
(1931) 05 PAT CK 0007
In the Patna High Court

Mt. Budha Kuer

APPELLANT

Vs

Mt. Sahodra Kuer and Others

RESPONDENT

Date of Decision : 19-05-1931

Acts Referred:

Citation : AIR 1931 Patna 367

Hon'ble Judges : Wort, J;Jwala Prasad, J

Bench : Full Bench

Judgement

Jwala Prasad, J.—This is an appeal by defendant 1, Mt. Budha Kuer. She is widow of one Sheosaran Misra. Sheosaran Misra had two sons. Thag Misra and Mathura Misra. The plaintiff Sahodra Kuer is widow of Thag Misra. Defendant 1 executed a zarpeshgi (usufructuary mortgage) in respect of revisional survey plot No. 1335, 2 kathas 3 dhurs, in favour of defendant 2. Sheosaran Misra died leaving his widow defendant 1 and his two sons Thag Misra and Mathura Misra. Mathura Misra died in 1325 (corresponding to 1918). The revisional settlement took place in 1919. In the Record of Rights of that settlement, which was published in January 1919, the name of defendant 1 Budha Kuer along with Thag Misra was recorded in respect of the lands belonging to Sheosaran Misra including the land in dispute. The plaintiff's case is that after the death of Mathura Misra her husband Thag Misra brother of Mathura Misra, succeeded to properties of Sheosaran Misra and has been in possession thereof, but defendant 1 wrongfully got her name along with Thag Misra recorded in the revisional settlement records and collusively executed the rehan deed in question and that she is offering resistance to the possession of the plaintiff. The plaintiff therefore claims a declaration to the effect that she as heir of Thag Misra has succeeded to the properties and that Mt. Budha Kuer has no concern at all with it and upon that declaration she seeks to have her possession confirmed and if it be found that she is not in possession, possession may be awarded to her.

2. Both the defendants Mt. Budha Kuer and Tilak Sah, the mortgagee, filed written statements. The plaintiff's claim is however resisted principally by

defendant 1. Her case is that Thag Misra was deaf and dumb from his birth and was therefore excluded from inheritance under the Hindu law. Therefore the plaintiff, his widow, did not inherit the properties in dispute. She denies possession of the plaintiff and asserts that after the death of her son Mathura Misra she inherited the properties as his mother and came to be in possession thereof, and the survey entry is correct in so far as it has recorded her name, but is wrong in so far as it has recorded the name of Thag Misra also jointly with her.

3. The Munsif upheld the contention of the defendant and dismissed the suit. On appeal the Subordinate Judge upset the decision of the Munsif and decreed the suit. The defendant Mt. Budha Kuer has therefore come to this Court in second appeal. She does not dispute and in fact she cannot dispute the findings of fact arrived at by the Court below, namely: (1) that Mathura Misra died before Thag became traceless; (2) that Thag Misra was deaf and dumb from his birth and (3) that the plaintiff was in possession of the disputed land until dispossessed. The contention however is that Thag Misra was excluded from inheritance by reason of the congenital defects referred to above being deaf and dumb from his birth and therefore the plaintiff, his widow could not inherit the properties in dispute. The properties were inherited by Mathura Misra, after the death of his father Sheosaran Misra and upon his death Mathura's mother defendant 1 Mt. Budha Kuer succeeded to the exclusion of the plaintiff's husband Thag Misra. The plaintiff could inherit the properties of Thag Misra but he had no vested interest in the properties. Her possession if any was that of a trespasser which being within twelve years of the death of Mathura Misra, could not ripen into an adverse possession giving indefeasible title to her. The learned advocate on behalf of the respondent contends that the disability of Thag Misra was only personal and did not affect the right of his widow to inherit the properties. In support of this contention the learned advocate has relied upon the decision of the Bombay High Court in *Gangu v. Chandrabhagabai* [1907] 32 Bom. 275. That was a case where the wife of a murderer was held entitled to succeed to the estate of the murdered man not because the wife deduced the title through her husband but because she by her marriage became a member of her husband's gotra and was entitled to succeed to the property of the last propositus as his gotraja sapinda.

4. The wife of the murderer in that case claimed the right to succeed upon two grounds: (1) as heir to her husband who became disqualified by reason of his having committed an offence of murder and as a gotraja sapinda of the last propositus. The learned Subordinate Judge who tried the suit rejected her claim upon the ground that the offence committed by her husband affected her also and accordingly she was excluded from the right of inheritance not only to her husband but also to the last propositus. On appeal the first appellate Court held that she was entitled to succeed as a gotraja sapinda of the last propositus and the disability of her husband did not affect her right to succeed to the last propositus. The defendant appealed to the High Court of Bombay and the Court confined its consideration of the aforesaid point only as to whether she was

competent to inherit as a gotraja sapinda of the last propositus and in deciding that point they held that the disqualification of the murderer was only personal and did not attach any taint or disability upon his heir such as his widow to inherit in her own right. But in dealing with this question their Lordships used general expressions which might lead to the contention that the widow of the murderer was entitled to succeed to the inheritance of her husband. The position taken by the learned advocate on behalf of the respondent is inexplicable in view of the fact that in the eye of the law the disqualification of a person to inherit implies that the person so disqualified does not in law exist and consequently he does not take any inheritance at the time the succession opens and consequently he cannot transmit anything to his own heir. The very text of Manu, which enjoins disqualification upon certain persons from inheritance implies the above view. In Ch. 9, Sloka No. 201, Manu says:

An impotent person and an outcast are excluded from a share of the heritage and so are those deaf and dumb from birth as well as mad men, idiots and the dumb and any other that is devoid of an organ of sense or action.

5. This sloka enjoins exclusion from inheritance of the person so disqualified and if he is excluded he does not inherit anything which he can transmit to his own heirs. This view is supported by the decisions of their Lordships of the Judicial Committee in the case of *Kenchva v. Girimallappa Channappa* AIR 1924 P.C. 209. That was the case of the heir of a murderer. Their Lordships held that the murderer was not to be regarded as the stock for a fresh line of descant but as not existing when the succession opened, and the Bombay decision in *Gangu v. Chandrabhagabai* [1907] 32 Bom. 275, referred to above was held not to have laid down a contrary view and was distinguished upon the ground stated above that the wife of the murderer was entitled to succeed to the last propositus in her own right as his gotraja sapinda and not as an heir to her disqualified husband. Mulla's Hindu Law, 6th Edn. 1920, pp. 104--05, para. 99 to 102, has clearly illustrated the point. In this case as observed above the concurrent finding of the Courts below has been that Thag was deaf and dumb from his birth and his disease was incurable. He was therefore in law excluded from inheritance. He did not take anything and could not therefore transmit it to the plaintiff.

6. Therefore differing from the Court below I would set aside the decision of that Court, decree the appeal, restore the decision of the Munsif and dismiss the suit with costs throughout.

Wort, J.

7. I agree.