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Surja Kumar Sardar Vs. Manmatha Nath Naskar and ors.

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Court : Kolkata

Decided On : Jul-11-1952

Reported in : AIR1953Cal200,56CWN845

Judge : K.C. Chunder, J.

Acts : Hindu Women's Rights to Property Act, 1937 - Sections 2 and 3; ;Hindu Law

Appeal No. : A.F.A.D. No. 919 of 1951

Appellant : Surja Kumar Sardar

Respondent : Manmatha Nath Naskar and ors.

Advocate for Def. : Anil Kumar Sett and ;Ashutosh Ganguly, Advs.

Advocate for Pet/Ap. : Jitendra Kumar Sen Gupta and ;Narendra Nath Biswas, Advs.

Judgement :

K.C. Chunder, J.

1. This is an appeal against an appellate decree of the Subordinate Judge, Sixth Court, 24 Parganas, reversing that of the Munsif, Second Court, Baruipore.

2. It appears that the plaintiff who is a purchaser from a Hindu widow, one Bhudimoni Dassi, claimed the property in suit alleging that Bhudimoni inherited the property from, her husband Debendra and the plaintiff purchased the same from Bhudimoni. Bhudimoni is still alive. Debendra left also a daughter Mangala who died leaving a son and the son is also dead.

3. The Principal contesting defendant is Manmatha, the husband of Mangala. His only defence was that Bhudimoni having been unchaste during the life of the husband, she did not inherit and therefore Mangala inherited and after Mangala, Mangala's son and Manmatha is now the owner as the only heir of the son.

4. Therefore the only pertinent questions were the question of unehastity prior to the death of the husband and secondly a question which had not been considered by either Court, namely Bhudimoni's rights under Section 3, Hindu Women's Right to Property Act, i.e. her statutory right of inheritance, notwithstanding the Hindu Law, even if she was unchaste.

5. Debendra died l9ng after the passing of that Act and the parties belong to the Dayabhag school of Hindu law. It seems though I am surprised to find that this has never come up for decision before in this Court, that a great inroad has been made into the Hindu law of inheritance of her husband's property by a Hindu widow by Section 3 of the Act. The Hindu widow now succeeds in virtue of Section 3, not because she is a Hindu widow under the Hindu Law entitled to succession, so long as the property is not agricultural. As regards the agricultural property, it has been already decided, that the Hindu Women's Right to Property Act does not apply. So what we are now saying musts be taken to refer to the non-agricultural property only. By Section 2 it is said that Section 3 will apply notwithstanding anything in the Hindu Law, or any custom to the contrary. Therefore the provision in the Hindu Law of a widow being deprived of her inheritance because of unehastity is done away with by this' Section 2.

6. Therefore in the present case it should have been noticed by the Courts below that a Hindu widow was entitled to succeed to non-agricultural properties under the Statute after her husband's death, whether she was or was not chaste before such death. Of course, it may be pointed out that the law under Section 3 gives the

Hindu widow a limited interest even now in the husband's estate. Under the circumstances, what the Courts should have done was first to decide which of the properties were agricultural and which were not so, as it appears from the evidence and the other materials on record that the properties perhaps were of both kinds. Then as regards the non-agricultural properties, the defence should have been negatived, because the Hindu widow has now a statutory right to succeed to her husband's properties in the limited interest of a Hindu widow even though she had been un chaste during her husband's life. The plain tiff should have been given, therefore, a decree-straight off as regards the non-agricultural properties to be enjoyed by him so long as the widow lived, unless he could prove subsequently that the sale was for legal necessity. If the widow did not inherit no question of legal necessity can arise and so it cannot be decided. If the widow inherited according to law, then a son-in-law is not the reversioner at the time of her death and the proper party is not now before the court and therefore the question of legal necessity cannot be decided now.

7. As regards the agricultural properties, the lower appellate Court should have distinguished between unchastity condoned by the: husband and unchastity subsequent to such: condonation but during the life time of the husband. The Hindu law is clear that if unchastity during the life time of the husband is condoned by the husband, such unchastity does not deprive a widow of her inheritance. The lower appellate Court should also have tried to sift the evidence, because there appears to be some variation from the pleadings, in, the evidence and further the story of unchastity subsequent to condonation was not accepted by the trial Court. In the written statement it is definitely stated that the widow left the village with her paramour 23 or 24 years before during the life time of the husband and never returned. In the cross-examination of the widow, she was not asked about her elopement with one Fani. Subsequently seven defence witnesses tried to make out that she had lived with such a person and the husband had brought her back and condoned her unchastity, and she lived with the husband. The eighth witness suddenly gave a different version namely that after the husband brought her back and condoned her unchastity and before the husband died she left again. The Munsif did not believe the story of unchastity. No' question arose of giving the widow an opportunity of giving her version of this alleged unchastity. She was a

defendant in the case, being defendant 1 and she was examined as a witness. The learned Subordinate Judge without trying to discriminate between two different stories namely, that given by the first seven witnesses and that given by the last witness and the relative credibility of the same and without giving any opportunity to the widow for explanation certainly reversed the finding of the trial Court. If the learned Subordinate Judge acts upon the evidence of these defence witnesses, an opportunity should be given by him to the widow to explain and he will have then additional evidence taken on the point of the widow herself.

8. As I have pointed out, the case has been muddled in the Court below. Therefore I have no other option but to set aside the decree of the Subordinate Judge and remit the appeal to him, for re-hearing in the light of this judgment.

9. Costs will abide the result.

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