

Mostt. Ratna and ors. Vs. Smt. Narayani Devi and ors.

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Court : Patna

Decided On : Feb-14-1995

Judge : K. Venkataswami, C.J. and Gurusharan Sharma, J.

Appeal No. : Letters Patent Appeal No. 91 of 1991 (R)

Appellant : Mostt. Ratna and ors.

Respondent : Smt. Narayani Devi and ors.

Advocate for Pet/Ap. : Mr. Eqbal

Disposition : Appeal Dismissed

Prior history : K. Venkataswami, C.J. 1. This appeal is directed against the judgment and order of the learned Single Judge passed in First Appeal No. 76/91 (R), dated 23.4.1991. 2. The appellants herein are the plaintiffs 1 and 2 in the title Suit No. 38 of 1978 on the file of the Subordinate Judge, Chaibasa. 3. Brief facts leading to filing of this appeal may now be noted. The appellants-plaintiffs along with plaintiff No.3 (Respondent No.3 herein) filed the said title suit for declaration that the sale dee

Judgement :

K. Venkataswami, C.J.

1. This appeal is directed against the judgment and order of the learned Single Judge passed in First Appeal No. 76/91 (R), dated 23.4.1991.
2. The appellants herein are the plaintiffs 1 and 2 in the title Suit No. 38 of 1978 on the file of the Subordinate Judge, Chaibasa.
3. Brief facts leading to filing of this appeal may now be noted. The appellants-plaintiffs along with plaintiff No.3 (Respondent No.3 herein) filed the said title suit for declaration that the sale deeds No. 2780 and 2781 dated 4.9.1968 were illegal, void, inoperative and not binding on the plaintiffs and defendant No.1, respondent No.1 herein, has not acquired any right, title or interest over the lands described in Schedule A of the plaint.
4. The 1st appellant herein is the widow of one Ghasi Kumar Behara, the 2nd appellant is the daughter of the said Ghasi Kumhar Behara and the 3rd respondent herein is the son of the said Ghasi Kumhar Behara. The sale deeds were executed by the 3rd respondent herein on 4.9.1968. The plaintiffs contended that the said Ghasi Kumhar Behara died on 7.8.1956 and, therefore, the 3rd respondent alone was not entitled to succeed to the entire properties left by the deceased and, therefore, the sale deeds executed by him alone will not cloth the Respondents Nos. 1 and 2 defendants in the suit with perfect title.

The defence set up by the Respondents Nos. 1 and 2 was that the said Ghasi Kumhar Behara died in the year 1949 and not on 7.8.1956, as claimed by the petitioner-appellants. According to Respondents Nos. 1 and 2, on the date of death of Ghasi Kumhar Behara, the 3rd Respondent was alone entitled to succeed to the entire properties of the deceased and he was the full owner of the properties sold under the sale deeds under question, Therefore, the plaintiffs have no case in the suit.

The trial court framed as many as eight issues and found that the said Ghasi Kumhar Behara died in the year 1949 and accepting the case of the defendants-Respondents Nos. 1 and 2 herein dismissed the suit. Aggrieved by that judgment the plaintiffs preferred an appeal in this Court and the learned Single Judge by the judgment under Appeal confirmed the findings of the trial court and consequently

dismissed the appeal. Hence the present Letters Patent Appeal.

Mr. Eqbal, learned Counsel for the appellants, is not in a position to challenge the finding based on facts relating to death of deceased Ghasi Kumhar Behara. Therefore, the finding given by the trial court confirmed in First Appeal that the said Ghasi Kumhar Behara died in the year 1949 remains.

Proceedings further learned Counsel for the appellants submitted that the widow had a right to maintenance and that right to maintenance, after commencement of Hindu Succession Act, 1956, became enlarged to an absolute estate and, therefore, she is entitled to a portion of the estate left by the deceased Ghasi Kumhar Behara and to this extent appellant No.1 is entitled to succeed in this L.P.A. In support of that he cited two judgments of the Supreme Court reported in : AIR 1959 SC577 (Gummalapura Taggina Matada Kotturuswami v. Setra Veerawa and Ors.) A.I.R. 1977 SC 1944 (Vaddaboyina Tulasamma and Ors. v. Vaddeboyina Sesha Reddi) and also a judgment reported in : AIR1958 Pat319 (Ramsaroop Singh and Ors. v. Hiralall Singh and Ors.).

It is not in dispute that the Hindu Women's Right to Property Act, 1937 as amended by Bihar Hindu Women's Right to Property (Extension to Agricultural Land) Act, 1948, came into force in Kharaswam and Seraikella area only on 1.1.1950. That being the position he cannot contend that under the Hindu Women's Right to Property Act the 1st appellant came into possession of a limited estate in the estate left by her husband. Unless the widow is possessed of certain rights on the date of the death of her husband, the question of enlargement of that limited right by virtue of Section 14 of the Hindu Succession Act, 1956, will not arise. As noticed above, on the facts of this case the 1st Appellant did not acquire any limited right on the date of death of her husband in the year 1949 as the Act was not applicable to the area at that time.

Learned Counsel for the appellants, however, submitted that the right of the 1st appellant to maintenance cannot be denied and, therefore, on that basis the right of the 1st appellant must be deemed to have been enlarged under Section 14 of the Hindu Succession Act. We are unable to accept this contention of the learned Counsel for the appellants in view of the admitted facts of this case.

On facts we are clear that the judgments cited by the learned Counsel for the appellants have no application and are distinguishable. We are of the view that the learned Single Judge was right in dismissing the appeal.

The son of Ghasi Kumhar Behara, who was 3rd plaintiff, has not joined in preferring this Letters Patent Appeal. He is shown only as performa appellant.

4. There is no merit in this Letters Patent Appeal. Accordingly, this Letters Patent Appeal is dismissed.

However, there shall be no order as to costs.

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