

(1958) 03 PAT CK 0007
In the Patna High Court
Case No : A.F.O.D. No. 9 of 1949

Mt. Jasoda Kuer and Another		APPELLANT
	Vs	
Dulhin Phul Kuer and Others		RESPONDENT

Date of Decision : 13-03-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 2
Evidence Act, 1872 — Section 101, 102, 103, 104
Hindu Womens Right to Property Act, 1937 — Section 3(1), 3(2), 4

Citation : AIR 1958 Patna 600 : (1958) 6 BLJR 475

Hon'ble Judges : K. Dayal, J;K. Ahmad, J

Bench : Division Bench

Advocate : R.S. Chatterji, Kanhaiyaji and K.N. Chaturvedi, for the Appellant;
Rama Kant Varma, Angad Ojha and Chandra Bhusan Sahay, for the Respondent

Final Decision : Dismissed

Judgement

K. Ahmad, J.—The controversy in this case centres round the properties of one Har Frasad Misser of village Dumraon which had been given to him by his father-in-law Rachheya Misser under a deed of gift dated 30-8-1878. Rachheya Misser was a resident of Rajdiha and had three daughters: (1) Sheobarta Kuer, (2) Anurago Kuer, and (3) Lakho Kuer. It was the first of these three daughters, namely, Sheobarta Kuer who was married to Har Prasad. Anurago and Lakho were married with Lachhmi Choubey and Ram Badhai Choubey respectively, both of whom were residents of Belaur. As Rachheya Misser had no son he had made a gift of all his properties in equal shares in favour of the aforesaid three sons-in-law.

And it is not denied that the properties given to Har Prasad under the aforesaid deed of gift remained all along in his possession as his absolute properties till his death which event took place sometime in the year 1896. Thereafter his widow Sheobarta died some-time in the year 1346 Fasli corresponding to the year 1938 and within 12 years from the date of her death the present suit was instituted for

declaration that the plaintiff was the daughter of Har Prasad and as such it was she who on the death of Sheo Barta was entitled to his properties and not Mosst. jasoda Kuer (defendant No. 1) the admitted widow of Har Prasad's predeceased son Bhagwat Misser. Further therein she also prayed for recovery of possession and mesne profits. In support of this claim the following genealogy was relied upon at the trial :

HAR PRASAD MISSER = SHEOBARTA _____ |
 _____ | | | Bhagwat Misser Phula Kuer Ramdasi
 Kuer (deceased) (Plaintiff) (deceased). =Jasoda Kuer (Deft. No. 1)

That means, according to the plaintiff, Har Prasad had one son Bhagwat Misser and two daughters. Phula Kuer and Ramdasi Kuer, of whom Bhagwat Misser died issueless in the life-time of his father Har Prasad. Thus Har Prasad on his death left behind him his widow Sheobarta, his two daughters Phula Kuer and Ramdasi Kuer, and Jasoda Kuer, the widow of the predeceased son Bhagwat. And as among these Sheobarta was the nearest heir, all the properties left by her and she remained in possession thereof till her life-time and it is not denied that it was her name that found place in all the papers of the cadestral survey with regard to these properties. Further, it was claimed that the plaintiff and her sister Ramdasi Kuer had been married with two brothers SheoKumar Ojha and Girja Dutt Ojha respectively of village Singhanpura and it was done by Sheobarta her-seu sometime between 1900 and 1903.

But just thereafter Ramdasi Kuer died without any issue. So, in the year 1938 when Sheobarta died, she left behind only two member; in the family, namely, Phula Kuer (plaintiff) and Jasoda Kuer (defendant No. 1). The claim of the plaintiff is that as between them she was the preferential heir of Har Prasad, therefore, on the death of Sheobarta all the properties of Har Prasad were inherited by her and she came in possession thereof. But as Jasoda Kuer (defendant No. 1) was entitled to maintenance, she left them under her management. Subsequently, however, she came to know that Jasoda Kuer was repudiating her title and was dealing with proper-lies as her own. Hence the suit for the reliefs stated above impleading therein the alienees as defendants 2 to 4.

2. Defendant No. 1 in defence of her title set up a counter genealogy which, as given in the writ-ten-statement, is as follows :

BHAIRO MISSIR (Died) | _____
 _____ | | | Ram Saran Missir
 Lachhuman Missir Naubat Missir Gauri Missir (died) (died issueless) (died) (died
 issueless) | |
 _____ | | | | Mathura
 Har Prasad Kishore Missir Bajrang Missir Baldeo Missir Jagdam Missir Missir
 Missir (died) (died) (died issueless) (died issueless) (died) (died) | | | Sheo
 Prasad Missir | _____ |
 _____ | | | Bhagwat Missir Jagtanand Missir

Mahadeo missir Kadar Missir (died) (died issueless). (died issueless) (died)
=Jasoda Kuer

According to her, Har Prasad Missir had no daughter but only two sons, namely, (1) Bhagwat Missir and (2) Jagtanand Missir, both of whom survived their father Har Prasad Missir. On the death of Har Prasad the properties devolved upon Bhagwat Missir by survivorship. And while he was thus in possession, his brother Jagtanand Missir first died and then he leaving behind him his widow Jasoda Kuer and his mother Sheobarta. Accordingly, on the death of Bhagat Missir, it was Jasoda Kuer who inherited the properties of Har Prasad, But as Sheobarta was the eldest in the family, the management of these properties was left in her hand; and perhaps it was for that reason, it is said, that her name was recorded in the survey record-of-rights and not that of Jasoda Kuer. As such she claimed that it was she who was entitled to the properties left by Har Prasad and not the plaintiff, who, according to her, was a stranger to the family and, as a matter of fact, was the daughter of one Rajnet Choubey of Rajdihan, the son of Anurago.

She further claimed in her written-statement that she had already on 19-12-1946, executed a deed of surrender (exhibit C) in favour of Sheo Prasad Misser who then, according to her, was the nearest agnate of Har Prasad. Accordingly, the plaintiff therefore got her plaint amended and made Sheo Prasad Misser also a party to the suit as defendant No. 5. But as he died issueless during the pendency of the suit leaving his widow Fuljharo Kuer alone surviving him, she was brought on the record in his place as defendant No. 5. Thus, on the allegations made by the parties, two main questions that arose for consideration at the trial were, (1) whether Bhagwat Misser predeceased his father Har Prasad Missir, and (2) whether the plaintiff was the daughter of Har Prasad. But on both these points the Court found with the plaintiff and finally decreed the suit.

3. Now on appeal, which is on behalf of only two defendants, Jasoda Kuer (defendant No. 1) and Fuljharo Kuer (defendant No 5), the first finding, namely, that Bhagwat Missir predeceased his father Har Prasad Missir has not been challenged by Mr. Chatterji appearing for appellant No. 2, and so far as appellant No. 1 is concerned, she has now, during the pendency of the appeal, compromised the case with the plaintiff and has also filed an application to that effect. Therein she has admitted the following facts and has prayed that the appeal be disposed of on compromise so far as she and respondent No. 1 are concerned :

"(a) The appellant No. 1 Jasoda Kuer accepting the respondents case and the decree passed in her favour.

(b) The respondents do not press for their costs either in the Court below or in this Court and the decree of the Court below be confirmed." Accordingly, the appeal is now pressed only on behalf of appellant No. 2 and the main contention raised on her behalf is that the plaintiff is not the daughter of Har Prasad and the finding given, by the trial Court on this point is perverse and cannot be

Sustained. In support of this contention what has been argued is that, Phula Kuer being the plaintiff, she has to prove by cogent evidence that she is the daughter of Har Prasad and in doing that she cannot take any advantage of the fact that the defendants have failed to prove that the plaintiff is the daughter of Rajnet Choubey.

As a proposition of law, there can be no two opinions on this submission, but at the same time on the facts of this case, it cannot be denied that the trial Court had only two versions before it about the parentage of Phula Kuer : the one was, as contended by the plaintiff, that she was the daughter of Har Prasad, and the other, as contended by the defendants, that she was the daughter of one Rajnet Choubey. Naturally, therefore, if the evidence given on behalf of the defendants on the point that the plaintiff was the daughter of Rajnet Choubey was condemned as unworthy of reliance, that was bound to have certain repercussion in the process of appreciating the evidence given by the plaintiff, though initial onus was always on the plaintiff to establish the same.

But once that onus was discharged, that got further strength from the conclusion that the counter-case set up by the defendants was not at all true. And I think it was in this sense that the trial Court observed that it was also a factor to be taken into consideration and not in the sense that because the case of the defence was false, therefore, the case of the plaintiff was true.

4. Coming to the evidence on this point, it has to be noted at the outset, as pointed out by the trial Court also, that on the side of the plaintiff the evidence in support of her claim is all oral excepting one document, namely, exhibit 6 which, in fact, is confined to the point whether Har Prasad had at all any daughter or not. But I think that that document when read with the other evidence on the record is so coercive that on the facts of this case it is difficult to draw any other conclusion than this that plaintiff is the daughter of Har Prasad.

It may be recalled here, that according to the defence, Har Prasad had no daughter at all. Rightly, therefore, on his death he could not leave any daughter surviving him. But this claim is directly contradicted by the statement made in the rehan bond (exhibit 6) by Sheobarta. It was executed by Sheobarta on 6-9-1903, that means, at a time when there was not the least sign of any dispute between the parties. Therein her statement is to the effect that she was executing the document to pay off the debt which she had incurred in meeting the marriage expenses of her daughters the exact vernacular words, which had been used by her are :

"Jo Hamne apne Larkien ke shadi me karja lekar sharaph kia tha".

This unequivocally shows that she had daughters and it fully fits in with the case of the plaintiff that Har Prasad died leaving two daughters, namely, the plaintiff and her sister Ramdasi Kuer. The defendants, however, in order to rebut it asserted in the Court below that the word "daughters" used in the document refers not to her own daughters but to the daughters of Mathura Missir, the

brother of Har Prasad Missir, and in support of this assertion here reliance has been placed mainly on the oral evidence of D.Ws. 1, 3, 4, 6, 9 and 10. I think that the words used in exhibit 6 are so unambiguous and unmistakably clear that no other extraneous evidence is permissible to throw light over them. Further, there are certain broad circumstances which also lend support to the view that the construction put on these words by the defendants is not the least worthy of acceptance.

5-9. (His Lordship referred to these circumstances and continued as under :) In these circumstances, I think, these documents cannot be relied upon as those of Mosst. Sheobarta, nor can be of any avail to the defence to prove that Har Prasad died without any daughter. If that is so, then there is no evidence left on the side of the defence to rebut the case of the plaintiff, that she is the daughter of Har Prasad and so far as the evidence of the plaintiff on that point is concerned, that, in my opinion, is not only reliable but overwhelming. Therefore, there is no ground for me to interfere with the finding of the trial Court on this issue.

10. Lastly, as an alternative case, it has been argued for the first time in this Court that even if it be held that the plaintiff is the daughter of Har Prasad and that Bhagwat Missir predeceased his "father, then also among the two heirs namely, Jasoda Kuer and the plaintiff, the former, on the death of "Sheobarta is the preferential heir of Har Prasad, and, therefore, the plaintiff cannot claim any interest in his properties. This is clearly opposed to what was argued in the Court below. There, the clear case made out was that Jasoda Kuer and after her, Sheo Prasad Missir could succeed only if the plaintiff was not the daughter of Har Prasad. Therefore, on this ground alone this contention has to be rejected but on merits also, I think, there is no substance in it. The contention of Mr. Chatterji in support of the alternative case is that since the enactment of the Hindu Women's Right to Property Act, 1937 (Act XVIII of 1937), the widow of a predeceased son become a preferential heir to a daughter. As a general proposition of law, it is no doubt correct, but it has to be read subject to the provision of Section 4 which reads :

"Nothing in this Act shall apply to the property of any Hindu dying intestate before the commencement of this Act.

In this case, the properties are admittedly of Har Frasad Missir and it is not denied that he died sometime in 1896 long before the enactment of the aforesaid Act. Further, it has to be remembered that the properties in dispute were given to Har Prasad under a deed of gift executed by his father-in-law Rachheya Missir. Therefore, they were not co-parcenary properties of Har Prasad but his acquired properties. That being so, in a case like this, the provision of the Act which is applicable is the one provided in Section 3(1) and not Section 3(2). That means, the controversy, if any, which may be there, in regard to the interpretation of Section 3(2) of the Act, does not apply to the facts of this case and so far as the provision in Section 3(1) of the Act is concerned, that is clearly controlled by

Section 4.

Mr. Chatterji, however, has contended that the word "Hindu" used in Section 4 of the Act refers to both male and female, and, therefore, in this case, the properly in dispute should be taken as that of Sheo-barta, and, as Sheobarta died sometime in 1946, therefore, this is a case fully covered by the aforesaid Act of 1937. In my opinion, this argument is utterly untenable and is clearly opposed to what is meant by the word "Hindu" as used in Section 2 and as used in Section 3(1) of the Act. In these sections the word "Hindu" necessarily means a male Hindu and not a female Hindu. Further, the Act refers to those properties which belonged to a male Hindu and as such, could not be previously inherited by his widow on his death. Therefore, the interpretation put by Mr. Chatterji is, on the very face of it, contrary to the terms and spirit of that Act. Further, his contention on the other point also that Section 3(2) of the aforesaid Act is retrospective is without substance.

And if any authority is needed in support of that contention, I may refer here to the decision in *Mt. Phulia Vs. Narpat Singh and Others*, , *Moni Dei Vs. Hadibandhu Patra and Another*, . And so far as the decisions in AIR 1946 173 (Privy Council) and *Kamalabala Bose v. Jiban Krishna* AIR 1946 Cal 461 (D), relied upon by Mr. Chatterji are concerned, they have no bearing whatsoever on the point in issue here. The former deals with the provisions of Hindu Law of Inheritance (Amendment) Act, 1929 which are entirely different to what is provided in the Hindu Women's Right to Property Act, 1937. And the latter deals with the nature, scope and extent of the rights of a widow which she got under the aforesaid Act of 1937 in the properties of her husband who admittedly died interstate sometime in 1943, i.e. long after the enactment of that Act; and there the case was decided on the admitted footing that the Act applied to the facts of the case.

Therefore, in view of what I stated above, I hold that Section 3 of the Hindu Women's Right to Property Act, 1937, is clearly prospective as laid down in Section 4 of that Act and not retrospective. If that is so, then on the facts of this case it has to be held that as between the plaintiff as the daughter and Mosst. Jasoda Kuer as the widow of a predeceased son, the former is the preferential heir of Har Prasad Missir and on the death of his widow Sheobarta, she is entitled to inherit his properties.

11. Lastly, in view of the compromise referred to above, it has been argued that in the absence of defendant No. 1, this appeal cannot now proceed at the instance of defendant No. 5 alone, and the argument advanced in support of this contention is that the surrender which is said to have been made by Mosst. Tasoda Kuer in favour of defendant No. 5 under the document of 19-12-1946, is not a valid surrender in law. In my opinion, in view of my finding as given above, that it is the plaintiff who is entitled to inherit the properties of Har Prasad after the death of Mosst. Sheobarta and not Jasoda, this question loses all its importance. But all the same, I cannot help saying, though not conclusively, that

to me also it appears that the deed of surrender is not a genuine document.

12. In the result, therefore, it has to be held that there is no substance in this appeal. It is accordingly dismissed with costs as against defendant No. 5, but as against defendant No. 1, it is disposed of in terms of the compromise which will form part of the decree.

K. Dayal, J.

13. I agree.