

(1968) 06 OHC CK 0001
In the Orissa High Court
Case No : A.H.O. No. 2 of 1964

Pakula Majhi and Others

APPELLANT

Vs

Subhadra Bhotruni

RESPONDENT

Date of Decision : 18-06-1968

Acts Referred:

Citation : AIR 1969 Ori 3 : (1968) 34 CLT 1021

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

Bench : Division Bench

Advocate : Y.S.N. Murty, for the Appellant; P.V.B. Rao, for the Respondent

Final Decision : Dismissed

Judgement

Patra, J.—The short point that arises for consideration in this appeal is whether a father's brother's daughter is a Bandhu entitled to succeed under Mitakshara Law as administered in the district of Kora-put which once formed a part of the Madras Presidency. Guru Majhi, father of the respondent Subhadra and the father of the propositus Mangala were two brothers. Guru Majhi died long ago leaving behind him his daughter Subhadra as the only heir. Mangala died some time in 1954 leaving behind him no other relation excepting the respondent Subhadra. In this case Subhadra claims to succeed, to the properties of Mangala as his sole surviving heir against the appellants who claim the properties under a deed of gift from Mangala. The trial Court and the first appellate court have disbelieved the story of the alleged gift in favour of the defendants and decreed the plaintiff's suit.

In second appeal, the main contention advanced on behalf of the appellants was that the plaintiff-respondent is not a Bandhu under the Benaras School of Mitakshara law which is prevalent in Orissa and that as such irrespective of the truth or otherwise of the defence set up by the appellants who admittedly are in possession of the suit properties, she is not entitled to recover possession of the same. Hon'ble Das, J. who heard the second appeal held that although the

plaintiff is not a Bandhu according to the Benaras School of Hindu Law which is prevalent in Orissa, she is a Bandhu according to the Madras School of Hindu Law which in this case must govern the parties, who belong to the district of Koraput which once formed a part of the Madras Presidency and in the absence of any evidence to show that the parties, after 1936 when Koraput district became part of the Orissa State, had adopted the law prevalent in Orissa. In this view of the matter he dismissed the appeal. In pursuance of the leave granted by the learned Judge this appeal has been filed.

2. The main contention advanced by Mr. Y. S. N. Murty appearing for the appellants is that as Koraput district is now a part of the Orissa State since 1936, the law applicable to the parties must be deemed to be the Benaras School of Hindu Law which does not recognise a female Bandhu; and even if it is held that the Madras School of Hindu Law governs the case there is no instance in Madras where a father's brother's daughter has been recognised as Bandhu. Neither of these two contentions appears to have any merit. As early as in *Raghunath v. Brajakishore* ILR 1 Mad 69 the Privy Council assumed that in respect of the Oriyas of Madras Presidency the Dravida School of Law prevails in matters of adoption. In *Bodo Annanda Podhano Vs. Dondo Naiko* (since deceased) and *Others*, which was again a case of adoption, it was held by a Division Bench of this Court that,

"In the absence of proof of any valid change of law, the Oriyas of ex-Madras area continue to be governed by the Madras School of law in matters relating to adoptions."

The argument that the aforesaid two cases related to adoption and that we are here concerned with a case of inheritance is equally untenable. That the principle as enunciated in these decisions relates to all personal laws of an individual is clear from the pronouncement of their Lordships of the Privy Council in *Balwant Rao v. Baji Rao* 47 Ind App 213 AIR 1921 PC 59. That was a case relating to succession and their Lordships observed:

"The particular doctrine of Hindu Law recognised in a province of India becomes part of the status of every family governed by them and continues to govern the family upon migration into a province where a different doctrine prevails, unless there is proved a renunciation of the original law for that of the place migrated to. It is the doctrine existing at the time of migration which, subject to renunciation continues to govern the migrated members. Decisions given by the Courts after the migration declaring what was the correct doctrine in the place migrated from affect the migrated members, but not customs there incorporated into the law after the migration." There is no evidence in this case nor such a point had been agitated in the trial Court that after Koraput became a part of the State of Orissa in 1936 Mangala Majhi renounced the personal law by which he was till then governed and adopted the law as prevalent in the rest of Orissa. We must therefore hold in agreement with the learned Single Judge that this case must be governed by the law of inheritance as it prevailed in Madras before 1936.

3. The question then is whether a father's brother's daughter is a heir under the Hindu Law as administered in Madras. Gotraj Sapindas and Samanodakas are all agnates, that is, persons connected with the deceased by an unbroken line of male descent. Admittedly the plaintiff is neither a Gotraj-Sapinda nor a Samanodak of late Mangala. The Bandhus or Bhinna Gotraj-Sapindas are all cognates, that is, persons related to the deceased through a female or females. The Bandhus of a person are his blood relations connected through females who have passed into other families or gotras. It therefore follows that every Bandhu must be related to the deceased through at least one female. Judged by this test the plaintiff Subhadra cannot be deemed to be a Bandhu of Mangala because no female intervenes between her and Mangala. The Benaras School of Hindu Law does not recognise any exception to this Rule. In Madras however certain females are recognised as Bandhus, on the basis that if they would have been males and would have been heirs as Bandhus being connected to the propositus within the prescribed limits, they should not be ebarred from succession merely by reason of their sex. Accordingly the Madras School had held that the brother's daughter, sister's daughter, brother's sons' daughter and father's sister are heirs. Under the Hindu Law of Inheritance (Amendment) Act 1929 the son's daughter, the daughter's daughter and sister were ranked as heirs. The daughter-in-law and son's daughter-in-law have been added after the Hindu Women's Right to Property Act 1937 came into force. Over and above these female heirs, certain other female heirs have been recognised in Madras from time to time like a son's daughter ILR Mad 149, daughter's daughter ILR Mad 421 and brother's sons' daughter AIR 1940 Mad 545 although some of these were not connected with the propositus through a female.

4. In AIR 1940 Mad 545 Jagannadhan v. Adilaxmi the question arose whether a brother's sons' daughter of the deceased is entitled to succeed to the latter's property. It was held that under the Hindu Law as administered in the Madras Presidency, female Bandhus are entitled to come in after the male Bandhus are exhausted, provided they satisfy the other conditions required by law. Their Lordships held that the brother's sons' daughter is a Bhinna Gotraj-Sapinda or Bandhu within five degrees and that in the absence of any male heir she would be entitled to inherit and that she is not disentitled to inherit merely by reason of her sex. In the present case the plaintiff is removed from Mangala within the permissive degrees. The test of mutuality is satisfied. There is no evidence to show that Mangala has left any other male heir. In the circumstances, the plaintiff as a Bandhu is entitled to succeed to the properties of Mangala.

5. This appeal therefore fails and is dismissed with costs.

G.K. Misra, J.

6. I agree.