

(2007) 05 PAT CK 0027
In the Patna High Court

Sri Harikant Singh and Others

APPELLANT

Vs

Sri Ram Krishna Sharma and Others

RESPONDENT

Date of Decision : 02-05-2007

Acts Referred:

Citation : (2007) 05 PAT CK 0027

Final Decision : Dismissed

Judgement

1. The appellants in this appeal seeks to rely upon an observation made by a Division Bench of this Court, which was comprised by one of us (Barin Ghosh, J.), in the case of Ambika Rai and Another Vs. The State of Bihar and Others, to the effect that "the right of maintenance of a Hindu widow was not a pre-existing right". We think that this observation is per incurium in view of the three judges Bench decision rendered by the Hon'ble Supreme Court in the case of V. Tulasamma v. Sesha Reddy reported in AIR 1977 SC 1944, followed by a Division Bench of the Hon'ble Supreme Court in the case of Raghubar Singh and Others Vs. Gulab Singh and Others, .

2 In the instant case the respondent No. 1 instituted a suit against the appellants for recovery of possession of the suit land. It was alleged in the plaint that the respondent No. 1 purchased the said property from a lady who inherited the same from her mother, Mangli. It was stated that in lieu of maintenance half of the suit property was given to the mother of the vendor of the respondent No. 1 for her life under an instrument and by reason of Section 14(1) of the Hindu Succession Act, 1956 the limited right the mother of the vendor of the respondent No. 1 had in half of the suit property matured into full right. It was stated that the remaining half of the property was mortgaged in favour of the father of the vendor of respondent No. 1. It was alleged that after the property was purchased under a registered instrument by the respondent No. 1 from his vendor, the respondent No. 1 got possession of the suit property and thereupon he was wrongly evicted therefrom by the appellants.

3. This suit was decreed ex parte. The appellants tried to have the ex parte

decree set aside by taking recourse to Order IX Rule 13 of the Code of Civil Procedure, but did not succeed. The appeal filed against the order rejecting the prayer for setting aside the ex parte decree having been dismissed no further step was taken by the appellants and, accordingly, the ex parte decree so passed reached finality.

4. Thereupon the appellants preferred an appeal against the ex parte decree on its merit. This appeal having been dismissed the present letters patent appeal has been filed.

5. At the trial plaintiff had tendered in evidence a document dated 22nd August, 1939. In that document it was mentioned that upon the death of Sukumar Das, Badri Das became the sole owner of the suit property but for the purpose of maintaining the wife of Sukumar Das, namely, Mangli, Badri Das has granted life interest in the suit property in favour of Mangli. It appears from another document tendered in evidence at the trial of the suit, namely, the judgment and order passed by this Court on 15th December, 1948, that Mangli had filed a suit for eviction against the grand father of the appellants. It appears from the said judgment and order that this Court held that the grand father of the appellants was not entitled to possess the suit property and Mangli alone was entitled to possess the suit property and only after her death the question of possession by any one else will become open for discussion.

6. While this is how at the trial of the suit the plaintiff established the title of his vendor in the suit property, it was contended by the appellants that these two exhibits will demolish the claim of title of the vendor of the plaintiff.

7. It was contended on behalf of the appellants that these two documents amply demonstrate that Sukumar Das died before the 1937 Act came into force. It was contended that before the 1937 Act came into force the survivors of the coparcenary had no obligation to maintain a widow of a coparcener who has died, in as much as a Hindu widow prior to 1937 had no right to obtain maintenance from the other survivors of the coparcenary. It was stated that it had been acknowledged in the deed dated 22nd August, 1939 by Mangli, being the mother of the vendor of the plaintiff, that on the death of Sukumar Das the property became the property of Badri Das. It was contended that by reason of the said document dated 22nd August, 1939 Mangli, for the first time, got an interest in the property in question, not in acknowledgment of any pre-existing right and, accordingly, Section 14(1) of the Hindu Succession Act has no application. Section 14(2) of the said Act applies.

8. It was next contended that from the judgment and order of this Court dated 15th December, 1948 it is amply clear that the grand father of the appellants were in pos-session of the property in question. It was contended that there is nothing on record which would show that this possession was taken back by Mangli either by extending the said judgment and order or otherwise.

9. It was also contended that assuming the suit property was given to Mangli in

recognition of her pre-existing right of maintenance, but the fact remains, as evidenced by the judgment and order of this Court dated 15th December, 1948, that she was not in possession of the suit property and, accordingly, Section 14(1) does not apply.

10. It was lastly contended on behalf of the appellants, as would be evidenced from the judgment and order of this Court dated 15th December, 1948, that before that date Badri Das had transferred his ownership right in the property in question to the grand father of the appellants. It was submitted that as on the date of such transfer Hindu Succession Act, 1956 had not come into force and, accordingly, that transfer cannot be affected by reason of coming into force of the said Act.

11. To answer these submissions, the learned Counsel appearing on behalf of respondent No. 1 has drawn our attention to the judgment of the Hon'ble Supreme Court rendered in the case of Raghubar Singh and Others Vs. Gulab Singh and Others, , where the Hon'ble Supreme Court had taken note in extenso of the earlier three Judge Bench judgment of the Hon'ble Supreme Court in the case of V. Tulasamma v. Sesha Reddy AIR 1977 SC 1944 (supra). In V. Tulasamma v. Sesha Reddy, and wherein no uncertain terms the Hon'ble Supreme Court held that the right of maintenance of a Hindu widow is a pre-existing right which existed under the Shastric Hindu Law long before the 1937 or the 1946 Acts came into force. In Raghubar Singh v. Gulab Singh (Supra) the Hon'ble Supreme Court pronounced the same as the law of the land subsisting since its pronouncement in V. Tulasamma v. Sesha Reddy (Supra).

12. In such view of the matter, as held by the Hon'ble Supreme Court in the case of V. Tulasamma v. Sesha Reddy AIR 1977 SC 1944 (supra), if in recognition of such pre existing right a property had been transferred to the widow of a coparcenor for her life, even before the 1937 Act came into force, she acquired a limited right in the property so transferred and she acquired full right therein by being alive even after coming into force of the Hindu Succession Act, 1946 by virtue of Section 14(1) thereof. In the instant case, admittedly, being widow of Sukumar Das, Mangli had a pre-existing right to claim maintenance from the other survivors of the coparcenary. In lieu of such maintenance, by the deed dated 22nd August, 1939 the property in question was given to Mangli for her life. The limited right, which Mangli acquired under the deed dated 22nd August, 1939, stood converted to full right upon coming into force of the 1956 Act by reason of Section 14(1) thereof in as much as she was alive at that time.

13. In the instant case Section 14(2) of the Hindu Succession Act 1946 has no application in as much as Mangli received the subject property under the document dated 22nd August, 1939 in recognition of her preexisting right to get maintenance. In other words, the document dated 22nd August, 1939 does not show that by not acknowledging any pre-existing right, the subject property was given to Mangli for her life. The document specifically mentions that life interest in the subject property is being given in lieu of maintenance.

14. It is true that the judgment and order of this Court dated 15th December, 1948 in no uncertain terms acknowledges the fact that as on the date of the said Judgment the grand father of the appellants was in possession of the suit property. It is also an admitted fact that at the time of trial no documentary evidence was brought on record suggesting that the grandfather of the appellants in acknowledgment of his obligation under the said judgment and order of this Court gave up possession of the subject property to Mangli. However, it is not the case of the appellants that there is no evidence on record which contains an assertion by the plaintiff that first Mangli, then her daughter and thereupon the plaintiff came in possession of the suit property in question. Furthermore, in both the Judgments, referred to above, the Hon"ble Supreme Court said that if a widow is entitled to possess that should be treated to be "in possession" as mentioned in Section 14(1) of the Hindu Succession Act as the said section should be given a broader meaning. By reason of the judgment and order of this Court dated 15th December, 1948 there is a judicial pronouncement to the effect that Mangli was entitled to possess the subject property. That itself will encompass "in possession" as mentioned in Section 14(1) of the Hindu Succession Act.

15. It is true that prior to 15th December, 1948 Badri Das had sold his interest in the subject property to the grandfather of the appellants, but by virtue of Section 8 of the Transfer of Property Act, Badri Das could sell his the then interest in the subject property, which was subject to the life interest created in favour of Mangli in acceptance of her pre-existing right of maintenance. The moment that right became a full right by reason of a legislative intervention, the right to take back possession upon death of Mangli, as was conveyed to the grand father of the appellants, ceased to have any effect.

16. In the circumstances, it cannot be said that on the basis of the evidence, as was adduced before the trial Court, the plaintiff failed to prove that his vendor had title to the property in question.

17. The matter must rest there. Accordingly, the appeal fails and the same is dismissed.