

Sukhmani and ors. Vs. Jagarnath

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Court : Madhya Pradesh

Decided On : Apr-03-2000

Reported in : 2000(4)MPHT462

Judge : S.C. Pandey, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100; Central Provinces Law - Sections 5 and 6; Hindu Law; Mitakshara Law

Appeal No. : Second Appeal No. 436/96

Appellant : Sukhmani and ors.

Respondent : Jagarnath

Advocate for Def. : P.N. Mishra, Adv.

Advocate for Pet/Ap. : Kishore Shrivastava, Adv.

Disposition : Appeal allowed

Judgement :

S.C. Pandey, J.

1. This is an appeal filed by the defendants against the plaintiff under Section 100 of the Code of Civil Procedure. The appeal arises from the judgment and decree passed by the Additional District Judge, Jashpurnagar in Civil Appeal No. 9- A/94,

dated 25-7-95 arising out of the judgment and decree dated 25-1-94 passed by the Civil Judge, Class I, Jashpurnagar in C.S. No. 169-A/92.

2. The respondent filed Civil Suit No. 169-A/92 against the appellants claiming that he was entitled to succeed to entire 24.15 acres of land situate in village Dandpani, Tahsil Kunkuri, District Raigarh. The suit property is detailed in Schedule 'A' of the plaint. The respondent stated in his plaint that he was son of Jatu from the second wife Sonamati. The appellants are daughters of Jatu from the first wife. Both the wives of Jatu were no more at the time of filing of the suit. Jatu died in the year 1978 and, therefore, it was claimed by the respondent that according to the custom among Gonds, it was Sonamati, who succeeded to the property and after the death of Sonamati the respondent alone was entitled to succeed to the property of Sonamati. However, the names of the appellants were mutated, after the death of Jatu, along with the names of Sonamati and the respondent, by mistake. The revenue Court rejected the application of the appellants for correction of the name. It was alleged that there was a village panchayat, but the decision of the panchayat was not accepted by the appellants and they filed an application for partition of the suit property. In Paragraph 21 of the plaint, it is alleged that according to the custom in the Gond Community, the daughters have no right to succeed to the property of father. On objection of the respondent to the partition, the revenue Court directed to file a Civil Suit to get his share declared. Accordingly, he filed the suit claiming that it be declared that he is the sole owner of the entire property and the appellants be restrained from interfering with his possession in the suit property.

3. The appellants in their written statement denied the claim of the respondent and alleged, inter alia, that the daughters have full right in the property of Jatu, as the parties are governed by Hindu law. However, they alleged that the names of the mother of the respondent Sonamati, wife of Jatu Gond has been illegally mutated.

4. On these allegations, the trial Court framed issues and found that it was not correct to say that among the Gond Adivasis, the daughter had no share in the property. It was also found that Sonamati was the legally wedded wife of Jatu Gond. Accordingly, the trial Court found that the appellants and the respondent

had 1/6th share in the suit property and, therefore, a decree declaring that the respondent is entitled to 1/6th share in the property was passed.

5. In appeal, the Lower Appellate Court had disturbed the judgment and decree of the trial Court on the theory that the suit property was the coparcenary property of Jatu and the respondent and the appellants had equal share in the suit property. This conclusion of the Lower Appellate Court is recorded in Paragraph 11 of its judgment.

6. After hearing the learned counsel for parties, this Court framed the following substantial questions of law :

'Whether the Lower Appellate Court was justified in holding that the parties were governed by the Hindu Law and that the suit property was the coparcenary property ?'

7. With the consent of the learned counsel for parties, this appeal is finally disposed of.

8. It is apparent: that the respondent had not pleaded anywhere that the suit property was a coparcenary property or that the parties were governed by the Hindu Law. He had pleaded that there was custom amongst Gonds that the daughters did not succeed to the property of their fathers. Only sons did. Consequently, it was claimed that after the death of Jatu, his wife Sonamati and the respondent succeeded to his property and after the death of Sonamati, the respondent-plaintiff was the sole-surviving owner of the suit property. It is true that the appellants had taken the plea that the parties are governed by the Hindu Law. But it was incumbent upon the appellants to prove their case that the appellants had adopted the customary law by way of custom the Hindu Law of Succession and Inheritance. They failed to do so.

9. The trial Court had found that the respondent had not proved any custom amongst the Gonds that the daughters are excluded from succession after the death of their father. It appears that no evidence was led by the appellants to prove that, as a custom, Hindu Law of Succession was adopted by the Gonds of

that area in general and by the family of the parties. In view of this matter, the Lower Appellate Court could not have assumed that the parties are in any way governed by the Hindu Law. Further assumption of the Lower Appellate Court was that the suit property was the ancestral property and it was governed by the incidents of joint Hindu family property, as obtaining under the Mitakshara Law. In absence of any such proof, the Lower Appellate Court could not have smuggled in the theory that the suit property was the ancestral property and the family was governed by the law relating to a coparcenary, as obtaining in the Mitakshara system of Hindu Law.

10. The trial Court had rightly held that the daughters are entitled to a share in the property of father in the Gond Community and they along with Sonamati and the respondent succeeded to the property of Jatu. After the death of Sonamati half share of Sonamati was also transmitted to the appellants as there was no prohibition in law to succeed the property of their step-mother. In fact, Sections 5 and 6 of the Central Provinces Law read together would show that in absence of any law governing the right to succession, the principles of equity, justice and good conscience shall apply.

11. For all these reasons, this Court comes to the conclusion that the appellants and the respondent are entitled to 1/6th share each in the suit property.

12. Accordingly, the judgment and decree of the Lower Appellate Court is set aside and that of the trial Court declaring that the respondent is entitled to 1/6th share each in the suit property is restored. The appeal is accordingly allowed. There shall be no order as to costs.