

Bimla Devi and anr. Vs. State of Bihar and ors.

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Court : Jharkhand

Decided On : Sep-10-2003

Reported in : I(2004)DMC350; [2003(4)JCR264(Jhr)]

Judge : S.J. Mukhopadhaya, J.

Acts : [Constitution of India](#) - Article 226; [Hindu Succession Act, 1956](#) - Sections 14(1); Hindu Women Right to Property Act, 1937; Hindu Law

Appeal No. : CWJC No. 1384 of 1991

Appellant : Bimla Devi and anr.

Respondent : State of Bihar and ors.

Advocate for Def. : P.K. Prasad and; M.K. Shah, Advs.

Advocate for Pet/Ap. : N.N. Tiwary, Sr. Adv.,; Vishal Tiwary and; Rajiv Tiwary

Disposition : Petition allowed

Judgement :

S.J. Mukhopadhaya, J.

1. This writ application has been preferred by the petitioners against the appellate order dated 8th June, 1989 passed by 3rd respondent and the second appellate order dated 22nd October, 1990 passed by 4th respondent. The appellate

authority allowed the appeal preferred by contesting respondents and the second appellate authority affirmed the appellate order.

2. To appreciate the case, it is better to reproduce the undisputed genealogy of the family of petitioners as shown hereunder :

Matuk Nath @ Matru Jha



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Ramnath Jha Umanath Jha

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Nanumani Jha Balkuntha Jha

Wife Baleshwari Devi Widow Sudama Devi

| (plaintiff)



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||||

Devendra Jha Upendra Jha Jahanbi Jha Gyanbi Jha |



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||||

|| Kamla Devi (D) Bimla De VI

|| W/O Shambhunath Thakur

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|||

| Rajesh Kumar Jha Sailesh Nath Jha @

| Maheswari Kumar Jha

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Anand Kumar Jha Akhilesh Kumar JhA Naresh Nath Jha @ Mithilesh Kumar Jha

3. The case of the petitioners is that in Ganzer's survey and settlement, Ram Nath Jha and Umanath Jha sons of Matuk Nath Jha were shown as recorded tenant in respect to lands in dispute as detailed at Annexure-1 to the writ petition. The brothers constituting a Joint Hindu Mitakashara Family died in estate of jointness in the year, 1350 fasali (1943) and 1351 fasali (1944) respectively. Baikuntha Jha, son of Umanath Jha predeceased his father in the year 1349 fasali (1942) leaving behind, his father, his widow, Sudama Devi and two daughters, namely, Kamla Devi and Bimla Devi (petitioner No. 1). Umanath Jha died in the 1943 leaving behind his predeceased son's widows Sudama Devi as his legal heir.

Further case of the petitioners is that Ramnath Jha's interest in the joint immovable property devolved upon his sons, grandson and great-grand-son. Sudama Devi died leaving behind her daughter (petitioner No. 1), who succeeded

the interest in the joint property which her mother possessed as the other daughter Kamla had predeceased her mother.

Originally, Sudama Devi claimed partition of properties in dispute vide Title Partition Suit No. 64/64 in the Court of Assistant Settlement Officer, Godda but after death of Sudama Devi, the petitioners were brought on record to prosecute the suit.

4. The case of contesting respondents was that Baikuntha Jha died in the year 1342 fasali, corresponding to year 1935 and his undivided interest in the coparcener properties passed to his surviving coparcener. They alleged that the plaintiff by means of interpolation made in the plaint changed it as 1347 fasali from 1342 fasali after filing of the plaint. They accepted the correctness of the genealogy but denied the petitioner's claim of any share of property.

5. According to petitioners, during the pendency of the suit, they (plaintiff) had filed an application in the Court on 17th December, 1970 for correction of year of death of Baikuntha Jha, which typed out as 1342 fasali. It was allowed by the Court to be corrected as 1349 fasali.

In the Court below, the main question arose for consideration was regarding the year of death of Baikuntha Jha as the respondents took plea that the applicability of provisions of 'Hindu Women Right to Property Act, 1937' (Act 1937 for short) would depend upon the fact as to when Baikuntha Jha died. After examination of witnesses and taking into consideration the evidence, oral and documentary adduced on behalf of the parties, the 1st Court decreed the suit with the following findings :

'(a) Defendants have not been able to prove that there had been interpolation in the plaint.

(b) Baikuntha Jha died in the year 1942.

(c) Claim of plaintiff is not barred by limitation.

(d) Claim of intervener Krishna Mohan Mishra in respect of Dag No. 267, Jamabandi No. 56 is accepted

(e) Plaintiff is entitled to reliefs as prayed for.'

6. The 1st appellate Court in Title Appeal No. 49/89 held that there had been interpolation in the plaint and concluded that Baikuntha Jha died in the year 1935. The second appeal preferred by petitioners being Appeal No. 18/89 in the Court of Commissioner, Santhal Paragana Division, Dumka was dismissed and affirmed the finding of the 1st appellate Court.

This Court under writ jurisdiction cannot determine the date of death of Baikuntha Jha. There being two concurrent findings by the appellate Court and the second appellate Court that there was an interpolation in the plaint and Baikuntha Jha died in the year 1935, this Court cannot substitute its own finding.

7. Counsel for the petitioners submitted that the widow being in possession as a maintenance holder on the date of coming into force of [Hindu Succession Act, 1956](#), her right as a full owner becomes absolute over her share of the land in question.

On the other hand, according to counsel for the contesting respondents, if the widow is not a maintenance holder under Act, 1937, the widow cannot claim benefit of Section 14(1) of the 1956 Act.

The parties placed reliance on one or other decision of the Supreme Court and the Patna High Court in their support.

The right of maintenance of Hindu family fell for consideration before the Supreme Court in the case of Raghubar Singh and Ors. v. Gulab Singh and Ors., reported in AIR 1998 SC 2401. In the said case, the question arose whether a Hindu female, who becomes widow long before passing of the Act, 1937 had a right to maintenance or not. The Supreme Court held as follows :

'Thus, we find that there is enough authority for the proposition that the right to maintenance of a Hindu female . is a pre-existing right, which existed in the Hindu

Law long before the Act of 1937 or the Act of 1946 came into force and is not a creation of those statutes, which only recognized that position. In the words of Fazal Ali, J. in Tulasamma's case, AIR 1977 SC 1944 at pp. 1977-78 (supra) :

'The Hindu female's right to maintenance is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognized and enjoined by pure Shastric Hindu Law and has been strongly stressed even by the earlier Hindu jurists starting from Yajnavalkya to Manu. Such a right may not be a right to property but it is a right against property and the husband has a personal obligation to maintain his wife and if he or the family has property, the female has the legal right to be maintained therefrom. If a charge is created for the maintenance of a female, the said right becomes a legally enforceable one. At any rate, even without a charge the claim for maintenance is doubtless a pre-existing right so that any transfer declaring or recognizing such a right does not confer any new title but merely endorses or confirms the pre-existing rights. Accordingly, we hold that the right to maintenance of a Hindu female flows from the social and temporal relationship between the husband and the wife and that right in the case of a widow is 'pre-existing right,' which existed under the Shastric Hindu Law long before the passing of the 1937 or the 1946 Acts. Those acts merely recognized the position as was existing under the Shastric Hindu Law and gave it a 'statutory' backing. Where a Hindu widow is in possession of the property of her husband, she has a right to be maintained out of it and she is entitled to retain the possession of that property in lieu of her right to maintenance.

8. In the present case, there was no dispute that Sudama Devi was in possession of the property in question. In this background, even if it is accepted that the date of death of Baikuntha Jha had taken place in the year 1935, Sudama Devi having right to maintenance under the Shastric Hindu Law, the plaintiff of the suit was entitled to the reliefs, as prayed for.

Though, for some other ground but this Court affirms the judgment and decree dated 2nd November, 1987 passed in Title Partition Suit No. 64/64 passed by

learned Assistant Settlement Officer, Godda. For the same reason, the 1st appellate order dated 8th June, 1989 passed in Title Appeal No. 49/89 and the 2nd appellate order dated 22nd October, 1990 passed by the Court of Commissioner, Shanthal Pargana, Dumka in Appeal No. 18/89 are set aside.

9. The writ petition is allowed. However, there shall be no order, as to costs.

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