

(2008) 03 OHC CK 0013

In the Orissa High Court

Sudam Charan Panda and Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 25-03-2008

Acts Referred:

Hindu Succession Act, 1956 — Section 14

Citation : (2008) 2 OLR 193

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.S. Naidu, J.—The facts and points of law in all these Writ applications being the same, the same were heard together.

2. The dispute is with regard to the properties owned by one Bhagaban Panda, the common ancestor of the contesting parties. Madani was the wife of Bhagaban. They had three daughters being Sakhi, Malati and Tulasi. Bhagaban died way back in the year 1912 and his wife Madani died in the year 1926. Thus in consonance with the Hindu Law, the entire property was inherited by the aforesaid three daughters. Sakhi had one son namely Nabakishore Panda who was originally opposite party No. 7 in OJC No. 9378/95. He having died his LRs have been substituted in his place. Malati was issueless. Tulasi had one son namely Rama and two daughters namely Rambha and Budhi. Rama had two sons namely Sadam Charan Panda and Bhagaban Panda who are the Writ petitioners.

For the sake of brevity and better understanding the genealogy of the family which is not disputed by the parties is given below:

Bhagaban Panda (Died in 1912) = (W) Badani _____ |
_____ | | Sakhi (Died in 1938) Malati (Died in 1998)
Tulasi (Died in 1946) | Naba (O.P) _____ | | Rama
Rambha Budhi ____|_____ | | Sudam Bhagaban (Petr. No. 1) (Petr. No. 2)

3. After the village in which the disputed properties are situated came under

consolidation operation, several Objections Cases were filed. The said Objection Cases were heard and disposed of together by the Consolidation Officer, Simulia in the district of Balasore by a common judgment dated 1.7.1981 (Annexure-1). According to the petitioners after the death of Sakhi in the year 1938 and Tulasi in the year 1946, Malati being the sole surviving daughter inherited the entire property. Thereafter Malati alienated the said property" by three registered sale deeds in favour of the Writ petitioners who also happened to be the sons of Rama and grandsons of Tulasi. The original contesting opposite party No. 7 Naba was the son of Sakhi. According to Naba after death of Bhagaban his three daughters inherited 1/3rd share each in the property and thus he being entitled to 1/3rd share, Malati had no right to alienate the entire property. Before the Consolidation Officer the plea of Naba was thus confined to his succession as an heir of Bhagaban and nothing more. The Consolidation Officer after discussing the materials in extenso and relying upon Article 43(6) of the Hindu Law came to the conclusion that in accordance with law that existed prior to the year 1956, in the absence of a son, daughters of a Hindu male were to succeed to the property jointly and after the death of any of them the property would pass to the other surviving daughter(s). It was further stipulated that a daughter's son being not "Gotraja Sapinda" cannot inherit the property when a daughters survives. Thus the Consolidation Officer held that after the death of Sakhi and Tulasi, Malati became the absolute owners of the Property and Naba, son of Sakhi and grandson of Bhagaban through his daughter, was entitled to 1/3rd share. The Consolidation Officer accepted the sale deeds executed by Malati in favour of the petitioners as valid to the extent of 1/3rd share and ordered to record the lands in accordance with the said sale deeds.

4. Being aggrieved by the order of the Consolidation Officer, several Appeal Cases were filed before the Deputy Director of Consolidation, Balasore. All the Appeals were also heard together and disposed by ft common judgment, videAnnexure-2. The Deputy Director relying upon one of the sale deeds executed by Malati wherein she had stated that she had only 1/3rd interest in the property observed that she was bound by the said statement and the contrary stand that she was the absolute owner could not be accepted. On the basis of such conclusion the Deputy Director allowed all the appeals and held that Malati, Naba (son of Sakhi), and Rama (son of Tulasi) and his branch had 1/3rd share each. Being aggrieved by the appellate judgment again several Revision Cases were filed before the Commissioner of Consolidation and Settlement, Bhubaneswar which were heard and disposed of by the Addl. Commissioner also by a common order dated 2.2.1995 (Annexure-3). The revisional authority concurred the findings of the appellate authority and dismissed the Revisions. The said order is assailed in these Writ applications.

5. This Court heard learned Counsel for the petitioners and Mr. Dagara for the contesting opposite parties at length. Though several parties had approached the Consolidation authorities, the main contestants before this Court are the petitioners being the sons of Rama, representing the branch of Tulasi who claim

to have purchased the disputed lands by three sale deeds executed and got registered by Malati and Naba (son of Sakhi).

6. At the cost of repetition, it is stated that Sakhi, Malati and Tulasi were the three daughters of Bhagaban. Mr. Dagara, learned Counsel appearing for the L.Rs. of Naba forcefully submitted that Naba not only claimed 1/3rd interest in the property by succession, but also alternatively claimed to have been inducted as a tenant in respect of the disputed property which was alleged to be a part of an ex intermediary estate of one Mahanta Ramanuja Das. It was stated that after vesting of the estate, Naba was accepted as a tenant under the State. It was further submitted that Malati was all along conscious that she had only 1/3rd interest in the property as would be evident from the recitals made in one of the sale deeds, out of three/executed and got registered by her. In short, according to Mr. Dagara, either way Naba had 1/3rd share and the appellate as well as the revisional authorities had rightly held so.

7. The submissions of Mr. Dagara was repudiated by the learned Counsel appearing for the petitioners mainly on the ground that in consonance with Hindu Law, Malati had succeeded to the entire property of Bhagaban who died in the year 1912 as sole surviving daughter, her two sisters Sakhi and Tulasi having died in the years 1938. and 1946 respectively and the property left by Bhagaban was inherited by Malati who was in possession thereof till 1956 when by virtue of the Hindu Succession Act, her right became absolute. Thereafter she alienated the property by three sale deeds. It is further submitted that though in one of the sale deeds it was mentioned that Malati had 1/3rd interest in the property, the recitals of the other two sale deeds clearly reveal that she was the absolute owner of the entire property. It is submitted that only on the basis of a wrong recital in a sale deed a person having right, title and interest could not lose the same.

8. Countenancing the submission of Mr. Dagara that the property was a part and parcel of the ex intermediary estate of Mahanta Ramanuja Pas, it is stated that the said plea was never taken by Naba either before the Consolidation Officer or the Deputy Director in appeals. No documents had been produced before authorities below to substantiate the said plea. Therefore the Commissioner had acted illegally, and with material irregularity in referring to such submission raised for the first time in the revisions.

9. The facts which are not disputed by the parties are that the property belonged to Bhagaban Panda, the common ancestor of the petitioner and the contesting opposite parties. The belated plea taken by the contesting opposite parties that the property was a part and parcel of the ex intermediary estate was neither pleaded nor proved. Thus the said plea cannot be entertained by this Court. The scenario of facts reveals that the parties had approached the Consolidation Officer with the assertion that the property belonged to Bhagaban. Admittedly, Bhagaban died in the year 1912. Law is well settled that succession to a property of a Hindu cannot be kept in abeyance. Right of a person to succeed as heir on

the death of a Hindu is a mere *spas successio*nis, i.e. "a bare chance of succession"

10. According to Article 511 of the Mayne's Hindu Law, the right of succession under Hindu Law is a right which vests immediately on the death of the owner of the property. It cannot in any circumstance remain in abeyance. Thus the properties of Bhagaban who died in 1912 were inherited by his widow Badani. Badani expired in the year 1926. Thereafter the property passed on to the three daughters, namely Sakhi, Malati and Tulasi. Sakhi had one son namely Naba (original opposite party No. 7). Tulasi had one son namely Rama and two daughters namely Rambha and Budhi. In consonance with Article 43(6) of Mulla Hindu Law, a daughter's son is not entitled to succeed if there be another daughter of the original owner living and capable of inheriting. According to the said provision, a daughter's son is strictly a "Bandhu" "Bhina Gotra Sapinda" being related to the deceased through a female. He succeeds not as an heir of his mother, but as an heir of his own maternal grandfather.

Article 43(6) of the Mulla Hindu Law reads as follows:

6. Daughter's son.

(i) When entitled to succeed--

The daughter's son is not entitled to succeed if there be any daughter living and capable of inheriting. A daughter's son is strictly a bandhu or bhinna gotra sapinda being related to the deceased through a female, but he inherits with gotraja sapindas by virtue of express texts; He succeeds not as an heir to his mother, but as an heir to his own maternal grandfather.

Thus law is very clear that if a daughter is alive, a grandson through another daughter shall not be entitled to succeed. In the case at hand, Bhagaban and Badani had three daughters as stated earlier. Sakhi died in the year 1936. Though Naba was born by then, as the other two daughters of Bhagaban, namely Malati and Tulasi were alive, Naba did not succeed to the property. The share of Sakhi passed on to Malati and Tulasi. Tulasi died in the year 1946. Though she had left behind a son and two daughters, as Malati her sister (a daughter of Bhagaban) was alive, the property passed on to Malati who was the sole surviving heir. Thus after 1946 Malati became the sole surviving daughter and the absolute owner of the property left behind by Bhagaban.

11. in consonance with Section 14 of the Hindu Succession Act which came into force in the year 1956, any property possessed by a female Hindu whether acquired before or after commencement of the said Act shall be held by her as full owner thereof and not as a limited owner. By virtue of the aforesaid provision, Malati who had succeeded to the property and was in possession thereof became the absolute owner having right of alienation. She had alienated the said property by three registered sale deeds In favour of the petitioners. By virtue of the sale deeds the petitioners acquired valid right, title and interest.

12. The reasoning given by the Deputy Director that as Malati in one of the sale deeds had mentioned that she had 1/3rd interest in the property and as such she could not be held to be the absolute owner is fallacious. Law is well settled that a recital in a deed will not strip a person of his/her valid right, title and interest which he/she otherwise possesses. Even otherwise it appears that Malati in the other two sale deeds had clearly mentioned that she was the absolute owner of the property. Thus nothing turns by the recital made in one of the three sale deeds. In view of the discussions made above, this Court finds that the Consolidation authorities having not decided the issue keeping the aforesaid law in mind, the orders passed by them cannot be sustained. This Court therefore quashes the orders passed by the Consolidation Officer, Deputy Director and the Commissioner. The lands purchased by the petitioners through the sale deeds executed by Malati being valid, the same be recorded in their favour. The, Writ applications are thus allowed.