
(1964) 05 OHC CK 0006

In the Orissa High Court

Case No : Second Appeal No. 22 of 1963

Pakulu Majhi and Others

APPELLANT

Vs

Subhadra Bhotruni

RESPONDENT

Date of Decision : 01-05-1964

Acts Referred:

Citation : (1965) 31 CLT 91

Hon'ble Judges : Das, J

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

Das, J.—The Defendants have filed the appeal against the confirming judgment of the District Judge, Koraput, arising out of a suit for declaration of title and recovery of possession and for mesne profits.

2. Guru Majhi, the father of the Plaintiff Subhadra and the father of Mangala Majhi are two brothers. In other words, the Plaintiff is the father's brother's daughter of Mangala. Plaintiff's father died some twenty years back. Plaintiff's case is that after her father's death, she and Mangala were jointly recorded in respect of the suit-property and were enjoying the same. Mangala died sometime in the year 1954-55. Long before the death of Mangala, though Plaintiff married to one Gundicha, she along with Mangala remained in possession of the suit property. On 24-2-1953 Mangala is said to have illegally gifted the suit property in favour of Defendant No. 3. Defendant No. 1 is the father and Defendants 2 and 3 are his sons. The Plaintiff now challenges the said gift as invalid and claims the property as heir of Mangala.

3. Defendant's case is that Guru Majhi and Mangala Majhi became separate about 20 years back during the lifetime of Guru. After her marriage Plaintiff remained at her husband's place and was not in possession of the suit-property. The suit properties were in exclusive possession of Mangala and sometime before

his death, he gifted it in favour of Defendant No. 3 and delivered possession to him. They also took the plea of adverse possession stating that the Plaintiff was ousted from possession for more than 12 years.

4. Both the courts held that the Defendants had failed to prove a valid gift and also their title by adverse possession. They also found that the father of the Plaintiff died in joint ness with Mangala. They found title in favour of the Plaintiff and decreed the suit, though the claim for mesne profits was disallowed. It is against this decision of the courts below the Defendants have come up in appeal.

5. Mr. Murty, learned Counsel for the Appellants did not rightly challenge the concurrent findings of the courts below. His main contention, however, was that even accepting the findings of the courts below it may at best be taken that the Plaintiff's father died in a state of joint ness with Mangala and with the latter the property became his separate property, yet the Plaintiff being the father's brother's daughter of Mangala, she was not one of the recognised legal heirs under the Benares School of Mitakhara law as is prevalent in Orissa, and as such she is not entitled to inherit the property as that school does not recognise females as Bandhus, the only class of heirs she can claim to be. Accordingly the suit was liable to be dismissed.

6. Mr. P.V.B. Rao, on the other hand contends that the parties are governed by the Madras School of Mitakhara law which admits females as Bandhus as heirs and as such there is no legal bar to the Plaintiff to succeed to the estate of Mangala Majhi, whose father's brother's daughter she is.

7. The parties are admittedly Oriya Hindus and come from the district of Koraput which was once a part of Madras Presidency, and became a part of Orissa in 1936. It is well settled by authorities that the Oriyas of Ganjam and Koraput districts which have now been transferred to Orissa, were governed by the Madras School of Hindu Law, See *Raghunath v. Brajakishore* ILR Mad 69. This position has been accepted by this Court in a case, *Bada Ananda Padhan v. Dando Naik* AIR 1952 Oria 307. Mr. Murty, however, attempted to distinguish this case on the ground that that was not a case of inheritance, but was one of adoption and all that was held in that case was that the Oriyas of the ex-Madras areas of Ganjam and Koraput Districts continue to be governed by the Madras School of law in matters relating to adoption. It makes no difference, however, whether it is a case of adoption or of inheritance. It is well-settled that the parties carry their personal law with them wherever they go, unless of course they make out a case that they have renounced their personal law and adopted the law of the place to which they have migrated. It has also been settled by authorities that the mere administrative transfer of a particular area will not affect the personal law of the resident of that area.

8. In AIR 1936 18 (Privy Council) , it was held by their Lordships that the mere transfer of a district to another presidency for administrative purposes is not sufficient to affect the personal law of the residents in that district, unless and

until it is shown that in the case of any resident there that he had intended to change and has in fact changed his personal law. This was also the view expressed in *Balwant Rao and Ors. v. Baji Rao and Ors.* AIR 1921 P.C. 59, where their Lordships held that the law of succession is, in any given case, to be determined according to the personal law of the individual whose succession is in question unless it can be shown that he has renounced his original law in favour of the law of the place to which he migrated. Nothing has been shown in this case to make out that the parties to the suit intended to renounce their personal law and ceased to be governed by the Madras School of Hindu Law so far as inheritance is concerned. Therefore there is no doubt that the parties in this case are to be governed by the Madras School of Hindu Law.

9. The admitted position here is that Mangala died prior to the new Hindu Succession Act of 1956 came into force. Therefore the case is to be governed by the old law of succession. Mitakshara law recognises only three classes of heirs, Gotraja Sapindas, Samanodakas and Bandhus otherwise known as Bhinna Gotraja-Sapindas. The first class succeeds before the second, and the second succeeds before the third. Mulla in his "Principles of Hindu Law" 12th Edition, has given a list of heirs in Section 39.

According to the learned author, the number of Gotraja-Sapindas are 57 as enumerated in Section 39, that is, the Gotraja-Sapindas of a person are his six male descendants in the male line, his six male ascendants in the male line, and their wives, the six male descendants in the collateral (sic) line of each of his six male ascendants, his wife, daughter and daughter's son. The Sapindas relationship thus extends to seven degrees including the deceased and six excluding him. Under the Hindu Law of Inheritance Act II of 1929, the son's daughter, the daughter's daughter and the sister were also to inherit as Gotraja-Sapindas. These three relations though earlier recognised in Madras were each assigned a place under this Act in the general Mitakshara succession. Samanodakas of a person include all his agnates from the 8th to 14th degree. On the failure of Sapindas, the inheritance is to pass to Samanodakas and on the failure of the latter, it passes to Bandhus, otherwise known as Bhinnagotra Sapindas. The Gotraja Sapindas and Samanodakas are all agnates, that is, persons connected with the deceased by an unbroken line of male descent whereas Bandhus are cognates, that is, persons connected with the deceased through one or more females by blood relationship. The Bandhus are again of three categories, that is, Atma Bandhus, Pitri Bandhus and Matri Bandhus and they consist of a number of relations. The Mitakshara mentions only about male Bandhus and does not expressly admit any female as a Bandhu. The Benares School of Hindu Law which is prevalent in Orissa rigidly follows the rule of Mitakshara and does not recognise females as Bandhus. In Madras, however, certain females are recognised as Bandhus. The basis of such recognition seems to be that if she would have been a male and would have been an heir as a Bandhu, that is, related to the propositus by birth within the limits of degrees for Bandhus, she would be entitled to inherit as a heritable Bandhu and her sex will

not stand as a bar. The rule that a Bandhu must be connected through one or more females has also been relaxed in Madras in some cases. High authorities in India have also noticed this position See Mayne's Hindu Law 11th Edition, paras 510 & 511, Principles of Hindu Law on Inheritance-Tagore Law Lectures, by R. Sarbadhikari, 2nd Edition, page 538 and Hindu Law by Raghavachariar, 4th Edition, page 476.

10. Admittedly, the Plaintiff is neither Gotraja-Sapindas nor a Samanodaka nor is a Bandhu according to the Benares School of Hindu Law, as she is not connected with the deceased through a female relation. Had she been governed by the Benares School of Hindu law, she had no case. Mr. Murty relied upon a decision of the Punjab High Court Gowardhan Dutt Vs. Shrimati Dwarku, , where like the present case the claim of the father's brother's daughter came up for consideration. There the contest was between a father's brother's daughter and a maternal uncle and the latter as held to be a preferential heir. That case, though not an authority as to whether a female like the father's brother's daughter is a Bandhu or not, it was said there that she did not get a place among the list of heirs. No doubt, the above case supports the Appellants' contention to some extent, but the parties here being governed by the Mitakshara Law as prevalent in Madras, the position becomes different. Mr. P.V.B. Rao, learned Counsel for the Respondent contended that unlike the Benares School, the Madras School recognises females as Bandhus and cited some decisions to support that a son's daughter Nalan v. Polan ILR 14 Mad 149 daughter's daughter Ramappa Udayan v. Arunugata Udayan ILR 15 Mad 421, Brother's son's daughter Yenamandra Jagannadhan v. Theerthlala Adilaxmi and Ors. AIR 1940 Mad 545, were recognised as Bandhus, though some of them also were not connected with the propositus through a female. No doubt, there is no direct authority to cover the present case, but that makes little difference if females as a class are not debarred from being Bandhus by reason of their sex. In the case reported in ILR 15 Mad 421 the question was whether the maternal grand-father will succeed the deceased in preference to the paternal aunt and in course of the discussion it was observed by their Lordships that a father's sister cannot be a Gotraja-Sapindas because as soon as a female marries, she passes into a different Gotra, but she is a Bandhu. In Kunki Ammaal v. Krishna Aiyar 8 Madras High Court Rep. p. 88, it was held that a sister is a Bandhu. The cases cited above are merely illustrative and not exhaustive. The case reported in AIR 1940 Mads 545 stated above, appears to be nearer the point. There the question was whether the brother's son's daughter was entitled to inherit and it was held by their Lordships 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 a brother's son's daughter is a Bhinnagotra-Sapindas or Bandhu within five degrees and that in the absence of any male heir she would be entitled to inherit. Their Lordships after having made reference to authorities summarised in the Mayne's Hindu Law held that a brother's son's daughter is a

female Bandhu and as such is not disentitled to inherit, merely by reason of her sex, and heirship of a female Bandhu is not limited to those mentioned in express texts but is governed by the propinquity of blood-relationship. Their Lordships while laying down the law as above, further held that such a person must be so related to the deceased that they are mutually Sapindas to one another within five degrees.

Mr. Murty, however, contended that the case reported in AIR 1940 Mad 545 cannot be applied to the present case as the same was decided long after the separation of Orissa from the Presidency of Madras. But it has been held by authorities that the decision of a Court is merely declaratory of law as it exists and must not be treated as if it were a statute which imposes the law for the first time. In *Sri Chandra Choor Deo and Others Vs. Bibhuti Bhushan Deva*, , their Lordships held that no doubt the person allow of the migratory family is the law prevailing at the time of migration at the place whence it is migrated but the law which prevailed at the time of migration can be determined with reference to subsequent judicial decisions and the Court is not confined to an examination of the contest existing at the time. The decision by the Court after the migration declaring what was the correct doctrine in the place migrated from, affects the migratory members though not so the customs which are incorporated into the law after migration. Thus, there cannot be any doubt that the principle of law as laid down in 1940 Mad 545 are applicable to the present case. It cannot be disputed that in the present case the Plaintiff is related to Mangala within the permissible degrees and and its such is a Bandhu. The Madras School like the Benares school does not insist that the relationship with the deceased must be established through some females as we have seen from the decisions cited above. As stated above, the list of female heirs so far available are only illustrative and not exhaustive. The Plaintiff fully satisfies the condition and entitles herself to be a Bandhu.

12. In view of this position of the law as stated above, it must be held that the Plaintiff is entitled to succeed to the estate of Mangala Majhi as a Bandhu as there is no other nearest heir. Accordingly her suit must succeed, but she shall not be entitled to any mesne profits the claim for which has been rejected by the courts below.

In the result, the appeal is dismissed, but under the circumstances, there would be no order for costs of this Court.

Leave to appeal is granted.