

(1960) 02 PAT CK 0016
In the Patna High Court
Case No : A.F.A.D. No. 1374 of 1955

Mt. Sampato Kuer and Another

APPELLANT

Vs

Dulhin Mukha Debi and Others

RESPONDENT

Date of Decision : 19-02-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60(1)
Hindu Succession Act, 1956 — Section 14, 14(1), 14(2)

Citation : AIR 1960 Patna 360

Hon'ble Judges : V. Ramaswami, C.J;Kanhaiya Singh, J

Bench : Division Bench

Advocate : D.N. Varma and M.N. Varma, for the Appellant; K.B.N. Singh and Janardan Sinha, for the Respondent

Final Decision : Dismissed

Judgement

1. The question at issue in this appeal is whether the plaintiffs are entitled to attach and sell the disputed plots of village Paharpur which originally belonged to one Salig Missir. It appears that after the death of Salig Missir his widow. Mst. Patasho Kuer, came in possession of all his properties. The plaintiffs had brought a suit against Salig Missir for setting aside an auction sale of an area of 1.53 acres of land of khata no. 182 of village Barja. The plaintiffs got a decree in that suit and was awarded costs against defendant No. 4, the widow of Salig Missir. In executing the decree for costs the plaintiffs attached the disputed land. An objection was filed by defendants Nos. 1 to 3 in the execution proceedings, saying that the plaintiffs had no right to attach or sell the disputed land, The reason given by defendants 1 to 3 was that defendant No. 4 had executed deeds of gift of all the lands which devolved upon her after the death of Salig Missir. Defendant No. 4 executed the deeds of gift in favour of her daughters, defendants 1 to 3, and also in favour of certain reversioners. The deeds of gift are exhibits B, B (1) and B(2) and are dated 16-5-1947 and 17-5-1947. It appears that on 17-5-1947, there was a document executed by defendants 1 to 3 to the effect that defendant" No. 4 would be in possession of all the lands

during her life-time without any right of alienation of the same by sale or mortgage. Defendant No. 4 was given the right to enjoy the usufruct of the property during her lifetime in lieu of maintenance.

The case of defendants 1 to 3, therefore, was that the plaintiffs were not entitled to attach the properties or to sell them in execution of a decree for costs awarded to the plaintiffs in the title suit. The lower appellate Court has held that the deeds of gift were validly executed by defendant No. 4 and that they had been duly attested and executed, and even if the transactions cannot be supported as being surrender of the widow's interest, still those transactions were valid for the lifetime of the widow. Accordingly the learned lower appellate Court dismissed the suit brought by the plaintiffs under Order 21, Rule 63, C. P. C.

2. In support of this appeal it was argued in the first place that Section 14 of the Hindu Succession Act, 1956, applied to the case because defendant No. 4 was admittedly in possession of the properties in dispute at the time the statute came into force. It was contended that the case is governed by Section 14(1) of the Hindu Succession Act. We do not accept this argument as correct. In our opinion the case is governed by Section 14(2) of the Hindu Succession Act which runs as follows:

"14(2), Nothing contained in Sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil Court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."

In the present case defendant No. 4 obtained possession of the properties on account of Ex. 2, dated 17-5-1947, the deed of maintenance executed by the daughters and the quantum of interest of defendant No. 4 is governed by the conditions stated in the deed of maintenance, Ex. 2, which gives no right to defendant No. 4 to alienate or deal with the properties otherwise. We, therefore, reject the argument of learned counsel on this point.

3. It was again contended on behalf of the appellants that even if the widow was in possession in lieu of maintenance, still the decree-holders had the right to attach the widow's interest and to sell, it. There is no substance in this argument, because the interest of defendant No. 4 is the right to future maintenance within the meaning of Section 60, Sub-section (1) (n) of the C. P. C., and, therefore, the property could not be attached and sold. That was the view of the Judicial Committee in *Rajindra Narain Singh v. Mt. Sundar Bibi* 52 Ind App 262: (AIR 1925 PC 176). It was argued on behalf of the appellants that the executing Court should appoint a receiver to realise rents and profits of the disputed land and pay out of that a sufficient and adequate sum for the maintenance of the widow and apply the balance, if any, to the liquidation of the decree. That matter, however, does not arise in the present suit; and if the

appellants should make a proper application to the executing Court, the matter will be decided by the executing Court. But in the present case we are of opinion that the decree passed by the lower appellate Court is correct and there is no merit in this appeal which is dismissed with costs.