

(1956) 11 PAT CK 0010

In the Patna High Court

Case No : Letters Patent Appeal No. 26 of 1954

Ram Ayodhya Missir and Others

APPELLANT

Vs

Raghunath Missir and Others

RESPONDENT

Date of Decision : 08-11-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 23, Order 41 Rule 27, Order 41 Rule 33

Hindu Succession Act, 1956 — Section 14, 15

Citation : AIR 1957 Patna 480

Hon'ble Judges : Ramaswami, C.J.; Raj Kishore Prasad, J

Bench : Division Bench

Advocate : Harians Kumar, for the Appellant; G.P. Das and Shambhu Nath, for the Respondent

Final Decision : Allowed

Judgement

1. In this suit which is the subject matter of this appeal the Plaintiff asked for a declaration that the sale deed executed on 11th July, 1914, by one Mosammat Sureba Kuer in favour of Sitaram was farzi, without consideration and without legal necessity and Was not binding upon the plaintiff. The plaintiff claimed that after the death of defendant No. 1, Mosammat Parkalo Kuer, he was entitled to the properties as the next reversioner. It was alleged by the plaintiff that the widow, Mosammat Sureba Kuer, executed the sale deed in favour of Sitaram, father of defendants 2 and 3, in order to defeat the plaintiff's claim. It was further alleged that the document was farzi and collusive and no title passed to Sitaram. It was stated by the plaintiff that defendants 2 to 4 had executed a mortgage bond in respect of the properties covered by the sale deed in favour of the defendant No. 1, Mosammat Parkalo Kuer, daughter of Mosammat Sureba Kuer. The suit was contested by defendants 2 to 4 who controverted the claim of the plaintiff that he was the next reversioner. Defendants 2 to 4 also contended that the sale deed was genuine, valid and for consideration. The learned Munsif held upon a consideration of the evidence that Sheoparsan was the son of Moti

Mis-sir and as such the plaintiff was the next reversioner of Ramyad, The learned Munsif also held that the sale deed in question was farzi without consideration and for no legal necessity. The Munsif accordingly granted a decree to the plaintiff. On appeal the learned Subordinate Judge affirmed the findings of the learned Munsif. A second appeal was taken on behalf of the defendants to the High Court. Mr. Justice C. P. Sinha, who heard the second appeal, dismissed the appeal holding that the decree granted by the trial Court was right.

2. On behalf of the defendants who have presented this appeal under the Letters Patent, Counsel put forward the argument that the plaintiff has no right to institute a suit in view of the provisions of Sections 14 and 15 of the Hindu Succession Act, 1956 (Act XXX of 1956). Section 14 reads as follows:

"Property of a female Hindu to be her absolute property.

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation-- In this sub-section, "property, includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or prescription or in any other manner whatsoever, and also any such property held by her as "stridhana" immediately before the commencement of this Act,

(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".

Section 15 reads as follows:

"General rules of succession in the case of female Hindus.

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16.

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband,

(b) Secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in Sub-section (1),--

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in Sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in Sub-section (1) in the order specified therein, but upon the heirs of the husband". It is manifest that Section 14 is made expressly retrospective and the statute declares that any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. Mr. G. P. Das on behalf of the respondents referred to Section 14(2) and contended that Section 14(1) would not apply" to the property which is the subject matter of the present litigation. We are unable to accept this argument as right. Section 14(2) only refers to a final decree or order of a civil court by which a restricted estate in the property is prescribed.

There is no such final decree or order of a civil court in the present case and we are unable to see how Section 14(2) of the Act has any application to the present case. It was also argued by Mr. Das on behalf of the respondents that Section 14(1) would apply to the property acquired by Mosammat Parkalo Kuer from her mother, Mosammat Sureba Kuer. It was argued that the Act would not apply to the property possessed by Musammat Sureba Kuer in her lifetime and that the plaintiff as reversioner was entitled to get a declaration in spite of the enactment of the Parliament contained in Section 14 of the Hindu Succession Act (Act XXX of 1956).

It is not necessary for us in this case to examine the question whether Section 14 would apply not only to the property possessed by Mossammat Parkalo Kuer hut also to the property possessed by Mosammat Sureba Kuer. The point is that as the law stands at present the plaintiff has no interest in the property either of Mosammat Parkalo Kuer or of Mosammat Sureba Kuer. The plaintiff has no vested interest nor has he any spes successions in the property which is the subject matter of the present litigation. Under the Hindu Law as if stood before the Hindu Succession Act (Act XXX of 1956) every female who succeeded as an heir, whether to a male or to a female, took a limited estate in the property inherited by her.

The heirs of the last full owner, who would be entitled to succeed to the estate of such owner on the death of a widow or other limited heir, if they be then living, were called "reversioners". It is also settled by various authorities that the interest of a reversioner was an interest expectant on the death of a limited heir.

It was not a vested interest. It was a spes successionis or a mere chance of succession. A reversionary heir was however recognised by courts of law as having a right to demand that the estate be kept free from danger during its enjoyment by the widow or other limited heir. A reversionary heir may sue to restrain a widow or other limited heir from committing waste or injuring the property.

A reversionary heir may also bring a representative suit for a declaration that an alienation by the widow is not binding on the reversion. The reason why such a suit was allowed was that the suit was in a representative capacity and on behalf of all the reversioners, and the object of the suit was that the corpus of the estate should pass unimpaired to those entitled to the reversion. But there has been a revolutionary change in law in this respect because of Sections 14 and 15 of the Hindu Succession Act (Act XXX of 1956). The effect of these sections is that the plaintiff in the present case is no more a reversioner and that the estate of Mosammat Parkalo Kuer is not a limited estate but an absolute estate and that the plaintiff has no vested interest in the property nor has he a right of reversion or any kind of spes successionis.

If that is the effect of Sections 14 and 15 of the statute it must be taken that the plaintiff has no right to bring a suit for a declaration that the sale deed executed by Mosammat Sureba Kuer in favour of defendants 2 and 3 was a farzi or collusive document or that there was no legal necessity. We, therefore, hold that the suit of the plaintiff must be dismissed and this appeal must be allowed in view of the change in law brought about by the Hindu Succession Act (Act XXX of 1956), which came into force on the 17th June, 1956.

3. It was, however, argued by Mr. Das on behalf of the respondents that there was a right vested in the plaintiff as reversioner before the passing of the statute and that vested right cannot be taken away by supervening legislation. We do not accept this argument as right. We have already referred to the language of Section 14 of Act XXX of 1956 and we have expressed the view that the section has been made deliberately retrospective and that the effect of this section is that any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

It is also well established that an appellate Court is entitled to take into consideration legislative changes which have supervened since the decision under appeal has been given. That is the ratio decidendi of the judgment of the Federal Court in AIR 1941 5 (Federal Court). It was held in that case by the Chief Justice of India that the Federal Court, as a court of Appeal, was entitled to take into consideration legislative changes which had supervened since the decision under appeal was given and that as the Bihar Money Lenders Act, 1939 (Bihar Act VII of 1939) had in terms been made retrospective the appellants could be given the benefit of Section 7 of the Act. In the course of its judgment the Chief Justice of India cited with approval the following passage from the judgment of the

Supreme Court of the United States of America in Patterson v. State of Alabama (1934) 294. U.S. 600, at p. 607 (B)):

"We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case, as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered".

This Bench has also applied the principle of the this decision in a recent case Kamakhya Narain Singh Vs. State of Bihar,

4. We accordingly allow this appeal, set aside the judgment and decree of the learned single judge dated 28-7-1954, and order that the suit of the plaintiff should be dismissed. Parties will bear their costs throughout.