she having died in 1914. Therefore, in my opinion, this document is not a dedication by Mt. Laruan but, as I have said, is a confirmation of an alleged dedication by Bishun which has been found not to have been made by him. Such a document cannot be binding upon the reversioners.

11. The result is that I would partly allow the appeal. Over and above the declaration in respect of the 17 kathas of malikana land which the plaintiffs have got from the Courts below there will be a declaration that the document called samarpannama, dated 4th September 1928, will not be binding upon the appellant (the surviving plaintiff) after the death of Mt. Laruan. The appeal in respect of the sale dated 26th July 1918, is dismissed. The order passed by the Court below for costs will stand. The appellants will get three-fourths of their costs of this Court, respondents bearing their own costs.

Macpherson, J.

12. I agree.