

(2001) 07 PAT CK 0098

In the Patna High Court

Case No : Appeal From Appellate Decree No. 252 of 1987

Satan Hazra and Others

APPELLANT

Vs

Dhorai Hazra and Others

RESPONDENT

Date of Decision : 31-07-2001

Acts Referred:

Hindu Succession Act, 1956 — Section 8

Citation : (2001) 3 BLJR 2130 : (2001) 4 PLJR 50

Hon'ble Judges : Someshwar Nath Pathak, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.N. Pathak, J.—This Second Appeal is directed against the judgment of 1st appellate Court passed by Sub-Judge, 3rd, Bhagalpur, in Title Appeal No. 13 of 1979. The defendants of Title Suit No. 168 of 1973 are the appellants before this Court. The title suit was decreed in favour of the plaintiff-respondents by a judgment passed by Munsif, 1st, Bhagalpur.

2. The main plank of the admitted case of the parties was that there were two brothers, namely, Hingan Hazra and Gokhul Hazra and they were recorded over an area of 5.43 decimals. These two brothers separated. Hingan left behind four sons, namely, Manchan Hazra Baudhu Hazra, Kanchan Hazra and Jhumak Hazra. According to the plaintiffs case all the four sons of Hingan Hazra separated their property receiving from Hingan Hazra and each got 68 decimals. However, the defendant-appellants differed and their case was that although Kanchan and Jhumak separated, Manchan and Baudhu were remained joint. In course of time Gokhul sold his land measuring an area of 2.72 acres to Manchan Hazra, according to the plaintiff-respondents' case. The defendant-appellants averred that sale-deed from Gokhul was obtained in the name of Manchan Hazra as Karta of his family consisting of his brother Boudhu and his son Chhedi Hazra. So, the defendant-appellants had also share in the property purchased from Gokhul. So, in the revisional survey the name of Chhedi Hazra and some of defendants were

entered in respect of the suit property. According to the statement of W.S. filed by defendants 1 to 4 (appellants before this Court) at Paragraph 11 Page 6, final publication of R.S. was made in the year 62. Subsequently, Chhedi Hazra, the son of Manchan Hazra executed a Bazidava on 25-11-1969 admitting the purchase of the suit land from Gokhul by Manchan in state of jointness with Boudhu and he also admitted the entry in favour of the contesting defendants (appellants here) as correct. However, plaintiff-respondents pleaded in this connection that they were minors when the survey operation was going on and their father Chhedi Hazra was in Railway service. The mother of plaintiffs No. 1 to 3 having faith in the defendants made over certain papers to defendants to get the survey record of rights correctly prepared, but the defendants taking advantage of this fact got their names entered in the survey record of rights and specially in absence of Chhedi Hazra. When the defendants started negotiating for sale of disputed land, the plaintiffs detected this fraud and then filed a suit claiming that they along with their father were all along in possession of the suit land described in Schedule 8 of the plaint and they had title over the same. So, they claimed the relief that their title and possession be desired and that defendant-appellants be injuncted from alienating any portion of the suit land.

3. Both the lower Courts decreed the suit and, hence, the defendants of the suit filed this appeal before this Court. The question of law formulated for this appeal as per the order-sheet dated 7-3-1988 was "whether the Courts below erred in placing the onus on the defendants (appellants) to prove that there was no separation between the branch of the plaintiffs and the appellants".

4. However, during the course of hearing, the appellants' lawyer raised another legal question "whether the plaintiffs should have any share in the land acquired by Manchan Hazra which would be his exclusive property". Before I discuss the legal questions raised before this Court, it would be worthwhile to refer to certain more relevant and admitted facts emerging from the pleadings of the parties. The defendants 1 to 4 in the W.S. specifically pleaded that Kanchan and Jhumak had separated. So, when once a separation is pleaded presumption attaching to the jointness of coparcenery breaks. So, it was defendant-appellants to prove that Manchan and Boudhu had remained joint. Both the lower Courts have held on discussion of the evidence that the defendant-appellants had failed to prove by cogent and reliable evidence that Manchan and Boudhu had remained joint. So, the onus of proving that Manchan and Boudhu had remained joint after it was admitted that two of the four members of the coparcenery had separated was rightly placed upon the defendant-appellants. Admittedly, the sale-deed from Gokhul was obtained in the name of Manchan Hazra. It was pleaded by the defendants that Manchan was the Karta, but the evidence adduced did not show that Manchan was elder to Boudhu and, so, it was all the more necessary on the part of the defendant-appellants to prove that Manchan was the Karta of the joint family consisting of himself and his brother Boudhu and, therefore, I am of the firm opinion that the onus to prove jointness between Manchan and Boudhu was, of course, heavily laid upon the defendant-appellants. Therefore, the first legal

question formulated for this appeal was beside the point.

5. So, far the next legal question raised by the appellants' lawyer is concerned, Section 8 of the Hindu Succession Act was taken as aid in favour of the defendants' case. Section 8 of the Hindu Succession Act, 1956, has laid down that when a male Hindu dies intestate his property shall be succeeded by the persons who are mentioned as class 1 heirs in Schedule 1. Of course, in Schedule 1 the son's sons are not mentioned as heirs. In this view of the law as laid down by Section 8 of the Hindu Succession Act, the appellants' lawyer submitted that the plaintiff-respondents including the wife of Chhedi Hazra will not have share in the property acquired by Manchan Hazra from Gokhul Hazra. However, in this connection, admitted position of law would be that the son of the male dying intestate shall acquire right in his father's property. Chhedi Hazra was very much alive when the survey record of right was being prepared and the name of Chhedi Hazra admittedly stood recorded over the property exclusively acquired by Manchan Hazra from Gokhul Hazra. It is not understandable how the names of defendants 1 to 4 got recorded over the property left behind by Manchan Hazra. Defendant No. 5 in the suit was Chhedi Hazra who was made the defendant 2nd set. The claim of the defendants that they had remained joint with Manchan having been negated by the discussions upon the evidence by both the lower Courts, it was, of course, a bit mysterious circumstance as to how the defendants got their names entered along with Chhedi, when under the law they will inherit nothing from Manchan Hazra. Perhaps, defendants were banking on the so-called Bazidava executed by Chhedi Hazra admitting their claims of jointness between Manchan and Boudhu and joint possession of the property of himself and the defendants. But, it is to be noted that Chhedi Hazra (defendant No. 5) neither appeared in the suit nor did he file any W.S. He was rather examined as a witness on behalf of plaintiffs (S.W. 15) and he stated that the concerned Bazidava was obtained from him fraudulently and he was addict of liquor. So, when Chhedi Hazra denied the alleged voluntary execution of Bazidava, the defendants could not have derived any title over the suit land on the basis of the concerned Bazidava. Besides the above, both the lower Courts held that when the names of the defendants stood recorded in the survey record of rights, it was not necessary for them to obtain this Bazidava on 25-11-1969. In this view of the matter, both the lower Courts doubted the genuineness of the concerned Bazidava. So, the finding of the two Courts below on the validity and genuineness of the Bazidava is final. So, the survey record of right in favour of the defendants could also be viewed with suspicion and both the lower Courts have held the same view. This view is re-inforced with another fact which is that, Ext. 3, which was record of right prepared in the consolidation proceeding was exclusively in the name of Chhedi Hazra.

6. During the course of argument, it was also pointed out that the first appellate Court failed to discuss the evidence adduced on behalf of the defendant-appellants. However, I find that the appellate Court did not deem it necessary to discuss the oral evidence because he had found himself in the agreement with

the finding of the trial Court on this point. I am of the opinion that when the appellate Court agrees with the finding of the trial Court arrived at on the basis of the evidence discussed, it need not discuss the oral evidence again. It is only when the appellate Court disagrees with the finding of the trial Court on any issue, it is imperative on the part of it to discuss any piece of evidence, oral or documentary, in order to support its view of disagreement with the finding of the trial Court.

7. The plaintiff-respondents had prayed through the plaint that the defendants be enjoined from alienating the suit land and they had also prayed that it be declared that the suit land was under the joint ownership of the plaintiffs and Chhedi Hazra (defendant No. 5). Of course, in view of Section 8 of the Hindu Succession Act, the plaintiffs would have no title over the suit land during life time of Chhedi Hazra, but the plaintiffs were entitled to seek declaration of at least that Chhedi Hazra had title over the suit land and they are also entitled to seek the declaration that the plaintiffs along with Chhedi were in possession of the suit land. Admittedly, Chhedi was in service and his constructive possession and the possession of the plaintiffs on behalf of father and husband (husband of plaintiff No. 4) was a natural phenomenon.. So, the defendants were, of course, liable to be enjoined from interfering with the possession of the plaintiffs and from alienating the suit land. I further to hold that since both the lower Courts declared the title of the plaintiffs along with title of their father and husband of plaintiff No. 4 not much can be read into this relief because after Chhedi the plaintiffs 1 to 4 would be the natural heirs of Chhedi. So, in this view of the matter, I am not in favour of modifying the judgment and decree passed by the two lower Courts.

8. In the result, this appeal is dismissed. The parties shall bear their own cost of this appeal.