

(1987) 03 PAT CK 0029
In the Patna High Court
Case No : A.F.A.D. No. 650 of 1980

Sheo Nandan Bhagat and Others

APPELLANT

Vs

Ramdhari Singh and Others

RESPONDENT

Date of Decision : 11-03-1987

Acts Referred:

Hindu Succession Act, 1956 — Section 14

Citation : AIR 1988 Patna 154 : (1987) 35 BLJR 662

Hon'ble Judges : S.S. Sandhawalia, C.J.; Lalit Mohan Sharma, J

Bench : Division Bench

Advocate : Susheel Chandra Sinha and Uday Shankar Sharan Singh, for the Appellant; Ganpati Trivedi, for the Respondent

Final Decision : Dismissed

Judgement

Lalit Mohan Sharma, J.—The dispute in the suit, out of which the present second appeal arises, relates to the property which admittedly belonged to one Dhuri Mahto, who died before 1928, leaving behind his widow Most. Lakhia, defendant No. 3, and two minor sons Bhagirath and Bhagwan under the guardianship of their mother. In March 1928, Most. Lakhia executed a deed of mortgage Ext. B(2) with respect to the suit property in favour of the defendant No. 1 and in July, 1967 sold the same to the defendants 4 to 6. the appellants in the present appeal, under the registered deed, Ext. C(2). Bhagwan died unmarried in a state of joint ness with his brother Bhagirath. Bhagirath was married with Sanichari, defendant No. 2, but unfortunately, he also died young without leaving a child. Most. Sanichari sold the property to the plaintiffs in September 1967. Thus, the present dispute is between the plaintiffs and the defendants 4 to 6, i.e. the vendees from the two ladies.

2. According to the case of the plaintiffs Bhagirath died in 1949. The defendants allege that he died as far back as in 1930. The question whether he actually died in 1930 or 1949 does not appear to be material for the purposes of the present appeal.

3. The plaintiffs filed the present suit for a decree for redemption. According to the defence case the mortgage was already redeemed by Lakhia. The defendants also challenged the claim of Sanichari to be the wife of Bhagirath, and the sale deed executed by her has been described as fabricated, illegal and inoperative. It has been pleaded that Most. Lakhia inherited the property after the death of her sons and had full right to transfer the same. The defendant No. 2 (Sanichari) supported the plaintiffs.

4. Both the courts below have accepted the plaintiffs' case, rejected the defence story and decreed the suit. Defendants 4 to 6 have now come to this Court.

5. It has been contended by Mr. Sushil Chandra Sinha that since after the death of Dhuri Mahto, Most. Lakhia came in actual physical possession of the property, her right to it got enlarged under the Hindu Succession Act, 1956. The learned counsel argued that although Most. Lakhia did not take any interest in the property on her husband's death, and the same exclusively devolved on their sons, but as she was entitled to maintenance, she acquired full title therein u/s 14 of the Hindu Succession Act. He strongly relied on the observations made by the Supreme Court in *V. Tulasamma v. V. Sesha Reddi* AIR 1977 SC 1944 .

6. In *Tulasamma v. Sesha Reddy*, the appellant, a Hindu widow, obtained a decree in 1946 for maintenance against the respondent, who was the appellant's deceased husband's brother, and put the same in execution. A compromise between the parties was reached in the execution case and, accordingly, Tulasamma was allotted certain properties in lieu of maintenance and she got possession thereof, and so continued till after the passing of the Hindu Succession Act. A question arose as to whether the interest of Tulasamma got enlarged under Sub-section (1) of Section 14 or the case was covered by the provisions of Sub-section (2). The Supreme Court agreed with the appellant and allowed the appeal. Mr. Justice Murtaza Fazl Ali quoted in paragraph 27 of his judgment with approval from Mulla's book of Hindu Law to the effect that a Hindu wife is entitled to be maintained by a husband whether he possesses properties or not as it is a matter of personal obligation arising from the existence of the relationship and quite independent of the possession by the husband of any property ancestral or self-acquired. Referring to this part of the judgment the learned counsel contended that it is immaterial whether Most. Lakhia shared in the inheritance or not, and in either event she must be deemed to have acquired full title to the property u/s 14(i). The fallacy in this argument is that it omits to take into account a factor, which is essential for the application of the section, namely, the possession of the widow in lieu of her right to maintenance. This aspect was emphasised in both the judgments of Mr. Justice P. N. Bhagwati (as he then was) and Mr. Justice Murtaza Fazl Ali. This case was considered, analysed and followed in *Bai Vajia (Dead) by Lrs. Vs. Thakorabhai Chelabhai and Others*, . Rejecting the challenge of the plaintiffs-respondents to the correctness of the judgment in *Tulasamma's* case, the Supreme Court observed : -

"We find that only that part of this argument which is interpretative of Sub-section (1) is correct, namely, that it is only some kind of "limited ownership" that would get enlarged into full ownership and that where no ownership at all vested in the concerned Hindu female, no question of the applicability of the sub-section would arise."(See paragraph 13)

Proceeding further the court observed in paragraph 16 of the judgment that :

"Limited ownership in the concerned Hindu female is thus a sine qua non for the applicability of Sub-section (1) of Section 14 of the Act but then this condition was fully satisfied in the case of Tulsamma to whom the property was made over in lieu of maintenance with full rights of enjoyment thereof minus the power of alienation. These are precisely the incidents of limited ownership."

In the present second appeal Most. Lakh is at no point of time claimed any right of maintenance and never asserted her possession to the disputed property or any part thereof in exercise of such a right. She was managing the property as the natural guardian of her sons, and on the death of Bhagwan his brother Bhagirath became its sole owner. He ultimately died before coming in force of the Hindu Succession Act leaving behind his widow Sanichari, defendant No. 2, as the sole heir and legal representative. It is true that Most. Lakhia was entitled to enforce her right of maintenance against the family property and she continues to be so entitled even now and even in the hands of the transferees, but that is not the point arising in the present second appeal. It follows, therefore, that the courts were right in decreeing the suit of the plaintiffs who have acquired the property from Sanichari in 1967. This appeal is, accordingly, dismissed, but in the circumstances without costs.

S.S. Sandhawalia, C.J.

7. I agree.