
(1968) 04 OHC CK 0010
In the Orissa High Court
Case No : A.H.O. No. 3 of 1964

Mst. Jandebi

APPELLANT

Vs

Upendra Sahu and Another

RESPONDENT

Date of Decision : 23-04-1968

Acts Referred:

Hindu Succession Act, 1956 — Section 8

Citation : AIR 1968 Ori 187 : (1968) 34 CLT 771

Hon'ble Judges : G.K. Misra, J;B.K. Patra, J

Bench : Division Bench

Advocate : R.N. Sinha, B. Naik and S.N. Sinha, for the Appellant; B. Mohapatra and R.K. Mohapatra, for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, J.—Janardan died in 1920 leaving behind his widow Brundabati and daughters Narayani and Jandebi (plaintiff). Brundabati died in January, 1958. Narayani died in 1942 leaving behind her sons Upen-dra and Rajendra (defendants 1 and 2). After Janardan's death, Brundabati executed a registered deed of gift (Ex. C) on 17-5-20 in respect of the disputed property In favour of Narayani. The suit was filed on 17-3-58 for recovery of possession of the disputed property after a declaration that the gift was void and was not binding on the plaintiff after the death of Brundabati. All the courts have concurrently held that the gift was void and was not binding on the plaintiff after the death of Brundabati. The trial court held that Section 8 of the Hindu Succession Act, 1956 (hereinafter referred to as the Act) applied to the case and both the plaintiff and the defendants would simultaneously inherit the properties of Janardan and the plaintiff was entitled to only eight annas interest. It accordingly declared plaintiff's title to half the disputed property and directed her to be put in joint possession with the defendants. The Subordinate Judge held that Section 8 had no application and the succession would be governed by the provisions of orthodox Hindu law. It accordingly decreed the entire suit for declaration of title

and recovery of possession. In second appeal, the learned Single Judge held that Section 8 had application and restored the decree of the trial court. Plaintiff has filed this appeal challenging the correctness of the aforesaid view.

2. The only question for consideration in this appeal is whether Section 8 of the Act or the orthodox Hindu law would govern the succession to the disputed property on the death of Brundabati. If Section 8 would apply to the devolution of the property in 1958, then the orthodox Hindu law would have no application. This conclusion flows directly from Section 4 of the Act, the relevant portions of which run thus:--

"Section 4 (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 for which provision is made in this Act."

Mr. Mohapatra concedes that excepting Section 8, there is no other section in the Act which would govern the succession in this case. Thus if Section 8 has application to this case, then the orthodox Hindu law would have no application in view of the provision in Section 4(1)(a).

3. Before examining the question whether Section 8 has application to this case, it would be profitable to analyse the position under the old Hindu law. When Janardan died in 1920, his properties were inherited by his widow Brundabati who was the next heir. Her estate was, however, a limited one. On her death, the properties would revert to Janardan and descend to those who would have been his heirs if he had lived up to and died at the moment of her death AIR 1946 173 (Privy Council). Plaintiff is the next reversioner and is a preferential heir to the defendants (See Mulla's Hindu Law, 13th Ed. at p. 109). Thus if the orthodox Hindu law applies, plaintiff's suit is to be decreed in toto.

4. It is now necessary to examine whether Section 8 has application to this case and would exclude operation of the orthodox Hindu law. Section 8 so far as is relevant runs thus-

"Section 8. The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter --

(a) firstly, upon the heirs being the relatives specified in Class I of the Schedule."

Section 9 lays down that among the heirs specified in the Schedule, those in Class I shall take simultaneously and to the exclusion of all other heirs. Class I of the Schedule contains both daughter and son of a pre-deceased daughter. Assuming [or the moment that the defendants are sons of a pre-deceased daughter plaintiff and defendants both come in class I. If Section 8 applies, they shall take the property simultaneously.

5. The only question, therefore, is whether Section 8 applies. On the facts of this case, two positions are conceivable.

(i) If Brundabati had not transferred the disputed property to Narayani and had continued in possession till the Act came into force on 17-6-56, she would have acquired an absolute title in that property u/s 14(1) and the succession would have been governed by Section 15.

(ii) As Brundabati had no subsisting title in the disputed property and was not in possession on the date of the commencement of the Act, Section 15 has no application to such a case, because it ceased to be the property of Brundabati when the Act came into force. Her limited interest continued till her death.

Section 8 would come into operation only on the analysis that though Janardan in fact died in 1920, by legal fiction he must be deemed to have died in 1958 on the date when Brundabati died. Mr. Mohapatra adopts this reasoning on the basis of the aforesaid Privy Council decision wherein it was held that the words "dying intestate" are a description of the status of deceased and have no reference to the time of the death of a Hindu male. The expression merely means "in the case of intestacy of a Hindu male".

He accordingly contends that as Janardan by legal fiction would be taken to be alive in 1958, and the property reverts back to him, it is the property of a male Hindu which shall devolve according to the provisions of Chapter II as laid down in Section 8 and on that basis defendants' claim to half the property cannot be resisted. *Hiralal Roy Choudhury Vs. Kumud Behari Roy Choudhury*, *Bepin Behari Mullick and Others Vs. Sm. Lakshasona Dassi and Others*, *Smt. Banso and Others Vs. Charan Singh and Others*, *S. Kuldip Singh and Others Vs. Karnail Singh Bakhshish Singh and Others*, *Ramulu and Another Vs. Govur Venkanna (Died) Govur Narayana and Others*, and *Harbhaj Vs. Mohar Singh and Others*, support his argument.

6. The rival contention, on the other hand, is that there is no provision in the Act for the devolution of the property on the termination of the widow's estate and there is no provision also for devolution of property on the basis of a fictional death and that it only deals with devolution on actual death of the male holder after the commencement of the Act. In support of this contention reliance is placed on Sections 6, 7, 14, 22 and 26 of the Act where clear provision is made as to whether the sections would come into operation before or after the commencement of the Act.

In Sections 6, 7 and 22, it is clearly stated that they would come into operation when a male Hindu dies after the commencement, of the Act. In Sections 14 and 26, the expression used is "before or after the commencement of this Act"

It is accordingly contended that where-ever a particular section was intended to be retrospective, the Legislature used clear words and that Section 8 having used the words "shall devolve" it would not apply to a case where the male Hindu does not actually die after the commencement of the Act. AIR 1966 Mys. 189. *Kempiah v. Girigamma and Renuka Bala Chatterji Vs. Aswini Kumar Gupta and Others*, support this contention. The aforesaid decision of the Patna High Court

has been consistently followed in *Nathuni Missir Vs. Mosammat Ratna Kuer and Others*, . *Gopi Chand Arya and Others Vs. Sm. Bedamo Kuer and Others*, and *Chaturbhuj Pradhan and Others Vs. Sarbeshwar Pradhan and Another*, .

7. We have clearly indicated the reasons in support of the rival contentions. It is not necessary to critically examine the correctness of the conflicting views supported by high authorities on either side as, according to us the matter is concluded by *Eramma Vs. Verrupanna and Others*, Their Lordships observed thus:

"There is nothing in the language of of this section (Section 8) to suggest that it has retrospective operation. The words "property of a male Hindu dying intestate" and the words "shall devolve" occurring in the Section make it very clear that the property whose devolution is provided for by that section must be the property of a person who dies after the commencement of the Hindu Succession Act."

Their Lordships made a reference to Section 6 of the Act and concluded thus:

"It is clear from the express language of the section that it applies only to coparcenary property of the male Hindu holder who dies after the commencement of the Act It is manifest that the language of Section 8 must be construed in the context of Section 6 of the Act. We accordingly hold that the provisions of Section 8 of the Hindu Succession Act are not retrospective in operation and where a male Hindu died before the Act came into force i. e, where succession opened before the Act, Section 8 of the Act would have no application.

8. This decision is a clear pronouncement that Section 8 is not retrospective and applies to cases where a male Hindu dies after the commencement of the Act. The death of a male Hindu after the commencement of the Act refers to actual and not fictional death.

9. Mr. Mohapatra attempted to distinguish this decision with reference to the facts of that case. The scope and ambit of the section came up for consideration undoubtedly on facts which are not similar to those of the present case. The construction given to Section 8 would not vary according to facts. It was said in clearest terms that Section 8 must be construed in the context of Section 6. Section 6 clearly lays down that devolution of property provided therein would operate only if the male Hindu dies after the commencement of the Act. That was the only context in Section 6 which was invoked for construction of Section 8. This is why their Lordships said that Section 8 would operate only in cases where a male Hindu dies after the commencement of the Act. Mr. Mohapatra's contention has no force. As the old Hindu law would govern the devolution of property in this case plaintiff is entitled to get the entire property

10. On the aforesaid view, the second contention that the defendants are not sons of a pre-deceased daughter of Janardan does not arise for consideration.

11. In the result, the judgment of the learned Single Judge is set aside and the appeal is allowed. Plaintiff's suit is decreed in full In view of the fact that law was

unsettled, parties to bear their own costs throughout.

Patra, J.

12. I agree.