

indramani Das and ors. Vs. Lokenath Das and ors.

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Court : Orissa

Decided On : Mar-30-1950

Reported in : AIR1953Ori98

Judge : Ray, C.J. and ;Panigrahi, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100 and 101

Appeal No. : Second Appeal No. 121 of 1946

Appellant : indramani Das and ors.

Respondent : Lokenath Das and ors.

Advocate for Def. : A.N. Purohit, Adv.

Advocate for Pet/Ap. : B. Mohapatra, Adv.

Disposition : Appeal partly allowed

Judgement :

Panigrahi, J.

1. The plaintiffs are the appellants. Plaintiffs Indramani Das and Gangadhar Das are two brothers, while plaintiff Champa Dibya is their sister-in-law. Their case is that Banaraali, father of Indramani and Gangadhar (plaintiffs 1 and 2) left three sons, Mahani, Padan and Panu. Plaintiffs 1 and 2 are the sons of Mahani while,

plaintiff 3, Champa Dibya, is the widow of Jadu, the deceased son of Padan. Defendant 4, Nisha-mani is the widow of Panu. Defendant 4 executed a sale deed in favour of defendants 1, 2 and 3 on 20-4-43 conveying not only her one-third interest in respect of the properties left by her husband but also purporting to sell her one-third interest in the properties left by Hadibandhu (brother of Banamali) who died without leaving any issues. It is admitted that Hadibandhu died about 40 years ago, while Banamali died about 30 years ago.

2. The Courts below came to different conclusions with regard to the question as to whether Hadibandhu died in a state of joint-ness with Banamali or whether he was divided at the time of his death. Another fact in issue was whether Panu, husband of defendant 4 died divided from his two brothers Mahani and Padan, and if so when that division took place. The trial Court found that Hadibandhu was divided from Banamali when he died and that Panu died when he was living joint with his two brothers. He accordingly decreed the plaintiff's suit. The appellate Court, however, differing from the findings of the trial Court, held that Hadibandhu was undivided from Banamali and that Panu was divided. The learned Subordinate Judge accordingly directed the dismissal of the plaintiff's suit.

3. In second appeal, it is contended by Mr. Mohapatra, learned counsel for the plaintiff-appellants, that the finding of the lower appellate Court with regard to the status of Hadibandhu is erroneous as it drew a wrong inference from Exhibit 10, the settlement record of the year 1911. This document shows that Udiya, widow of Hadibandhu, had been separately recorded in respect of the suit properties as being in possession of eight annas share and that her interest in the property was to terminate on her death. This clearly shows that she was in possession of half the properties by virtue of her position as the widow of Hadibandhu in her own right and enjoying a widow's estate. The learned Subordinate Judge, however, took the view that this entry merely indicated that she was a maintenance-holder. There is nothing in the entry to indicate that her interest was only that of a maintenance holder. The fact that she is described to be in possession of eight annas share in the family properties would certainly be inconsistent with such a position. Mr. Purohit appearing for the respondents points out that her name had not been recorded in respect of some other lands belonging to the family. But this

contention is not tenable in view of the express entry in Ext. D (R.S. Khatian relating to another mouza) that Mahani and Padan had been recorded as owners of eight annas interest only in respect of those properties. Agreeing with the finding of the learned Munsif, therefore, we hold that Hadibandhu died in a state of division and that Udiya was in possession of his share, as his widow, enjoying a limited estate. On her death the property of Hadibandhu came, by inheritance, to Mahanr and Padan, as Panu had been dead by that time. As admittedly Panu was dead by then his widow (defendant 4) can claim no interest in that property of Hadibandhu which she purported to sell to defendants 1, 2 and 3 on 20-4-43. The plaintiffs suit in respect of these properties must, therefore, succeed and the judgment of the learned Munsif should be restored.

4. With regard to the properties which Banamali had, and which were inherited by his three sons, the learned Subordinate Judge has found that Panu had become divided before he died and that his widow, defendant 4 succeeded to his share of the properties. The learned Subordinate Judge has discussed the oral and documentary evidence in great detail, and we are satisfied that his finding with regard to these properties is unassailable. Mr. Mohapatra, however, contends that defendant 4 was only a maintenance-holder and that her separate residence and payment of choukidari tax is not inconsistent with this status. That, however, is a question of appreciation of evidence and it is not open to us to set aside the finding on that ground. We accordingly accept the finding of the learned Subordinate Judge so far as the status of defendant 4 is concerned and hold that the alienation made by her of the properties which admittedly belonged to Banamali's branch should be upheld and that, to that extent, the finding of the learned Munsif should be set aside. The plaintiffs shall have a decree accordingly.

5. The appeal is allowed in part. The decree passed by the lower appellate Court shall be modified in the light of the orders made above. In the circumstances, we make no order as to costs.

Ray, C.J.

6. I agree.

