

(1976) 05 GAU CK 0001

In the Gauhati High Court

Case No : Second Appeal No.25 of 1971

Sanglakpam Ningol Adhikarimayum Ongbi Ibemcha Devi and
another

APPELLANT

Vs

Ningombam Mani Singh and others

RESPONDENT

Date of Decision : 21-05-1976

Acts Referred:

Civil Procedure Code, 1908 — Section 100, 101
Civil Procedure Code, 1908 (CPC) — Section 100, 101
Government of India Act, 1935 — Section 99, 99
Limitation Act, 1963 — Article 64, 64, 65, 65

Citation : AIR 1977 Guw 1

Hon'ble Judges : D. PATHAK, J and K. LAHIRI, J

Bench : Division Bench

Advocate : M. Charugopal Singh, L. Indrajit Singh, Advocates appearing for Parties

Judgement

D. Pathak, J.—This appeal by the defendants is directed against the judgment and decree passed by the learned Additional District Judge, Manipur, Imphal, in Civil Appeal No. 71/52 of 1970 dated 27/2/1971, by which the judgment and decree passed by the learned Munsiff III, Manipur, Imphal, in O. S. No. 17 of 1969 dated 16/4/1970 was affirmed. From the pleadings of the parties the

brief narration of the fact emerges as follows:

2. The plaintiff Shri Ningombam Mani Singh, instituted a suit on 14/7/1969 in the Court of Munsiff III. for evicting defendant No.1 Sanglakpam Chandrabi Sharma, son of late Nilakrishna Sharma, defendant No. 3 Sanglakpam Ningol Adhikarimayum Ongbi Ibemcha Devi, wife of Borthakur Sharma, and defendant No. 4 Sanglakpam Ongbi Angatombi Devi, wife of late Tomba Sharma and any one claiming through or under them from the suit land which is the southern half of the homestead land under patta No. 51/28 I.E.T. comprising Dag No. 239 measuring 1 B. 3 K. altogether situated in Khongman village No. 51 within the

Imphal East Tahsil. The suit land has been recorded separately in the present Survey and Settlement operation of 1964 in the name of the plaintiff as the ownerpattadar under new patta No. 51/ 172I.E.T. comprising C. S. Dag No. 448 having an area of 25 acre. According to the plaintiff, the homestead land under patta No. 51/28 I.E.T. (old) comprising Dag No. 239 (old) with an area of 1 B 3 K. originally belonged to and stood in the name of Shri Sanglakpam Nilakrishna Sharma who died about 20 years ago leaving behind two sons, who were the defendants Nos. 1 and 2 as his legal heirs and other relatives the defendants Nos. 3 and 4 who were his sister and mother respectively. The plaintiff purchased the southern half of this homestead land from the defendants Nos. 1 and 2 under a registered saledeed dated 1871964, in pursuance to an oral agreement of sale dated 31101963 by paying a price of Rs. 1.000 to the said defendants. At the time of the said purchase there was one house belonging to the defendant No. 3 lying in the southern side of the suit land and another house belonging to defendant No. 1 encroaching partly on the suit land and lying on the northwestern side thereof, where the defendants Nos. 1 and 4 were living. The plaintiff further alleged that the defendants Nos. 1, 3 and 4 requested him at the time of his purchase of the suit land to allow them to reside in those houses for three years so as to enable them to construct their own houses in the remaining portion of the aforesaid homestead land lying adjacent to the north of the suit land. On the refusal of these defendants to vacate the suit land with removal of their houses despite the plaintiffs repeated request, he instituted the present suit for their eviction and recovery of possession of the suit land with the removal of their houses and for mesne profit at the rate of Rs. 100 per annum from the date of suit till the recovery of possession.

3. The defendants Nos.1 and 2 did not contest the suit, but filed a written statement dated 17101969 averring that the suit land was sold by them to the plaintiff for a price of Rs. 1,000 and that the plaintiff became the owner thereof with his name recorded as pattadar of the new patta No. 51/172 I.E.T. partitioned from the old patta No. 51/28 I.E.T. and further that they executed the registered sale deed dated 1871964 in pursuance of the agreement of sale dated 31101963.

4. The defendants Nos. 3 and 4 contested the suit of the plaintiff denying all the allegations in the plaint except that the defendants Nos. 1 and 2 were the sons of late Shri Nilakrishna Sharma who according to them died about 15 years ago. These defendants averred that the defendants Nos. 1 and 2 had no capacity to sell the suit land, and further that the entire homestead land under patta No. 51/28 (old) I.E.T. comprising Dag No. 239 (old) and originally having an area of 2 B. 4 K. 12 L. belonged to late Atomba alias Tonjao Sharma who died about 27 or 28 years ago leaving his widow Angatombi Devi and his son Nilakrishna Sharma as his legal heirs. On the death of Nilakrishna Sharma about 15 years ago, his widow Kamini Devi sold her husbands share of the said homestead land in the southern part to Shri Moirangthem Tomchou Singh under a registered sale deed. These defendants also alleged that the remaining portion of the homestead

land including the suit land was the share of Angatombi Devi and she had been in continuous, uninterrupted and exclusive possession thereof as her own since the death of her husband late Atomba Sharma. It was also pleaded that the suit was barred by limitation and adverse possession.

5. The learned trial Court framed as many as 11 issues and decided them in favour of the plaintiff and granted relief to the plaintiff for recovery of possession of the suit land with removal of the defendants structures thereon, but that. Court refused to grant the relief of mesne profit. The defendants Nos. 3 and 4 being aggrieved with the judgment and

decree passed by the trial Court, preferred an appeal before the learned District Judge. Before the first appellate Court, the following submissions were contended on behalf of the appellants:

(1) that the defendant No. 4 Mst. Angatombi Devi was entitled to a half share in the property left by Atomba Sharma, who died on or about 1942, leaving her as his widow and his son Shri Nilakrishna Sharma in accordance with Hindu Womens Rights to Property Act 1937 (hereinafter called the Act) and in consequence of the provisions of Section 14 of the Hindu Succession Act, 1956 that interest which she had under the Act, ripened into her absolute estate.

(2) that the sale of the suit land by defendants Nos. 1 and 2 to the plaintiff was sham and collusive transaction so as not to convey any title to the plaintiff; and

(3) that the suit land was possessed by defendants Nos. 3 and 4 adversely against the plaintiff and, therefore, the suit of the plaintiff was barred by limitation under Article 65 of the Limitation Act of 1963.

All these contentions raised on behalf of the defendants Nos. 3 and 4 before the learned first Appellate Court were rejected and the appeal was dismissed. Hence, this Second Appeal has been preferred before this Court.

6. Earlier this appeal was heard by a Single Bench on 541974 and referred the appeal to the Division Bench with the following observation:

"Questions of constitutional importance arise in the appeal. viz., whether Manipur was a part of India or British India within the meaning of the Govt. of India Act, 1935 and whether the Hindu Womens Rights to Property Act, 1937 was applicable in the State of Manipur in 1942."

7. At the outset Mr. Charugopal Singh, the learned counsel appearing on behalf of the appellants, submits that appellant No. 2 is now dead and she is represented now by her legal representatives. The learned counsel for the appellants submits that under 1937 Act, the appellant No. 2 was entitled to a share equal to that of a son in respect of the property left by her deceased husband by virtue of the provision of Section 3 of the 1937 Act. It is true that 1937 Act was passed for ameliorating the condition of the Hindu females. According to the scheme of the Act, some females are made heirs and have been

given statutory entitlement to the property left by their deceased husbands by virtue of the provision of Section 3 of the 1937 Act. This Act only gives limited interest to the widows of the deceased husband in respect of the property left by him and that interest was subject to the defeasance by remarriage, death or conversion to some other religion. The only question for consideration by us is as to whether this Act was applicable to the State of Manipur and whether the beneficial provision enacted therein was applicable to the appellants. The 1937 Act was passed under the Govt. of India Act 1935. From the scheme of the Govt. of India Act, 1935, it is seen that this Act was passed with the expectation that princely States would join the federation and form part of the British India. That expectation did not materialise in the long run. Section 99 of the Govt. of India Act, 1935, provides for the extent of Federal and Provincial laws. The section reads as follows :

"99 (1) Subject to the provisions of this Act, the Federal Legislature may make laws for the whole or any part of British India or for any Federated State and a Provincial Legislature may make laws for the Province or for any part thereof.

(2) Without prejudice to the generality of the powers conferred by the preceding subsection, no Federal law shall, on the ground that it would have extra territorial operation, be deemed to be invalid in so far as it applies

(a) to British subjects and servants of the Crown in any part of India; or

(b) to British subjects who are domiciled in any part of India wherever they may be; or

(c) to, or to persons on, ships or aircraft registered in British India or any Federated State wherever they may be; or

(d) in the case of a law with respect to a matter accepted in the Instrument of Accession of a Federated State as a matter with respect to which the Federal Legislature may make laws for that State, to subjects of that State wherever they may be; or

(e) in the case of a law for the regulation or discipline of any naval, military, or air force raised in British India to members of, and persons attached to, employed with or following, that force, wherever they may be."

Section 311 is the interpretation section of the 1935 Act. According to this section British India means all territories for the time being comprised within the Governors Provinces and the Chief Commissioners Provinces and "India means British India together with all territories of any Indian Ruler under the suzerainty of His Majesty, all territories under the suzerainty of such an Indian Ruler, the tribal areas, and, any other territories which His Majesty in Council may, from time to time, after ascertaining the views of the Federal Government and the Federal Legislature, declare to be part of India." Therefore, any enactment made by the Federal Legislature or the Provincial Legislature would have only territorial operation; in the case of the former in the whole of British India and in the case

of the latter in the provinces only. Such legislation could not have any extraterritorial operation except what is provided in Section 99. (2) of the 1935 Act. Manipur was a princely State and before its accession after independence with the Union of India, it was outside British India. Therefore, any enactment passed by the Central Legislature could not operate in the State of Manipur proprio vigore, Manipur being a princely State. The Central legislation could only be applied by some action taken by the Prince or Raja or Maharaja in the Darbar or Council. Such legislation did not operate (sic) (apply?) ipso facto to the princely States. That being the position, the 1937 Act could never have any operation in the State of Manipur and, therefore, the beneficent provision enacted therein could not enure to the benefit of the appellant. Mr. Charugopal Singh, the learned counsel submits that a British Reserve was constituted in a portion of the State of Manipur wherein some of the Central legislations were applied. We find from the India Gazette Notification Pt. 1 page 201 dated 12th of March, 1909, that the British Reserve was constituted with certain areas within the State of Manipur and in respect of that British Reserve also some of the Central legislations were made applicable in exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1902 by the Governor General in Council, which is seen from the India Gazette Notification No. 533I.B. and No. 535I.B. dated 12th March, 1909. The above Gazette Notification also shows that the Central Acts did not operate automatically in the British Reserve. The learned counsel for the appellants has contended that the British Reserve was within the British India and the Central Legislations were automatically applied there. In absence of any materials shown by the counsel in support of his submission such contention does not hold good. Moreover, from the record of the case it is not found that the suit land was within the British Reserve. That being the position, the contention of the learned counsel that the 1937 Act was applicable to the case is not at all tenable. The 1937 Act for the first time was extended to the State of Manipur with effect from 11/1950 by the operation of the Merged State (Laws) Act, 1949. Accordingly, we hold that the said Act, 1937 was not a part and parcel of Hindu Law operating in the State of Manipur and the beneficial provision of the Act did not extend to the State of Manipur unless it was specifically applied. The learned counsel was not in a position to show that this Act was specifically applied to the State of Manipur. As the Act was not in force in 1942 when the succession opened, the defendant No. 4 could not have inherited under the pure Hindu Law, the property of her husband in presence of his son late Nilakrishna Sharma and as such she had no right to a share of his property which would have become her absolute property on the enforcement of Section 14 of the Hindu Succession Act, 1956. Therefore, the first contention of the learned counsel fails.

8. Regarding the second contention of the learned counsel that no consideration passed in the sale transaction made in respect of the suit land by defendants Nos. 1 and 2 in favour of the plaintiff we find that this submission is also devoid of any substance because the learned first appellate Court discussed the

evidence on record and found that there was overwhelming evidence to show that the transaction in question was not sham and collusive and that the consideration money passed from the plaintiff to defendants Nos. 1 and 2. That is a finding of fact recorded by the Courts below which cannot be disturbed or interfered with in a second appeal.

9. The last point urged by the learned counsel for the appellants is that the suit of the plaintiff was barred by limitation as the defendant No. 4 adversely possessed the suit land for a statutory period and thereby extinguished the

title of the plaintiff. In order to adversely possess the suit land, it must be shown by the defendants that the possession was open, hostile and exclusive. The burden of proving that their possession of the suit land was adverse and for the statutory period lay heavily on the appellants. From the discussion of the evidence on record, it was found by the learned first appellate Court that the appellants miserably failed to establish that they possessed the suit land exclusively and in assertion or under colour of their own right as owners. From the evidence we find that defendant No. 4 was living in one of the houses either owned by her or D.W. 1. That by itself was not enough to show that she was adversely possessing the suit land against the plaintiff. Therefore that contention of the learned counsel also fails.

10. In the result, we do not find any good and sufficient reason to interfere with the judgment and decree passed by the learned first appellate Court. Accordingly, this appeal stands dismissed. But, in the facts and circumstances of the case we pass no order as to costs.

K. LAHIRI, J. : I agree.

Appeal dismissed.