
(1986) 05 OHC CK 0005
In the Orissa High Court
Case No : First Appeal No. 134 of 1976

Sulochana Dei

APPELLANT

Vs

Khali Dei and Others

RESPONDENT

Date of Decision : 16-05-1986

Acts Referred:

Hindu Succession Act, 1956 — Section 14

Citation : AIR 1987 Ori 11

Hon'ble Judges : R.C. Patnaik, J;B.K. Behera, J

Bench : Division Bench

Advocate : M. Patra and B.K. Dagara, for the Appellant; S.N. Kar and P.K. Lenka for Respondent Nos. 1, 1(a) and 2 to 5, for the Respondent

Final Decision : Dismissed

Judgement

Behera, J.—This appeal has been directed against the judgment and decree passed in the suit instituted by the appellant as the plaintiff for a declaration of her title over the lands in suit and confirmation of her possession thereof and for permanent injunction restraining the defendants-respondents from interfering with her possession over the suit properties.

2. The appellant is the daughter of late Chintamani Dalai born through Khali Dei (respondent 1). On the death of Chintamani, Khali had taken a second husband (respondent 1(a)) according to the Dwitya form of marriage. The respondent 2, who had figured as the defendant 2 in the Court below, is the brother of Khali. According to the plaintiff-appellant, the properties described in schedule "A" of the plaint were the ancestral raiyati lands of the family and the properties described in schedule "B" of the plaint were Khamar lands belonging to her. In 1954, her father died leaving her and his widow Khali, In the month of Falgun of the year 1956, Khali remarried Gouranga (respondent 1(a)) and on and from the date of her remarriage, she ceased to be the widow of Chintamani and consequently lost her title over the properties left by her deceased husband and the appellant became the sole owner thereof. In order to grab the properties, the

respondent 1 executed and got registered a nominal sale deed in favour of her brother (respondent 2) in July, 1971 in respect of Schedule "A" properties and this transaction was a fraudulent one and was not for consideration. Thereafter, the respondents attempted to create troubles in the peaceful possession of the appellant over the suit properties which led to a proceeding u/s 145 of the Code of Criminal Procedure in which possession of the respondents 1 and 2 was declared. It was thus that the appellant came to the Court in a suit for the aforesaid reliefs.

3. The respondents 1 and 2 had put in separate written statements substantially pleading the same facts. Their case was that the suit was bad for non-joinder and mis-joinder of parties. According to them, Khali remarried the respondent 1(a) in the year 1958 and not in the year 1956, as falsely averred by the appellant and after coming into force of the Hindu Succession Act, 1956 (the "Act", for short), Khali acquired exclusive title over the properties under the Act which remained unaffected by her marriage with the respondent 1(a). The sale effected by her in favour of the respondent 2 was for consideration and legal necessity and this had been done to perform the marriage of the appellant.

4. On these pleadings, issues were framed and the parties went to trial and relied on oral and documentary evidence. On a consideration of the evidence and keeping in view the provisions of Section 42 of the Specific Relief Act, the trial Court has come to the conclusion that the suit was maintainable in respect of Schedule "A" properties. In respect of Schedule "B" lands, however, the trial Court has held that after abolition of the intermediary interest, the appellant had made an application for settlement of these lands with her on fair and equitable rent and that application was pending finalisation and thus the appellant had no subsisting title over the said properties and could not maintain the suit in respect of those properties without impleading the State Government as a party to the suit. It has accordingly been held that the suit is not maintainable in respect of Schedule "B" properties. These findings recorded by the trial Court are reasonable and well-founded.

4A. The trial Court has accepted the case of the contesting respondents that Khali remarried Gouranga (respondent 1(a)) on the 23rd May, 1958 and not in 1956, as sought to be established by the appellant. It has come to the conclusion that the respondent Khali had title over and was in possession of the properties left by her deceased husband and u/s 14 of the Act, she became the absolute owner of the properties left by her deceased husband on and from June 16, 1956, the date of enforcement of the Act. It has accordingly been held that the respondent 1 Khali had not lost her title by her remarriage with the respondent 1(a). For the reasons recorded in the impugned judgment, the trial Court has found that the sale in respect of "A" schedule properties in favour of the respondent 2 is valid as it had been supported by legal necessity and it had been effected for a consideration of Rs. 2,000/- by a registered deed of sale. This conclusion has been reached after an elaborate discussion with reference to the

oral and documentary evidence in paragraph 16 of the judgment The suit has accordingly been dismissed at contest against the respondent Nos. 1 and 2 with costs and ex parte against the remaining respondents without costs.

5. Appearing on behalf of the appellant, Mr. Patra has strenuously urged that on the evidence on record, the trial Court went wrong in holding that the remarriage of the respondent with the respondent I(a) had taken place in the year 1958 and it should have been held that it had taken place in 1956 in which case, the appellant was entitled to a decree in respect of Schedule "A" properties. The finding of the trial Court with regard to the validity of the sale in favour of the respondent 2 under the registered sale deed (Ext. 4) has also been assailed. It has been submitted on behalf of the respondents that none of these contentions can prevail.

6. The important question for consideration is as to when did the respondent 1 remarry the respondent I(a). The trial Court has elaborately dealt with this question in paragraphs 9 to 13 of the judgment. As rightly noticed by the learned trial Judge, at the time of the remarriage, the appellant was a small girl aged about two years and therefore, her evidence in this regard was of no avail. As for the evidence of P.W. 2, the trial Court has held that it was not likely that this witness would have been invited at the time of the remarriage in question. His evidence, according to the learned Judge, is otherwise not reliable. P.W. 3 was inimically disposed towards the respondent 1 having previous litigations. P.W. 4 had made contradictory statements in his evidence with regard to the time of the remarriage and was an accused in a criminal case instituted by the respondent Khali in which he had been acquitted. As rightly noticed by the trial Court, the plaintiff-appellant had relied on the evidence of interested and untrustworthy witnesses and the trial Court has rightly rejected the evidence of P.W. 5 that he had acted as the priest at the time of remarriage of the respondent 1 with the respondent I(a). Thus the appellant had failed to establish by the evidence adduced from her side that the respondent 1 remarried the respondent 1(a) in 1956.

7. Reliance has been placed by the trial Court on the palm leaf Lagna Patra (Ext. D) fixing the date in question by Golak Bihari Mohapatra alias Patra, the astrologer of the family, which had duly been proved by D. W. 4 and the 23rd day of May, 1958 was date fixed for the remarriage. As the evidence would show, such Lagna Patra was being prepared for the Dwitya form of marriage. There was no justifiable reason to come to a conclusion that Ext. D was a manufactured document for the purpose of the suit,

8. The respondent 1 (D.W. 6) had testified that the remarriage took place four years after the death of her deceased husband. D.W. 2, the caste headman, had participated in the remarriage ceremony and had supported the case of the respondent 1. D.W. 3, a caste man, had also attended the remarriage and had supported the case of the respondent 1 and according to this witness, Narsimha Panda (D.W. 4) had acted as the priest and Kangali Barik had acted as the barber

at the remarriage ceremony.

9. Much advantage is sought on behalf of the appellant on an undertaking (Ext. B) given by the respondent 1 Khali at the time of her remarriage with the respondent 1(a) as per the decision of the caste men that she would not drive him out later from the house and this was suggested and done, as would appear from the evidence, because of an earlier criminal litigation between Khali on one hand and Gouranga on the other. This undertaking had been given two to three days prior to the remarriage and as the date of execution mentioned therein was June 20, 1958, it had been contended before the trial Court and has also been contended in this Court that this would falsify the case of the respondent 1 that the remarriage had taken place on May 23, 1958. The trial Court has dealt with this matter in para 13 of the judgment and has observed and held :

"This undertaking is dated 20-6-58 which date is mentioned on the body of this document. The document was executed two to three days before the actual remarriage of Khali on the date as fixed by the astrologer. The astrologer fixed 23-5-58 as the remarriage date of Khali as appears from Ext. D (Lagna Patra). In this document (Ext. B) there is mention about the date of remarriage as fixed in the lagna patra but the date is mentioned as 23-6-58 and the document (Ext. B) is dated 20-6-58. The date of the document and the date of remarriage as mentioned on this document are both incorrect. The date of remarriage as fixed in the lagna patra is 23-5-1958. So, the document should have been dated 20-5-1958 and not 20-6-1958 as written on the body of the document. It seems that due to inadvertence, the scribe has mentioned the date of remarriage as 23-6-58 and the date of the document as 20-6-58 on the body of this document."

The evidence adduced from the side of the respondent 1 would certainly support the finding recorded by the trial Court.

10. We find that the trial Court has correctly concluded that the respondent 1 had acquired exclusive title over the "A" schedule properties on the coming into force of the Act, had remarried the respondent 1(a) in May, 1958 and had, for legal necessity and consideration, sold schedule "A" properties in favour of the respondent 2 for Rs. 2,000/-. In an affirming judgment, we do not feel ourselves called upon to re-state and reiterate the reasons given by the Trial Court in support of these conclusions as it was not necessary to do so. (See *Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury*, .

11. For the foregoing reasons, we find no substance in any of the contentions raised on behalf of the appellant.

12. The appeal fails and is dismissed, leaving the parties, in the circumstances of the case, to bear their own costs of this appeal.

R.C. Patnaik, J.

I agree.