

(1961) 02 PAT CK 0002
In the Patna High Court
Case No : A.F.A.D. No. 225 of 1957

Tulsi Ahir and Others

APPELLANT

Vs

Mt. Sonia and Another

RESPONDENT

Date of Decision : 24-02-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 2, Order 7 Rule 7
Hindu Succession Act, 1956 — Section 14

Citation : AIR 1962 Patna 296

Hon'ble Judges : Anant Singh, J

Bench : Single Bench

Advocate : L.K. Choudhuri, for the Appellant; R.S. Chatterji, A.K. Chatterji and Md. Khaleel, for the Respondent

Final Decision : Allowed

Judgement

Anant Singh, J.—This appeal by the plaintiffs is directed against "he judgment and decree dated the 19th December, 1956, of the Additional Subordinate Judge of Ranchi, dismissing the suit.

2. There are five plaintiffs in the suit. Plaintiffs 1 and 2 are descendants of Gadi, plaintiffs 3 and 3 (a) are descendants of Gadli, and plaintiff No. 4 is the descendant of Ripo. Gadi, Gudli, Ripo and one Guslu were brothers, being sons of one Ghamu. Guslu had a son named Mangra, whose daughter is Mosst. Sonia, defendant No. 1.

3. Mosst Sonia, defendant No. 1 executed a sale deed (Ext. A) dated the 2nd February, 1954 in favour of defendant No. 2 in respect of 10.24 acres of land appertaining to Khata No. 57 of village Bandhua in the district of Ranchi.

4. The plaintiff's case is that they are Hindus, governed by Mitakshara School of law, and that Mangra, father of defendant No. 1, died in 1938, in a state of jointness with them. After the death of Mangra, his share devolved on the plaintiff by survivorship, Mosst. Sonia having not inherited her father's share and

they have been in possession of it. They brought the present suit for a declaration that the sale deed (Exhibit A) executed by defendant No. 1 in favour of defendant No. 2 was not binding on them. It was also alleged that the deed was a fraudulent one, without consideration and legal necessity and was executed during the minority of defendant No. 1 and that the plaintiffs' right, title and interest in the land covered by the sale deed were not affected by it at all.

5. The suit was contested by both defendants 1 and 2 who filed separate written statement but practically to the same effect. It was denied that Mangra, father of defendant No. 1 was a coparcener with the plaintiffs. It was, on the other hand ascertained that he was in no way connected with them. It was said that the suit land was not the ancestral property of the plaintiffs and that Mangra never died in a state of jointness with the plaintiffs. The defence further was that the suit land was the exclusive property of the father of defendant No. 1. Mangra and he was in its possession separately from the plaintiffs. On his death, he left behind his widow and defendant No. 1, his daughter. On the death of the widow, defendant No. 1 succeeded to her father's property as his sole heir and was in its exclusive possession all the time till she transferred it in, favour of defendant No. 2, and ever since he has been in possession of the same.

6. The learned trial court found that defendant No. 1 was major at the time she executed the sale deed (Exhibit A); that the sale deed was for consideration, but not for legal necessity and, that Mangra was separate but the genealogy given by the plaintiffs was not correct. On these findings, it dismissed the plaintiffs' suit.

7. On appeal, the learned lower appellate court affirmed the findings of the trial court except with regard to the genealogy given by the plaintiffs, which it has found to be correct. In other words, the learned lower appellate court has held that Mangra was a member of the plaintiffs family, but at the time of his death, he was separate from the plaintiffs. It has also affirmed the trial court's finding that the sale deed was without legal necessity, but it has dismissed the suit because the form of the suit was defective inasmuch as the plaintiffs did not claim any right by way of survivorship and also because by the time it came to give its decision Hindu Succession Act, 1956, had come into force conferring u/s 14 of it an absolute right upon a Hindu widow. The plaintiffs have since come up in appeal,

8. It is contended by learned counsel appearing for the appellants that on the findings of the appellate court itself the plaintiffs are entitled to the declaration they have sought for, namely, that the sale deed in question is not binding on them. It is submitted that the learned lower appellate court has found that the plaintiffs and Mangra were members of the same family, and that the sale deed was not for legal necessity. In that case, even if Mangra was separate at the time of his death in 1938, the plaintiffs would be his immediate next reversioners and as such they are entitled to the relief that the sale deed in question is not binding on them after the life time of defendant No. 1.

9. As regards the finding of the learned lower appellate court, regarding the bar u/s 14 of the Hindu Succession Act, 1956, it is contended that in view of the decision of the Full Bench of this court in the case of Harak Singh Vs. Kailash Singh and Another, , the right of defendant No. 1 was already lost at the time the Hindu Succession Act of 1956, came into force, in that she was not possessed of the property within the meaning of Section 14 of the Act, and therefore, the plaintiffs as the next reversioners to her father, are entitled to maintain the suit for the declaration they have sought for.

10. The two contentions raised on behalf of the appellants appear to be quite sound.

11. On behalf of the respondents, however, it has been vehemently urged that the plaintiffs did not claim the suit property as next reversioners to Mangra but they claimed it by survivorship, and therefore, in absence of any such alternative relief that they were entitled to Succeed as reversioners, the suit ought not to be decreed. It is contended that in case the plaintiffs had based their claim also as reversioners the defendants would have been able to show that they were not the immediate reversioners so as to be able to maintain the suit, but that there were other nearer reversioners who alone could be competent to sue.

In support of the contention reliance has been placed upon the case of Srinivas Ram Kumar Vs. Mahabir Prasad and Others, . But the facts of that case, in principle instead of supporting the defence contention, support the plaintiffs' stand. The question that arose for decision in that case, was whether, in the absence of any alternative case in the plaint it was open to the court to give the plaintiff a relief which followed on the defendant's own admission. Their Lordships of the Supreme Court held:

"The rule undoubtedly is that the court cannot grant relief to the plaintiff on a case for which there was no foundation in the pleadings and which the other side was not called upon or had an opportunity to meet. But when the alternative case, which the plaintiff could have made was not only admitted by the defendant in his written statement but was expressly put forward as an answer to the claim which the plaintiff made in the suit, there would be nothing improper in giving the plaintiff a decree upon the case which the defendant himself makes"

The principle behind this decision was to obviate the necessity of driving the plaintiff to a separate suit provided there was no injustice done to the defendant. Their Lordships of the Supreme Court in support of their decision have relied upon the pronouncement of the Judicial Committee in AIR 1943 29 (Privy Council) . It is true that in the present case there was no admission by the defendant that the plaintiffs were reversioners, but that will not make any difference in the principle when there is a clear finding of the lower appellate court that the plaintiff's genealogy is correct which would obviously mean that they would be the reversioners to Mangra. True it is that the plaintiffs did not set up their case in so many words that in the event of Mangra having been found to

have died in a state of separation, from the plaintiffs, they would be entitled, as reversioners, to seek for the same relief, but this inference is irresistible on the finding of the lower appellate court itself, namely, that Mangra having died in a state of separation the plaintiffs alone would be the next male reversioners.

12. Learned counsel for the respondents has argued that in case they had been called upon or had been given opportunity on the frame of the plaint, the defendants could have been able to show that there were other preferential reversioner than the plaintiffs, it cannot, however, be legitimately said that the defendants had no such opportunity. The plaintiffs no doubt sought the relief on the basis of coparcenary but they did set out that the sale deed in question was not for legal necessity obviously implying thereby that the plaintiffs could challenge the sale deed on such other scores also, and this would not be possible unless they were the next reversioners, if not members of the coparcenary. As a matter of fact, the defendants in their written statements did mention all the heirs of Mangra, and, if there was any other heir, the defendants would not have failed to mention his or her name. According to the plaintiff's genealogy, which has been found to be correct, Mangra was the son of one of the four brothers, namely, Gulsu, the plaintiffs are the descendants of the: other three brothers, and defendant No. 1 is the daughter of Mangra. In the written statements it was not mentioned anywhere that there was any other member in the family when Mangra died. Thus; there could have been no other reversioner to Mangra than the plaintiffs.

Learned counsel for the respondents has, however, suggested that it is possible that Mangra had a sister, and, in that case, she could have been a preferential reversioner, and, therefore, the plaintiffs not being the immediate reversioners, could not have maintained this action. His contention is that every reversioner is not entitled to maintain an action for a declaratory decree, but it is only the nearest reversioner who can maintain such an action, unless it can be shown that the nearest reversioner has refused to join in the action or has colluded with the limited heir or is precluded from suing due to poverty. This principle is undoubtedly true; but there are cases in which exception has been made when female lives intervene between the reversioners suing and the estate of the widow. It has been held in *Ramyad Pandey v. Rambihara Pandey* 4 Pat LJ. 734 : (AIR 1920 Pat 514).

"It would appear therefore, that there is practically a consensus of opinion in the different High Courts that a reversioner who is not the immediate reversioner but who is the immediate male reversioner is entitled to sue for a declaration declaring the invalidity of transfers made by the widow notwithstanding that there may be other female lives between him and the estate".

The same view was repeated in the case *Sheodutta Kedia and Another Vs. Akali Bhumijani and Others*, . Thus, it follows that immediate male reversioners can sue even if there may be any female reversioner between the reversioners suing and the estate. Thus, supposing that Mangra died leaving his sister, who could be

a preferential reversioner to the plaintiffs, but she being only a female reversioner is entitled only to the widows' estate, the plaintiffs, being the next male reversioners, are entitled to maintain the action for the declaration they have sought for.

13. It has been held by the Supreme Court in the case *Kidar Lall Seal and Another Vs. Hari Lall Seal*, :

"The court would be slow to throw out a claim on a mere technicality of pleading when the substance of the thing is there and no prejudice is caused to the other side, however, clumsily or inartistically the plaint may be worded. In any event, it is always open to a court to give a plaintiff such general or other relief as it deems just to the same extent as if it had been asked for provided that occasions no prejudice to the other side beyond what can be compensated for in costs".

The relief of the plaintiffs have sought follows from the findings of the lower appellate court itself without any prejudice to the defendants. The claim, of the plaintiffs as reversioners is implicit in their claim as coparceners. If they had failed to prove their right as members of the coparcenary, they could always fall back upon their right as reversioners although such a claim is not set out in so many words in the plaint. As a matter of fact, the plaintiffs cannot maintain any other action for a declaration of the kind they have asked for, if their present suit were to be dismissed for, that would be barred by *res judicata*. For this view, the case of *Sakaldip Singh Vs. Imrit Barhi and Musammat Bhagmania and Others*, , is a clear authority. There appears to be absolutely no reason to refuse to the plaintiffs the relief they have asked for only because they did not ask it as an alternate remedy by way of their being reversioners to Mangra. As I have already said, this relief follows as a necessary corollary on the facts as found by the learned lower appellate Court.

14. The learned lower appellate Court has, however, dismissed the plaintiffs' suit also for the reasons that it considered the provisions of Section 14 of the Hindu Succession Act, 1956, as a bar to the plaintiffs suing as reversioners to Mangra. The provisions of Section 14 of the Act are to the following effect:

"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.

(2) Nothing contained in Sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument of the decree, order or award prescribe a restricted estate in such property."

13. The expression "property possessed by a female Hindu" came up for interpretation in the Full Bench decision of this court referred to above and it has been held therein that Section 14 applies only to the property possessed by a

Hindu widow at the date of commencement of the Act and not for the property already transferred by her before the Act came into force. It has been clearly laid down in that case:

"Where, therefore, a female Hindu makes an absolute alienation of property) without legal necessity, by way of sale or gift before the coming into force of the Act the right of an heir of the last male holder to repudiate the alienation and his claim of possession thereof from the transferee on the death of the female Hindu, or on the extinction of the women's estate otherwise, is not adversely affected and taken away by Section 14"

16. The transfer in question, in the present suit was made by defendant No. 1 much earlier than the date of commencement of the Act. It was a complete alienation in favour of defendant No. 2 and, therefore, the plaintiffs as immediate male reversioners of Mangra, are quite competent to ask for the relief that the sale deed in question is not binding on them, when it was as found by the learned lower appellate court, not for legal necessity

17. Learned Counsel for the respondents, has however, argued that in view of the decision of the Supreme Court in the case of *Gummalapura Taggina Matada Kotturuswami Vs. Setra Veeravva and Others*, reversioners should be deemed to have been wiped out as a class not entitled to maintain any action at all. On the basis of this decision, learned counsel has expressed, a doubt as to the decision of the Full Bench of this Court referred to above. His apprehension is, however, not true. The Full Bench case of this court was referred to in the case decided by their Lordships of the Supreme Court and it was not overruled in that case. Their Lordships of the Supreme Court have only decided that the possession of a female Hindu would include not only her physical possession but also her constructive possession. In the case before, them, the question involved was whether a widow would be deemed to be in constructive possession of an estate which was in possession of her adopted son in case the adoption was held to be invalid. The adoption was held to be invalid, and, therefore, the possession of the adopted son of the widow was held to be her possession.

It was in this view of the matter that the reversioners were held to have no right to sue because of the bar of Section 14 of the Act. The principle behind the decision of the Supreme Court was that the adopted son, when his adoption was held to be invalid, was not entitled to retain possession of the property till the life time of the widow adopting him, but that the widow was entitled to claim back possession the moment the adoption was held to be invalid. But in case of an alienation by the widow as in the present case the transferee is entitled to retain possession till the life time of the widow and she is not entitled to claim possession if the alienation, is declared to be not binding on the reversioners. In other words, after the alienation, the widow cannot claim back the property from the transferee during her life time and in this view of the matter, she cannot be deemed to be in possession, either physical or constructive, of the property alienated, by her. Thus, the plaintiffs are clearly entitled to "the relief that the

sale deed in question is not binding on them after the death of defendant No. 1. The learned lower appellate court was in error in having dismissed the plaintiffs' suit.

18. In the result, the appeal is allowed. It is hereby declared that the sale deed (Exhibit A), dated the 2nd February, 1954, is not binding on the plaintiffs. In the special circumstances of the case, however, the parties will bear their own costs throughout.