

(1982) 10 OHC CK 0006
In the Orissa High Court
Case No : Second Appeal No. 45 of 1978

Sulabha Gouduni and Others

APPELLANT

Vs

Abhimanyu Gouda and Others

RESPONDENT

Date of Decision : 06-10-1982

Acts Referred:

Hindu Succession Act, 1956 — Section 14(1)

Hindu Womens Right to Property Act, 1937 — Section 3

Citation : AIR 1983 Ori 71

Hon'ble Judges : R.C. Patnaik, J

Bench : Single Bench

Advocate : B. Pal and Ashok Mohanty, for the Appellant; N.C. Mohanty and C. Pani, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Patnaik, J.—The plaintiffs whose suit for partition has been dismissed by the courts below are the appellants.

2. Khetra and Shyama were the two sons of one Ganga Gowda. Sulabha (plaintiff No. 1) is the widow of Khetra and plaintiff No. 2 is the son of her only daughter. Defendant No. 1 is the son and defendant No. 2 is the widow of Shyama. Defendants Nos. 3 and 4 are the sons of defendant No. 1. According to the plaintiffs, though Khetra and Shyama had separated in mess and status, the land had not been partitioned and they were dividing the usufructs amicably in two equal shares. There was, however 3 division of the residential house, Khetra died about 30 years back, i.e., around 1941. After the death of Khetra and Shyama, the property stood jointly recorded in the name of plaintiff No. 1 and defendant No. 1. The plaintiffs alleged that after the death of Khetra, plaintiff No. 1 as his heir, was in enjoyment of the half share and she was in khas possession of the land and was paying revenue to the State. She executed a conditional deed-of-gift on 25-6-1969 in favour of her daughter's son under which the plaintiffs were to jointly enjoy the property till the death of plaintiff No. 1 whereafter the

plaintiff No. 2 was to become the absolute owner thereof. As the defendants threatened to deprive the plaintiffs of the property, the suit for partition was filed.

3. The contesting defendants Nos. 1, 3 and 1 pleaded that out of the writ property. Survey No. 542/2 did not belong to the erstwhile joint family but belonged to defendant No 1. They alleged that Khetra died around 1933. The plaintiff No. 1 was a pre-1937 Act widow and could only be a maintenance-holder. Defendant No. 1 was all along in possession of the entire property. They controverted the rest of the allegations,

4. The courts below have found that Khetra died before the Hindu Women's Rights to Property Act, 1937 came into force. They further held that Khetra and Shyama were joint and plaintiff No. 1 being only entitled to maintenance, she was not entitled to sue for partition.

5. Mr. B. Pal, the learned counsel for the appellants, strenuously urged in this Court that in the facts and circumstances of the case, the lower appellate court had not drawn proper inferences from the materials on record Exts. 1, 2 and 3 went to indicate that there was severance of status and so u/s 14(1) of the Hindu Succession Act, 1956, the plaintiff No. 1 became the absolute owner of the interest of her husband Khetra.

6. It cannot be disputed, having regard to the materials on record and the concurrent findings recorded by the courts below, that Khetra died before the coming into force of the Hindu Women's Rights to Property Act, 1937. So, Sulabha who is a pre-Act widow was entitled to maintenance. The next question is: are there materials on record to hold that Section 14 (1) of the Hindu Succession Act had application? Section 14(1) may be reproduced :

"14 (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation : In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as "Stridhana" immediately before the commencement of this Act....."

For the application of Section 14(1) to the facts in hand, the plaintiffs have to establish that the female Hindu possessed the property acquired before the commencement of the 1956 Act to lieu of maintenance or arrears of maintenance. If the plaintiffs could satisfy the aforesaid requirements then the interest of plaintiff No. 1 would be that of a full owner. Did the plaintiff No. 1 hold the property for enjoyment? Did she have occupation of and control over the property? Was any specific property allotted to plaintiff No. 1 in lieu of her claim

for maintenance? If any property was allotted to her towards maintenance then she could become the full owner of the property after the commencement of the 1956 Act (See Bai Vajia (Dead) by Lrs. Vs. Thakorbhai Chelabhai and Others, and Vaddeboyina Tulsamma v. Vaddeboyina Sesha Reddi. AIR 1977 SC 1944).

7. Coming to the facts of the case, it is found that plaintiff No. 1 admitted in her evidence :

".....For my maintenance, Abhi is paying one cart load of paddy or two bharanas of paddy....."

PW 3 admitted that the properties were still joint. PW 1 stated :

".....Till today Abhi is in possession of the land....."

Abhi is defendant No. 1. DW I has stated that two bharanas of paddy were being given to the plaintiff No. 1 for her maintenance. To the same effect is the statement of defendant No. 1. So, it is the admitted case of the parties, according to their evidence, that plaintiff No. 1 was receiving maintenance from defendant No. 1. It is not in the pleadings nor in evidence that any property was possessed by plaintiff No. 1 acquired by her in lieu of maintenance. Severance of status between Khetra and Shyama and the joint recording of the names of plaintiff No. 1 and defendant No. 1 do not attract the provisions contained in Section 14(1) of the Hindu Succession Act. In fact, the case of the plaintiffs was not built on the plank of Section 14(1) but as a post-Act widow whose limited ownership had ripened into full ownership, in view of the conclusion I have reached above, it is unnecessary to refer to the number of authorities cited at the Bar.

8. In the result, I find no merit in this second appeal which is accordingly dismissed. In the facts and circumstances, there would be no order for costs throughout.