

(1973) 01 PAT CK 0001

In the Patna High Court

Case No : Appeal from Appellate Decree No. 532 of 1969

Mossammat Sonekali Kuer and Others

APPELLANT

Vs

Srimati Bahuria Akashi Devi

RESPONDENT

Date of Decision : 17-01-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Hindu Succession Act, 1956 — Section 14

Citation : AIR 1973 Patna 477

Hon'ble Judges : Shambhu Prasad Singh, J; A.N. Mukharji, J

Bench : Division Bench

Advocate : Kailash Rai and Ashwini Kumar Sinha, for the Appellant; B.P. Samaivar and R.S. Chatterji, for the Respondent

Final Decision : Dismissed

Judgement

1. This Second Appeal by the defendants except No. 11 arisen out of a suit for declaration of title and recovery of possession with mesne profits in respect of schedule 2 property, in the alternative, a decree for partition in respect of Schedule 1 property. The suit was instituted by the transferee from defendant No. 11.

2. One Jagdayal who died in the year 1952 had five daughters and one son Lakhandeo. Lakhandeo had predeceased him. His widow is Sheomati, defendant No. 11. By a registered sale deed dated the 20th of May, 1959 she transferred Schedule 2 lands to the plaintiff-respondent. Jagdayal's widow Sonekali is defendant No. 1 to the suit and she has also sold portions of the property in dispute to defendants Nos. 7 to 10. The four daughters of Jagdayal who are alive are defendants 2 to 5. Balkesh son of one of the deceased daughters of Jagdayal is defendant No. 6. Defendants 12 to 15 are husbands of defendants 2 to 5. One Ramlagan has been made defendant No. 16, to the suit. It is not quite apparent from the plaint why he was made a party to the litigation; perhaps he was a party in the proceedings u/s 145 of the Code of Criminal Procedure.

3. Briefly stated the case of the plaintiff-respondent is that Lakhandeo died in the year 1950 in jointness with his father Jagdeyal. After Jagdeyal's death there was a partition between Sonelal and Sheomati at which the latter got schedule 2 lands which were transferred subsequently to the plaintiff-respondent. After the execution of the sale deed in her favour by Sheomati she came in possession of those lands but subsequently she was dispossessed when an order in favour of the defendants was wrongly passed in a proceeding u/s 145 of the Code of Criminal Procedure, She however averred that in case the court was of the opinion that there was no partition between Sonekali and Sheomati a decree for partition may be passed.

4. The case of the appellants was that Lakhandeo died sometime in the year 1343 Fs. before coming into force of the Hindu Women's Rights to Property Act. Sheomati widow of Lakhandeo, therefore, could not get any right, title and interest in the property in dispute. There was no partition between her and Sonekali as alleged by the plaintiff-respondent who never came in possession of the property in dispute. They admitted however, that the property in dispute was a joint family property.

5. The trial Court held that the plaintiff-respondent failed to prove that Lakhandeo died after 1937. It further held that the property in dispute was joint family property and that there was no partition between Sonekali and Sheomati. Accordingly, it dismissed the suit. The lower appellate Court has affirmed two of the findings of the trial Court that the property was joint family property and that there was no partition. It has however, held that Lakhandeo died after 1937 and therefore. Sheomati did get an interest in the property in dispute. On these findings it has decreed the suit so far as alternative relief for partition is concerned giving the plaintiff-respondent a moiety share in Schedule 1 property.

6. Mr. Kailash Rai appearing for the appellants has firstly challenged the finding of the court of appeal below that Lakhandeo died after 1937. He has contended that the finding has been arrived at by arithmetical calculation on the basis of statements made by two of the defendants' witnesses. D.Ws, 7 and 11, and therefore, it was wrong in law. In support of his contention he has placed reliance on decisions in AIR 1935 199 (Privy Council) and Bishwanath Gosain Vs. Dulhin Lalmuni and Others, . In these decisions it has been observed that evidence as to time and date of witnesses of this country who are mostly illiterate cannot be accepted to be arithmetically correct. The practice of making arithmetical calculations and recording finding thereon or disbelieving a witness on the ground that the statements are not arithmetically correct has been deprecated. It has not however, been held in either of these two decisions that if a final court of fact arrives at a finding on making arithmetical calculations on the basis of evidence of witnesses, the finding is wrong in law. It may be an erroneous reason on the part of the final court of fact for arriving at a particular finding but the finding of fact so arrived cannot be held illegal on that score. Such a finding is binding on a Second I Appellate Court. It is not therefore, open

to the appellants to challenge the legality of the finding of the lower appellate Court as to the date of death of Lakhandeo.

7. Mr. Rai has next urged that Sheomati had merely an undefined share in the property in dispute and transfer by her until that share was defined by claiming a partition could not bind the estate. The transfer in favour of the plaintiff-respondent was made after coming into force of the Hindu Succession Act, 1956. In the case of Sukhram and Another Vs. Gauri Shankar and Another, it has been held that a female who became full owner after coming into force of the Hindu Succession Act was competent to sell her undefined interest for her own purpose without the consent of the male coparceners of her husband. Mr. Rai had drawn our attention to some decisions of the Supreme Court and this Court in which it has been held that the interest of a Hindu widow which she gets under the Hindu Women's Rights to Property Act, 1937 is liable to be increased or decreased so long she does not claim a partition and has submitted that the decisions of the Supreme Court in Sukh Ram's case is in conflict with those decisions. Mr. Rai was not able to place before us any decision either of the Supreme Court or any other Court which is directly in conflict with the dictum laid down in Sukh Ram's case where it has been observed that no limitations should be imposed on the powers of a Hindu female which the Parliament has not chosen to impose upon her by the Hindu Succession Act. The decision of the Supreme Court is binding on all Courts in India and therefore it is not necessary to discuss the arguments advanced by Mr. Rai in any further detail.

8. Mr. Rai has lastly urged that the share of Sheomati could be only one-third and not half and, therefore, the decree in favour of the plaintiff-respondent should also have been only in respect of the one-third share in the property. The basis for this contention of Mr. Raj is that after the death, of Lakhandeo on a partition between (sic) mati and Jagdayal, Sonekali could (sic) also get a share. Therefore, accordig to him she is entitled to two-third share, one-third of her own and one-third of her husband. Sonekali as stated earlier, is the widow of Jagdayal and mother of Lakhandeo. The fact whether she could get a share over and above that of her husband depends upon the date of partition of the property. The mother becomes entitled to a share only when there is partition amongst the sons or between the father and the son. So long there is no partition the mother does not get a share. In the instant case, Sheomati did not separate and claim partition from Jagdayal so long he was alive. After Jagdayal's death, when the Hindu Succession Act came into force, only Sonekali and Sheomati, two persons, were there who were entitled to the property and their share would be half and half. In our opinion, therefore the court of appeal below has rightly passed a decree for partition in respect of moiety share in this case and, it has not committed any error of law even, in that respect. No other argument was advanced by Mr. Rai.

9. In the result, we find no merit in the appeal and it is accordingly, dismissed with costs.