
(2011) 07 OHC CK 0006
In the Orissa High Court
Case No : S.A. No. 151 of 1991

Trinath Naik @ Nayak Dead BY Lrs. and Others APPELLANT
Vs
Hema Bewa and Another RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Hindu Marriage Act, 1955 — Section 11, 12, 16

Citation : AIR 2012 Ori 15 : (2012) 2 DMC 196

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Advocate : N.C. Panigrahi, K.P. Nanda and Sujata Dash, for the Appellant; S.R. Pattnaik, U.S. Pattnaik, S.K. Ray, P.K. Rout, P. Behera, M. Mohanty, B. Brahmachari, P.N. Mohanty and S.C. Dash, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Das, J.—This Second Appeal was admitted on 27.3.1992 on the following substantial question of law:

Whether in view of Section 16 of the Hindu Marriage Act, an illegitimate son has share in the paternal property along with other sharers

The suit was filed by one Mandodari Bewa and Trinath Naik, who are mother and son, against the defendant-respondent, inter alia, alleging that the plaintiff No. 1 is the wife of Khetri alias Khetra Naik and she lived with her husband as his wife from 1931-32 till 28th July, 1978, when Khetra Naik died. According to the plaintiff, Khetra and plaintiff No. 1 did not have any male issue even after fifteen years of their marriage and, therefore, they adopted the plaintiff No. 2 as their son in 1947, when he was about two years old, after observing all rites and customs of adoption. Plaintiff No. 2 thereafter lived with the plaintiff No. 1 and her husband Khetra. Plaintiffs further alleged that the defendant No. 1 was married to one Khadala Maharatha, but she deserted her husband as well as her daughter and lived with one Aji Naik. In 1967, she came to the house of plaintiff

No. 1, when she has conceived a child and worked there as servant and was allowed to live in the house. Khetra Naik developed an illicit relationship with the defendant No. 1, who deserted her first husband Khadala Maharatha. She was thereafter driven out from the house and gave birth to defendant No. 2. Defendant Nos. 1 and 2 came back to the house of the plaintiff and thereafter Khetra Naik died. Out of compassion, they were allowed to work as servants.

2. In the meantime, the plaintiffs went to the Tahsildar to mutate the suit scheduled lands in their names. The prayer was allowed. But, subsequently, an objection was raised by the defendants before the Tahsildar and the Tahsildar struck out the name of plaintiff No. 2 from the mutated Record of Rights and recorded the suit land in the name of the plaintiff No. 1 and the defendants holding that defendant No. 1 is the second wife and defendant No. 2 is the son of late Khetra Naik. This fact was denied by the plaintiffs. The plaintiffs in the suit sought to declare that the plaintiff No. 1 has absolute right, title, interest and possession over Schedule "A" and "C" land has joint right, title, interest and possession over Schedule "B" land along with the plaintiff No. 2 as the sole successor of Khetra Naik. They also sought to declare that the plaintiff No. 2 is the adopted son of late Khetra Naik and the plaintiff No. 1 and as an ancillary relief, decree for permanent injunction was also sought for.

3. Written statement was filed on behalf of the defendants denying the plaintiff allegations. It was admitted that plaintiff No. 1 is the legally married wife of late Khetra Naik. The fact of adoption was, however, denied. The defendant No. 1 further pleaded that she was previously married to Khadala Maharatha and out of their wedlock, a daughter was born to them. But she was divorced by Khadala Maharatha after birth of the daughter. Thereafter, she again got married to Khetra Naik according to their caste custom. She lived with him in his house as his legally married wife and defendant No. 2 was born out of their wedlock. She also claimed to be the widow of late Khetra Naik and defendant No. 2 to be her son.

4. The learned Trial Court after framing issues came to the conclusion that it is an admitted case that the plaintiff No. 1 was legally married to Khetra Naik and the defendant No. 1 was not the legally married wife of Khetra Naik and she cannot enjoy the status of widow. Defendant No. 2 was born out of the union of Khetra Naik and defendant No. 1 and, therefore, he was the illegitimate son of Khetra Naik and plaintiff No. 2 is the adopted son of Khetra Naik and plaintiff No. 1. Thereafter, the learned Trial Court on analyzing the evidence found that the Schedule A, B and C lands were the properties of late Khetra Naik and Khetra Naik gifted away the Schedule-"C" land to plaintiff No. 1 in order to avoid future complication. Schedule A and B lands are to be inherited by the plaintiffs 1 and 2 and the defendant No. 2, who is found to be illegitimate son of Khetra Naik. Accordingly he decreed the suit in part. An appeal was carried by the plaintiffs against the said judgment, being Title Appeal No. 6 of 1986. The learned appellate Court on scrutinizing the materials on record and the findings,

confirmed the findings arrived at by the learned Trial Court.

5. As before filing of the Second Appeal, the plaintiff No. 1 expired, plaintiff No. 2 preferred the Second Appeal and he having expired in the meantime, his legal heirs have been substituted as appellants.

6. Section 16 of the Hindu Marriage Act is as follows:

16. Legitimacy of children of void and voidable marriages--(1) Notwithstanding that marriage is null and void u/s 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage u/s 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in Sub-section (1) or Sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity u/s 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.

Since, factually both the Courts below have found that the defendant No. 2 was the illegitimate son of the husband of the plaintiff No. 1, i.e., Khetra Naik, a bare reading of Section 16 clearly shows that the said illegitimate son, who was the defendant No. 2 in the suit will succeed to the properties left by Khetra Naik as a legal heir and the learned Courts below have rightly held so.

7. I, therefore, find no merit in the Second Appeal. However, it is directed that since the Schedule "C" property has been declared to be the exclusive property of the original plaintiff No. 1 and after her death, the same has been succeeded by her son, plaintiff No. 2, and, thereafter, the legal heirs, who have been substituted as appellants, the respondents in this appeal, who are the defendants shall be permanently enjoined from interfering with the possession of the appellant over the "C" Schedule property. With the aforesaid modification of the decree passed by the Courts below, the Second Appeal stands dismissed. There shall be no order as to costs of this Second Appeal.