

Mali Bewa Vs. Dadhi Das

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Court : Orissa

Decided On : Jul-21-1959

Reported in : AIR1960Ori81

Judge : S. Barman, J.

Acts : [Hindu Succession Act, 1956](#) - Sections 14(1) and 14(2)

Appeal No. : Second Appeal No. 129 of 1957

Appellant : Mali Bewa

Respondent : Dadhi Das

Advocate for Def. : K.M. Swain, Adv.

Advocate for Pet/Ap. : N. Mukherji, Adv.

Disposition : Appeal allowed

Judgement :

S. Barman, J.

1. This is the plaintiff's second appeal from a decision of the learned Additional Subordinate Judge Cuttack reversing a decision of the learned Munsif of Kendrapara in a suit for partition and mesne profits filed by the plaintiff against the defendant-respondent.

2. The plaintiff was a widow of one Jagu Das (deceased), his other widow having been one Palini Bewa (deceased). The defendant-respondent Dadhi Das was an adopted son of the deceased Jagu Das. In 1923 the son Dahi Das filed a suit, -- being Title Suit No. 244 of 1923 against the said two widows and eleven other defendants having been the transferees from the widow in respect of certain properties, -- for a declaration that the plaintiff in the said suit (Dadhi Das) was the adopted son of deceased Jagu Das and that he was entitled to the said properties being 10 acres 45 decimals mentioned in schedule Ka to Una in the plaint therein and further that the son Dadhi Das was not bound by the alienation made by the widows.

In June 1924 the said Title Suit No. 244 of 1923 was compromised between the parties. One of the terms of the said compromise was that the son Dadhi Das was to have -/8/- share and the widows -/8/- share on certain conditions as fully stated in the compromise decree. I shall deal with the said compromise decree hereinafter at the appropriate stage. In 1939, the son Dadhi Das again filed a suit being Title Suit No. 186 of 1939 against the said widows; and the superior landlord under whom they were holding the properties was also made a defendant as defendant No. 3. The reliefs prayed for in the said suit were for declaration that the widows had no right to the properties in the said suit, that the record of rights showing the widows as rayats was a mistake and that the son was himself the rayat.

On April 1, 1940, the said title suit No. 186 of 1939 was decreed on contest against the widows in favour of the son. By the said decree (Ext. 2), the title of the son was declared over the lands in suit and his possession was confirmed and it was further declared that the widows 'are entitled to hold half of the property in lieu of their maintenance.' It was also declared that the son was an occupancy tenant in respect of the lands in suit under the landlord defendant No. 3 and not an under-rayat under the widows. In 1946, the widow Paluni Bewa died. In 1951 the surviving widow the plaintiff Mali Bewa filed the present suit No. 283 of 1951 against the son for partition and mesne profits.

The son in his written statement took the defence that his title to the entire property was by compromise declared in the previous suit and that the widows including the plaintiff Mali Bewa were only entitled to maintenance. Alternatively, the son contended that the other widow Paiuni Bewa having died, her four annas interest devolved on him and that the surviving widow the plaintiff Mali Bewa was entitled to four annas interest only.

In his judgment dated November 4, 1952, the learned Munsif decreed the suit against the son and held that Mali Bewa is entitled to partition by metes and bounds and declared the respective shares of the parties as mentioned in the said judgment. The son filed an appeal being Title Appeal No. 252 of 1952. On August 26, 1954, the learned Additional District Judge allowed the appeal and set aside the decree for partition and remitted the suit back for retrial for reconsideration of the issue relating to partition with reference to the pleadings and the petition of compromise decree in Title suit No. 186 of 1939. Incidentally, the learned Additional District Judge obviously by mistake gave a wrong number to the compromise decree because the only compromise decree in this connection was the Title suit No. 244 of 1923 as aforesaid and not in Title Suit No. 186 of 1939 as incorrectly stated by the learned Additional District Judge in his judgment.

This mistake however caused some confusion. After remand by the learned Additional District Judge as aforesaid, the suit was reheard by the learned Munsif. In his judgment dated February 19, 1955 after remand, the, learned Munsif granted a decree for partition declaring that the plaintiff Mali Bewa owned eight annas share in the Ka schedule property and that the son defendant Dadhi Das was entitled to the remaining eight annas interest; and a commissioner was appointed to partition the Ka schedule land as stated in his judgment.

The son again appealed from the judgment of the learned Munsif being Title Appeal 38 of 1955 in which the learned Additional Subordinate Judge, on appeal, held that the said suit for partition by the widow Mali Bewa was not maintainable and accordingly the judgment and decree for partition passed by the Trial Court was reversed and the suit filed by Mali Bewa was dismissed. Hence this present second appeal.

3. Mr. N. Mukherji, learned counsel appearing for the appellant widow Mali Bewa, contended that the decree in Title suit No. 186 of 1939 based on the compromise decree in Title suit No. 244 of 1923 was misconceived. According to the learned Counsel the learned Munsif in his judgment dated February 19, 1955 (after remand) correctly interpreted the compromise decree in Title Suit No. 244 of 1923. In fact, Mali Bewa based her claim on the said compromise decree in the said Title Suit No. 244 of 1923 and accordingly the learned Munsif after remand, construed the said compromise decree for determination of the question whether she could demand partition of the suit lands.

The learned Munsif in paragraph 10 of his judgment fully interpreted the said compromise decree (Ext. 1) showing that the/ son would get half the property left by the deceased Jagu Das and the remaining half was allotted to the widows in lieu of their maintenance and further that the widows would continue to be the owners of the lands referred to therein and possess till their death and maintain themselves out of the usufruct therefrom and in case the usufruct be insufficient for their maintenance they could sell away a portion thereof for their maintenance.

The said compromise decree was construed to mean that subsequent to the death of the widows their eight annas share or what would be left behind after sale, if any, would revert to the son of their husband and in case the son would predecease them, his legal representatives would get it. The lower appellate Court however took a contrary view as expressed in his judgment. Mr. N. Mukherji contended that the lower appellate Court's reading and interpretation of the effect of the compromise decree (Ext. 1) was, in his submission, not correct.

The learned counsel also contended that the remanding Court in his judgment dated August 26, 1954 intended to refer to Ext. 1 that is to say, the compromise decree in Title suit No. 244 of 1923 to be reconsidered in retrial. Merely because there was a mistake in numbering the suit as aforesaid there could be no doubt with regard to the identity of the only compromise decree, which was in fact intended to be referred to in the judgment of the learned Additional District Judge, remanding the suit for retrial to the learned Munsif. In fact, it was compromise decree in Title suit No. 244 of 1923 which was directed to be reconsidered and not

the decree in Title Suit No. 186 of 1939 because there was no compromise decree in the 1939 suit.

Furthermore, the judgment in the 1939 suit (Ext. 2) was based on the compromise decree in the 1923 suit (Ext. 1). The learned Counsel also urged that merely because the learned Munsif in his judgment in Title suit No. 186 (Ext. 2) has used the words 'in lieu of their maintenance' they however do not make the right of the widows a possessory right only without any title, because absolute title can also be given in lieu of maintenance. In the compromise decree of 1923 (Ext. 1) it is said that eight annas is given to the widows in lieu of their maintenance with a right of sale, if the usufruct be not sufficient for their maintenance.

It was contended on behalf of the plaintiff Mali Bewa that had it been that only nessesory right was given to the widows, this right ef sale wouldnot have been given to them. In this context the learned Counsel relied on Section 14 of the Hindu Succession Act (Act XXX of 1956). It was contended that in the present case there was no restriction of user and accordingly the widow had absolute interest in the property. As to the applicability of Section 14 of the Hindu Succession Act to the present case, the learned Counsel relied on a decision of the Patna High Court in Mst. Janki Kuer v. Chhatu Prasad, (S) AIR 1957 Pat 674. While pursuing his point under the Hindu Succession Act, the learned Counsel drew my attention to the Explanation to Section 14(1) as also sub-section (2) of the section.

His point was that the widow Mali Bewa by the said compromise decree in Title Suit No. 244 of 1923 (Ext. 1) had acquired the property in lieu of maintenance and that by the said decree no restricted estate was given to her and according to him the application of the Explanation to Section 14 of the Act was attracted, As to the meaning of the word 'possession' in Section 14, my attention was drawn to a judgment of this Court in Sansir Patelin v. Satyabadi Naikani, 23 Cut LT 489: (AIR 1958 Orissa 75) where it was held that Section 14 of the Act has given the female owner an absolute ownership in respect of property which was in her possession. In the present ease the plaintiff widow was in possession of her husband's property with her adopted son.

4. Mr. K. M. Swain, learned counsel appearing for the son-respondent contended that the decision of the Patna High Court in (S) AIR 1957 Pat 674 cited above was overruled by a subsequent decision of a Full Bench of the Patna High Court in Harak Singh v. Kailash Singh, AIR 1958 Patna 581 and submitted that the Hindu Succession Act did not apply to the facts of this case and further that the point cannot be raised here in second appeal for the first time. The Patna Full Bench held that Section 14 only applies to properties possessed by the female Hindu at the date of the commencement of the Act and that is not correct to say that the expression 'possession by a female Hindu' refers to a point of time before the commencement of the Act because such an interpretation would be inconsistent with the expression 'shall be held by her as full owner' occurring in the latter part of the section. The Act came into force on June 17, 1956.

The widow was in possession along with her son at the date of the commencement of the Act as aforesaid. The lower appellate court passed its judgment on January 25, 1957. Therefore assuming that the Act applied to this case, the question to be decided is what is the position of the widow under the Act. In this context I have carefully considered the vernacular context of the compromise terms of the decree made in Title Suit No. 244 of 1923 (Ext. 1). The decree expressly provides that the son was to be entitled (Satwaban) and remain in possession (Dakhalkar) in respect of eight annas share in the property.

By the said decree the widows had also accepted the son as adopted son of Jagu Das. It was further provided that the widows would get the remaining eight annas share for the purpose of their maintenance and that they would remain in possession (Dakhalkar) thereof till their life time and out of the usufruct of the said properties they would meet their maintenance and if for any reason the usufruct of the said properties be not sufficient then they would be entitled to sell such portion of the said properties for their maintenance as may be necessary. Reading this document it is quite clear that only restricted right was given to the widows and not absolute right as contended on behalf of the widow.

In this reading of the compromise decree 'Ext. 1', it appears that the case directly falls under subsection (2) of Section 14 of the Hindu Succession Act. That is to

say, the widow having acquired by the said decree only a restricted estate in the property, she would not be entitled to the benefit of Sub-section (1) of Section 14 of the Act which gives a widow the right of a full owner and not limited owner. I, therefore, find that the plaintiff widow is entitled to eight annas share in the property which she would enjoy during her life time out of the usufruct of which she would meet her maintenance and in case the usufruct be not sufficient then she would be entitled to sell such portion of the property for her maintenance as may be necessary. After the widow's death, the son will get it.

5. The widow, -- thus entitled to the property though as a limited owner as aforesaid, -- is entitled to partition of the property as claimed by her. In this view of the matter I hold that the plaintiff is entitled to a decree for partition of her eight annas share which she would enjoy during her life time and out of the usufruct of which she would meet her maintenance and in case the usufruct be not sufficient for meeting her maintenance then she would have the right to sell such portion of the property as may be necessary.

After the plaintiff widow's death the property or such portion thereof, -- as may be left behind by her, -- will revert to the defendant son. Subject to this modification as aforesaid as to the plaintiff widow's limited interest as stated in terms of the said compromise decree in Title Suit No. 244 of 1923 (Ext. 1), I uphold the decision of the learned Munsif dated February 19, 1955. Accordingly I set aside the decision of the lower appellate Court below dated January 25, 1957 and allow this appeal. Each party to bear own costs of this Court.