

Bai Dahi and anr. Vs. Bai Sada and ors.

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Court : Gujarat

Decided On : Sep-05-1960

Reported in : AIR1961Guj105; (1960)GLR201

Judge : Miabhoy and; Raju, JJ.

Acts : Hindu Law; Baroda Hindu Code - Sections 5 and 230

Appeal No. : Appeal No. 45 of 1960

Appellant : Bai Dahi and anr.

Respondent : Bai Sada and ors.

Advocate for Def. : S.N. Patel and; N.V. Karlekar, Advs.

Advocate for Pet/Ap. : N.R. Oza, Adv.

Disposition : Appeal dismissed

Judgement :

Miabhoy, J.

1. In this appeal, the main question which requires to be decided is whether the two plaintiffs appellants are or are not entitled to challenge certain transactions entered into by Sada, defendant No. 1, according to the Baroda Hindu Code. The present suit was instituted by plaintiffs for a declaration that the transactions

entered into by Sada were null and void, against their interests and not binding on them. The impugned transactions are a compromise entered into on 11-11-52 between Sada, defendant No. 1, on the one hand and Gajara, defendant No. 2, and Sharda, defendant No. 3, on the other; a gift made by Sada on 13-6-1953 in favour of defendant No. 4 and a sale made on 20-6-1953 in favour of defendant No. 5. The trial Court has dismissed the suit from which this appeal arises on the ground that plaintiffs were not the next reversioners of their father Nathabhai Trikambhai or the next reversioners of their brother Punjabhai Nathabhai and that, as such, according to the Baroda Hindu Code, they were not entitled to bring the present suit for challenging the aforesaid transactions effected by Bai Sada.

2. The suit was dismissed on a preliminary ground without taking any evidence in the matter. Therefore, the question which requires to be decided in this appeal will have to be decided on the basis that the allegations made in the plaint are true.

The facts on the basis of which the point requires to be decided may shortly be stated as follows:

3. One Nathabhai Trikambhai and his son Punjabhai constituted a joint Hindu family. Natha-bhai had two wives, named Ratu and Sada, who is defendant No. 1. Ratu predeceased Nathabhai and by Ratu, Nathabhai had two daughters, Dahi and Son, who are plaintiffs in the suit. By Sada, Nathabhai had a son named Punjabhai. Nathabhai died on 3-7-1924 leaving behind him surviving Sada, Punja and Dahi and Son, Plaintiffs admit that, on the death of Nathabhai, Punjabhai became the sole surviving coparcener and as such, he became the owner of the joint family properties. Punjabhai also died on 19-12-1942. Plaintiffs allege that by Gajara, defendant No. 2, Punjabhai had a daughter named Sharda defendant No. 3. But, they allege that Sharda was not the legitimate daughter of Punjabhai. They allege this on the ground that there was no valid marriage between Punjabhai and Gajara. Therefore, according to plaintiffs, on the death of Punjabbai, his properties did not devolve on Gajara and Sharda is not his next reversioner. According to plaintiffs, on the death of Punjabhai, the properties in suit devolved on Sada, defendant No. 1, as the mother of Punjabhai. It appears that, in 1950, Sada filed a Special Civil Suit No, 126 of 1950 against Gajara and Sharda for recovering

possession of the properties owned by Punjabhai. In that suit, a compromise was made between the parties and, under the compromise, Sada got some of the properties held by Punja. This compromise is one of the transactions which the plaintiffs are challenging in this suit as not binding on them. It also appears that soon after the compromise was made, Sada made a gift in favour of defendant No. 4 on 13-3-1953 of some of the properties which she got under the compromise and, by a deed, about a week thereafter, she sold to defendant No. 1 the rest of the properties acquired under the compromise. These are the other two transactions which the plaintiffs challenge in the present appeal.

4. In the plaint, plaintiffs contended that they were the next reversioners of Nathabhai Trikambhai and, as such, they were entitled to challenge the aforesaid transactions. Subsequently, they sought to amend the plaint and challenged the transactions on the ground that they were the heirs of Nathabhai Trikambhai. That application was rejected by the trial Court and an application for revision against that order was summarily rejected by the High Court. It appears that, amongst other contentions, the defendants resisted the claim for declaration on the ground that plaintiffs were not the next reversioners of Nathabhai Trikambhai. In answer to this, the plaintiffs contended that they were also the next reversioners of Punjabhai Nathabhai and sought to support their claim for declaration on that ground. The plaint, as it stands to-day, does not purport to support the claim for declaration on the ground that plaintiffs were next reversioners of Punjabhai Nathabhai. But, the matter has been considered by the learned trial Judge on that basis also.

5. As the learned Judge thought that the aforesaid contentions of defendants went to the root of the matter, he raised a preliminary issue embodying those contentions and proceeded to decide the same. He came to the conclusion that the plaintiffs were not the next reversioners of Nathabhai Trikambhai or the next reversioners of Punjabhai Nathabhai. He also decided that, that being so, the plaintiffs were not entitled to bring the present suit and, therefore, as a result of his finding on the aforesaid preliminary issue, the learned trial Judge dismissed the suit of plaintiffs. The present appeal is directed against the decree passed as a result of the finding on the aforesaid preliminary issue.

6. It is not disputed that the rights of the parties are governed by the provisions of the Baroda Hindu Code. It is also not disputed that the preliminary issue has got to be tried on the assumption that Bai Gajara, defendant No. 2, and Bai Sharda, defendant No. 3, had no interest in the estate of the deceased Punjabhai. Mr. Oza, learned advocate for the plaintiffs, admits that the true position in law is that the suit properties were last held by Punjabhai as the absolute owner and that, on the allegations made in the plaint, on the death of Punjabhai, the properties devolved on Bai Sada, defendant No. 1 as the heir of Punjabhai. It is also not disputed that, according to Baroda Hindu Code, Sada would become absolute owner of the estate of Punjabhai to the extent of Rs. 12,000/- and that, in respect of the test of his estate, she would be holding a widow's estate. In the present suit, we are not concerned with that part of the estate of Punjabhai, the value of which is Rs. 12,000/-. We are only concerned with the estate of Punjabhai which is in excess of Rs. 12,000/-. The contentions raised by the parties have got to be decided in respect of this excess estate.

7. The first contention of Mr. Oza is that, according to the Baroda Hindu Code, the plaintiffs are the successors to the estate of Punjabhai. Mr. Oza rests his contention on Section 220 of the Baroda Hindu Code. That section occurs in Chapter 33 which deals with the heirs of a Hindu woman. Section 220 deals with the succession to the estate held by a woman as a limited owner and that section states that, in respect of such an estate, on the death of the woman, the estate would devolve upon, her husband's heirs. The contention of Mr. Oza is that, though the suit estate has been inherited by Bai Sada as the mother of Punjabhai, according to Section 220, Baroda Hindu Code, that estate would devolve upon the present plaintiffs being the heirs of Sada's husband on the death of Bai Sada. In our judgment, it is not necessary to decide this question in the present litigation at this stage. We will assume for the purposes of the present suit that the contention of Mr. Oza is right that in case Sada dies, plaintiffs would be the heirs who would be entitled to the estate of Punjabhai. But, the present suit has not been brought by plaintiffs as claiming succession to the estate of Punjabhai. In law, plaintiffs cannot bring such a suit during the life-time of Sada. Their claim would be a *spes successionis*. The present suit has been brought for the purpose of challenging certain transactions effected by the limited owner viz., Bai Sada and the question

as to who are the heirs to that particular estate does not directly fall to be decided in the present suit. The question is, whether the plaintiffs fall within the category of persons who are entitled to challenge the transactions made by Bai Sada and that question has got to be answered with reference to the provisions contained in S. 230 of the Baroda Hindu Code and it is this section which deals with the right of persons to challenge the transactions made by a Hindu woman. That section is in the following terms:

'Right of a reversioner to sue for relief against misuse: Where a woman is found

(a) to be misusing or wasting the property in which she has a limited estate, or
(b) committing any act detrimental to that interest of a reversioner in such property, the presumptive reversioner or in case he precludes himself from suing either fraudulently or for any other reason or he is incapable of instituting a suit, any other reversioner may sue for the following reliefs:

(a) on an occasion under clause (a), for obtaining an injunction for preventing such misuse or waste;

(b) on an occasion under clause (b), for a declaration to the effect that the act is not binding on him'.

It will be noticed that this section confers a right only on reversioners to challenge acts of mismanagement or acts harmful to the interest of reversioners. That right is conferred on reversioners and the section does not say in terms that the right is available to any other category of persons. The term 'reversioner' itself has been defined in the Code and the definition is to be found in Section 5(Kha) of the Code and that definition is as follows :

"reversioner" means any of the following relations of a person whose property has devolved on his widow or the widow of his sagotra sapinda:

1. daughter,
2. daughter's son,

3. father,
4. mother,
5. widow of the son,
6. brother of the whole blood,
7. son or brother of the whole blood,
8. father's mother,
9. sister of the whole blood and son's daughter, 10. father's rather,
11. son of the sister of the whole blood and daughter's daughter'.

According to this definition, a reversioner is one who is related to the propositus whose estate is held by the limited owner in the way mentioned in this section. The section gives a list of eleven such relatives. Therefore, reading Section 230 along with Section 5 (kha), it is crystal-clear that the persons who are entitled to bring a suit for declaration under Section 230 are the eleven relatives mentioned in Section 5 (kha). As regards the last ten relatives, whether their right is absolute or qualified, is dependent upon the fact as to whether, at the date of the filing of the suit, he or she does or does not happen to be the next reversioner of the deceased estate holder. If he or she is the next reversioner, then, he or she has the absolute right. But, if that is not so, then those other relatives must satisfy the conditions laid down in Section 230. Mr. Oza's contention is that the plaintiffs fall within the purview of the class of reversioners mentioned in Section 5(kha). One of the relatives mentioned as the reversioner is 'real sister'. The contention of Mr. Oza is that the expression 'real sister' includes a consanguine sister. We are unable to agree with this contention. Mr. Oza contended that the expression 'real' was used to connote a legitimate relationship and was intended to describe a legitimate sister in contradistinction to an illegitimate one. We cannot accede to this argument. In our judgment, the Legislature did not intend to contrast a legitimate and an illegitimate sister in this clause. The contrast was intended to be effected between a real sister and a step-sister. There are several sections in the

Code in which the term 'real' has been used in the Code in conjunction with a relative. That the Legislature was also not unaware of the distinction between a 'real relative' and a 'step relative' is also shown by at least one section of the Code, wherein it has been specifically provided that the relatives mentioned therein include not only the real relative but the step-sister also. Section 211 falls in Chapter XXXI which deals with the heirs outside the compact series. That section provides that, in the absence of a daughter's daughter or sister's son of a deceased male, certain prescribed 'Sagotra Sapin-das', and, in their absence, the 'Samanodakas' shall be the heirs of the deceased. Whilst so providing, the section states in specific terms that in determining the heirs in accordance with the rules prescribed in Section 211, no distinctions shall be made between a step relative and a real relative. As against this, in Chapter XXX, which deals with the compact series of heirs, the term 'real' has been used in more than one section, such as sections 203, 205, 206 and 208. If the expression 'real' is to be co-related with the expression 'Legitimate' in respect of these sections-then, it would lead to absurd results. For example, in Section 203, it will have to be held that the person who is mentioned as the heir therein is the legitimate mother, which would be an absurd construction. Under the circumstances, we are not satisfied that the plaintiffs come within the purview of Section 5, sub-section (Kha), clause (9), inasmuch as they are not real sisters but only step sisters of the deceased Punjabhai and, consequently, in our judgment, plaintiffs do not come within the purview of Section 230 of the Baroda Hindu Code.

8. But, Mr. Oza contended that the expression 'reversioner' used in Section 230 must be liberally construed. He submitted that that expression must be so construed as to include not only the specific heirs mentioned in Section 5, sub-section (kha), but all the heirs of the propositus whose estate is being held by a woman as a limited estate. He submitted that, according to the Baroda Hindu Law, the plaintiffs being the heirs in respect of the limited estate, would be the next reversioners, there being no nearer relatives and, under the Hindu Law, as administered in the rest of India, plaintiffs undoubtedly would have a right to maintain the present suit. He contended that, therefore, the expression 'reversioner' as used in Section 5, sub-section (Kha) ought not to be construed in such a manner as to be exhaustive of the list of heirs who were entitled to be

described as reversioners. He contended that that list was only an illustrative list and was not intended to exclude the other relatives who, ordinarily, according to the Mayukha or other Hindu Law, would fall within the category of 'reversioners'. In our judgment, it would not be proper to construe the Code with any preconceived notions. The Baroda Code is a codifying piece of legislation. In construing the Code, the interpreter must primarily have regard to the language used in the Code and construe it in accordance with the ordinary principles of interpretation. The previous history of the law cannot be allowed to affect the interpretation if the construction does not require the previous history to be taken into account. In our judgment, reading sections 230, 220 and 5(Kha) together, it is clear that Baroda Hindu Code divides the heirs to the estate of a person held by a woman as a limited estate into two classes. The first class consists of those persons who are described as 'reversioners' in Section 5, sub-section (Kha) and the second class consists of those who, though they are heirs to the estate, do not fall within the category of reversioners. The intention of the Legislature appears to confer a right to challenge the acts of a limited owner only on the eleven specific heirs mentioned in Section 5, sub-section (Kha) and not to confer such a right on the other relatives, though they fall within the class of heirs. Mr. Oza contended that the Legislature could not have intended such a result specially in those cases, such as the present, where the nearest heir happens to be not within the class of eleven specific heirs described in Section 5, Sub-section (Kha). Mr. Oza is unable to point out any section or sections in the Code which would show that such was the object of the Legislature in enacting Section 230 and Section 5, sub-section (Kha). It is difficult to speculate as to why the Baroda Code made a distinction between heirs so as to divide them into reversioners and non-reversioners for the purpose of Section 230, of the Code. One explanation which may be put forward is that the Legislature thought it proper not to allow a litigation of the type mentioned in Section 230 to be started by heirs remoter than the heirs mentioned in Section 5, sub-section (Kha). It may be that the Legislature might have thought that the remoter heirs, though they would ultimately inherit the estate, should not be given the right of challenging the acts during the life-time of the limited heir and must wait till the succession actually opens. In this connection, it is important to bear in mind that it is difficult to say during the life-time of the limited owner as to who

actually would become the heir to the estate of the deceased propositus. For aught we know, the present plaintiffs may not survive defendant No. 1 and may not inherit the estate at all. Under the circumstances, in our opinion, no reasonable ground has been shown by Mr. Oza for departing from the salutary rule of construction which says that a statute must be interpreted in accordance with its ordinary meaning. As we have already pointed out, we are not dealing with the question of heirship at all. We are dealing with the question of the right to file a suit for claiming the reliefs mentioned in Section 230, clauses (a) and (b) during the life-time or a limited owner. As to the scope and the amplitude of that right and the persons who are entitled to have that right, the same must be answered with reference to the provisions contained in Section 230 and not by notions of equity and justice, or notions derived from the state of the general Hindu Law, under which the immediate or the next reversioner though remoter than the eleven heirs mentioned above has the right to institute a suit of the present type. As already stated probably, the Baroda Legislature intended to restrict the scope of this type of litigation by stopping short at a certain number in the list of heirs which, probably, it thought, for all practical purposes, would meet the needs of quite a large majority of cases. It did not intend to leave the question at large and permit the heirs remoter than the last heir mentioned in Section 5, sub-section (Kha) to undertake a litigation of this type. In this connection, it is important to notice that the definition of the expression 'reversioner' is not an inclusive definition. The definition states that the expression 'reversioner' means 'the following' kinds of heirs.

9. It is also noteworthy that the expression 'reversioner' has reference only to the last holder from whom the widow or the limited owner has inherited the estate and has no reference to the pre-vius owners to whom the estate might have belonged at one or the other time. The definition states in specific terms that the 'reversioner' means any of the relations, mentioned therein, of a person 'whose property had devolved on his widow or the widow of his 'sagotra sapinda'. Having regard to this definition, it is quite clear that the fact that plaintiffs stand related to the deceased Nathabhai Trikambhai as his daughters, has no relevance whatsoever. The estate having been last held by Punjabhai and having been inherited by Sada from him as his mother, the question of reversionship must be decided with reference to the

relationship existing between Punjabhai and plaintiffs and not with reference to the relationship existing between plaintiffs and Nathabhai who at one time held the estate. *****

10. For the aforesaid reasons, we have come to the conclusion that the view taken by the learned trial Judge that the plaintiffs do not fall within the purview of Section 230 of the Baroda Hindu Code is correct, as also the finding that the plaintiffs are not entitled to file the present suit for challenging the various transactions mentioned in the suit.

11. The appeal therefore, fails and is dismissed with costs in one set.

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