
(1954) 04 PAT CK 0005
In the Patna High Court
Case No : A.F.O.D. No. 335 of 1947

Ram Karan Singh and Others

APPELLANT

Vs

Baidka Singh and Others

RESPONDENT

Date of Decision : 02-04-1954

Acts Referred:

Citation : AIR 1954 Patna 545 : (1954) 2 BLJR 398

Hon'ble Judges : Imam, C.J;Narayan, J

Bench : Division Bench

Advocate : P.R. Das, Sreenath Singh and Balbhadra Prasal Singh, for the Appellant; Sultan Ahmad, Ganesh Sharma, G.P. Misra and Ramanand Sinha, for the Respondent

Final Decision : Allowed

Judgement

Narayan, J.—The plaintiffs are the appellants and the appeal arises out of a suit for declaration of title and recovery of possession with regard to certain properties which once belonged to one Domi Singh. Domi Singh died on 19-1-1919, leaving him surviving a daughter named Gangabati, a daughter's son named Misri Lal and the widow of a predeceased son named Musammat Palto, Misri Lal died in the year 1944, leaving a son Baidka Singh, who was defendant 1 in this action, and Musammat Palto died in the year 1927. The daughter Gangabati is still alive and she was defendant 39 in this action. She had three sons, Satnarain Prasad, Chandrika Prasad and Ranjandan Prasad. Satnarain and Chandrika are now dead and Rajanandan is defendant 38.

2. After the death of Domi Singh, Misri Lal propounded a will alleged to have been executed by his grandfather Domi in December 1918. He filed an application for letters of administration with a copy of the will annexed in July, 1919. Gangabati entered caveat and later on she filed a regular objection. The case was then converted into a title suit and it was ultimately disposed of in December, 1930. The District Judge held that the will propounded by Misri Lal was forged document and he dismissed his application for letters of

administration. The decision of the District Judge was upheld by this Court in November, 1933.

The contention put forward by the plaintiffs was that after the decision of this Court, Ganga-bati, who was the sole heir of her father, surrendered her entire interest to her son, defendant 38, under a deed of surrender dated 26-10-1945. On 39-10-1945 defendant 38 and Gangabati executed A sale deed in favour of the plaintiffs with regard to the property in suit for a consideration of Rs. 11,996/- and the plaintiffs claim title to the property in suit by virtue of this document. Defendant 1, as already stated, is the son of Misri Lal. De-lendants 2 to 13 are said to have taken usufructuary mortgage from Misri Lal who had come in possession of 8 annas share in the property described in Schedule 1 of the plaint during the pendency of the probate proceeding. Palto Kuer is said to have come in possession of the remaining 8 annas share during the pendency of the probate proceeding. She later on executed a deed of gift in favour of defendant 14 and defendant 22.

The other defendants have been impleaded on the allegation that they are in possession of property. One Lakshman Saran Das took possession of the property mentioned in Schedule 2 as a Shebait when the probate proceedings were going on. He died during the pendency of the suit and was succeeded by defendant 37 who is still in possession of the property.

3. The defence "inter alia" was that Misri Lal and others had acquired title by adverse possession. The contention found favour with the learned Subordinate Judge with the result that the suit was dismissed by him. The learned Subordinate Judge was of the opinion that by the execution of the deed of surrender after the lady lost her title on account of the adverse possession of Misri Lal and others the reversioners could acquire no interest in the property.

4. Domi Singh died on 19-1-1919, & the deed of surrender was executed on 26-10-1945. The learned Subordinate Judge, therefore, finds that at the time of the execution of this deed Gangabati had

no subsisting title to the properties.

5. Mr. P. R. Das, who has argued this appeal on behalf of the plaintiffs-appellants, had accepted this finding of the learned Subordinate Judge and has conceded that Gangabati had lost her title on account of the adverse possession of Misri Lal and others. But he has urged that the view taken by the learned Subordinate Judge cannot be supported inasmuch as it is now well settled that if there is a "bona fide" surrender in favour of the next reversioner he at once becomes entitled to the possession of the property and is in a position to recover possession from an alienee of the widow and also from one who has obtained title by adverse possession against her. No doubt till very recently there was a considerable divergence of opinion on this point and this Court following a decision of the Madras High Court had laid down in --- "Basudeo Mandar v. Baidyanath Mandar" AIR 1935 Pat. 175 (A) that when a widow surrenders

absolutely the widow's estate to the nearest reversioner, he cannot after the surrender challenge any transaction or arrangement entered into by the widow or an alienation made prior to the surrender during the lifetime of the widow.

This Court's view has not, however, been accepted by the Supreme Court in -- Natvarlal Punjabhai and Another Vs. Dadubhai Manubhai and Others, . This decision has now set at rest the entire controversy on the subject, and Mukherjea J., who delivered the Judgment of the Supreme Court, after reviewing the decisions of the different High Courts, came to the conclusion that there is no warrant in the Hindu law for the proposition that in case of alienation by a Hindu widow of her husband's property without any justifying necessity, or in the case of a stranger acquiring title by adverse possession against her, the interest created is to be deemed to be severed from the inheritance, and that if a surrender is made absolutely by the widow, the surrenderee must take it subject to such prior interest. The position, therefore, is that if there was a "bona fide" surrender of the estate in favour of the next reversioner, he got an immediate right to the possession of the properties left by the last male owner, and a trespasser who has acquired title by adverse possession can be ousted by him just in the same way as the transferee the transfer in whose favour is not founded on legal necessity. I should like to quote the following passage from the judgment of Mukherjea, J.:

"If the effect of surrender, as explained above, is to destroy the widow's estate in the same way as if she suffered physical or civil death, there is no conceivable reason why the reversioner should not, subject to any question of fraud or collusion that might arise, be in a position to recover possession of the properties from an alienee from the widow or from one who has obtained title by adverse possession against her, "as none of them could acquire rights except against the widow herself."

Sir Sultan Ahmad, counsel for the respondents, candidly admitted that after this decision of the Supreme Court the claim for possession by the reversioner or the transferee from him cannot be resisted, but he contended that the surrender in this case cannot be deemed to be a "bona fide" surrender. In my opinion, there is no substance in the contention that the surrender cannot be deemed to be a "bona fide" surrender. The learned counsel referred us to the document of sale dated 29-10-1945, which has been executed not only by the surrenderee Rajnandan Prasad but also by Musammat Gangabati, the widow, in favour of the plaintiffs. But the mere fact that the lady has joined in the sale deed for satisfying the purchaser, who must naturally take every precaution for ensuring the safety of his title, cannot be a ground for suspecting that the surrender was not "bona fide". In fact the document clearly recites as follows:

"Although after execution of the deed of surrender mentioned above I, the executant No. 2, neither had nor have any concern with these vended properties, yet I (executant No. 2) participate in execution of this sale deed for the satisfaction of the aforesaid claimants."

The document thus contains a very satisfactory explanation as to why the lady joined in its execution. I fully appreciate the contention of Mr. Das that this lady had been considerably harassed. It appears that Misri Lal was bent upon keeping her out of possession and had gone to the length of forging a will for depriving her of the property and therefore it is quite natural that she would renounce in favour of the nearest reversioner and operate her own civil death. In the deed of surrender she says that as she has grown old she wants to keep aloof from the worldly affairs, and circumstanced as she was it was not unnatural for her to think like that. On the facts and the circumstances it is therefore not possible to find in this case that the surrender was not a "bona fide" surrender. I find myself in absolute agreement with the view which was taken by Venkatasubba Rao J. in -- Subbalakshmi Ammal and Another Vs. A. Narayana Ayyar, in which his Lordship observed as follows:

"A surrender must be "bona fide", i.e., there must be no device to divide the property between the lady and the reversioner, it being equally fatal to the transaction whether the benefit is directly taken by the lady or by her nominees, subject, however, to the proviso that the giving of a small portion to the surrendering widow for her maintenance is unobjectionable."

His Lordship referred to certain Privy Council decisions in which the meaning of the expression "bona fide" has been explained. The transaction must be "bona fide" in the sense that the widow retains no benefit either directly or indirectly, that is, there must be a complete relinquishment by the widow, and it should not appear that in the guise of a surrender the widow had enlarged her own estate in regard to a part of the estate. If it is found that in the guise of a surrender the widow had enlarged her own estate in regard to a part of the estate, the so-called surrender cannot be upheld. The relevant Privy Council decisions are -- "Rangasami Gounden v. Nachi-appa Gounden" AIR 1918 P C 196 (D), and -- AIR 1921 107 (Privy Council) . I should like to quote the following passage from the judgment of their Lordships of the Judicial Committee in --" AIR 1918 PC 196 (D) :

"The result of the consideration of the decided cases may be summarized thus: (1) An alienation by a widow of her deceased husband's estate held by her may be validated if it can be shown to be a surrender of her whole interest in the whole estate in favour of the nearest re-versioners at the time of the alienation. In such circumstances the question of necessity does not fall to be considered. But the surrender must be a "bona fide" surrender, not a device to divide the estate with the reversioner."

This decision was referred to with approval in the later case of -- AIR 1921 107 (Privy Council) . It cannot be contended in this case, that there was any device to divide the property between the lady and the reversioner, and, as I have already pointed out, the circumstances unmistakably go to show that the lady had been so much oppressed by Misri Lal that she had no other option but to surrender the entire estate in favour of the next reversioner. The surrender must,

therefore, be held to be bona fide and by this surrender the lady lost her entire interest in the property. The reversioner became entitled to the property after the surrender and certainly he, according to the decision of the Supreme Court, can dispossess the son of Misri Lal and other defendants who claim to have acquired title by adverse possession. This appeal, therefore, succeeds and the suit must be decreed. The appeal is allowed and the suit is decreed with costs throughout. The plaintiff's title to the property in suit is declared and they will recover possession of the same. The plaintiffs will be entitled to mesne profits, the amount whereof will be determined later on.

Imam, C.J.

6. I agree. In -- "Behari Lal v. Madho Lal Ahir", 19 I.A. 30 (F), it was held that it may be accepted that, according to Hindu law, the widow can accelerate the estate of the heir by conveying absolutely and destroying her life estate, so that the whole estate be vested at once in the grantee. In the present case, on 26-10-1945, Gangabati executed a document in favour of her son Rajnandan Prasad Singh. This document is described as the deed of surrender. A plain reading of this document clearly shows an absolute conveyance of the estate to Rajnandan Singh and the destruction of Gangabati's life estate. Indeed, as the document stood, Sir Sultan Ahmad was not in a position to argue otherwise.

Three days later, on 29-10-1945, was the deed of sale executed by Rajnandan Prasad Singh in favour of the plaintiffs. In this document there is a clear recital to the effect that Gangabati had surrendered the entire estate to Rajnandan Singh by a deed of surrender dated 26-10-1945. It was further specifically stated in this document that although after the execution of the deed of surrender Gangabati neither had nor has any concern with the properties conveyed by the deed of sale, yet she has taken part in the execution of the document in order to satisfy the wishes of the vendees.

To my mind there could not be clearer assertion by the person who had destroyed her life estate than what Gangabati stated in the deed of sale in favour of the plaintiffs; that is to say, Gangabati had not only completely destroyed her life estate by the document of 26-10-1945, but had confirmed her relinquishment by a positive assertion in the deed of sale to the plaintiffs to the effect that she had no claims whatsoever over the property which was being conveyed by the document of sale. I should have thought myself that after the decision of the Supreme Court there could be no other meaning to be found from these two documents than this that Gangabati had absolutely and completely, without any reservation whatsoever, relinquished her limited estate in favour of Rajnandan Prasad Singh and thus accelerated the estate in favour of Rajnandan Prasad Singh.

Sir Sultan Ahmad, on the other hand, contended, having regard to the history of the litigation between Gangabati and Misri Lal and the close proximity in time so far as the sale deed is concerned to the deed of surrender, that there had been

no "bona fide" surrender and the deed of sale must be regarded as an alienation by the widow Gangabati with the consent of the nearest reversioner Rajnandan Prasad Singh in which case the plaintiffs could not get possession during the lifetime of Gangabati. It seems to me, however, that the motive which induces a widow to relinquish her estate and accelerate the estate in favour of an heir is immaterial. What the Court is concerned to see is as to whether the relinquishment is absolute and complete.

I can for myself see no indication of any device in the present case. It may be that Gangabati finding her position entirely hopeless in her struggle against Misri Lal thought it best to give up her rights absolutely and leave it to her son to make what he could out of the estate. I can hardly call it a device. It would not be permissible, I think, to go beyond the two documents, namely, the deed of surrender and the deed of sale. On the two documents it is impossible to come to the conclusion that the deed of sale was the result of a device. It seems to me that the moment the relinquishment is complete, the grantee can proceed to deal with the property as he pleases. The mere association of Gangabati with the deed of sale is of no consequence, because Gangabati took the precaution to have it stated in the deed of sale that she was putting her signature merely to satisfy the wishes of the vendee and not because she had any claims upon the property conveyed.