SUPREME COURT OF INDIA

Labishwar Manjhi

Vs.

Pran Manjhi

(A.P. Mishra and N. S. Hegde JJ.)

19.07.2000

ORDER

1. Heard learned Counsel for the parties.

2. The present appeal is directed against the judgment and order dated 27th January, 1986, passed by the High Court whereby the second appeal of the respondent was allowed while setting aside the concurrent findings of the two courts below.

3. The short facts are that the father of respondent nos. 2 and 3 and husband of respondent No. 1, filed a suit against the appellant for declaration that they being an agnate of the deceased husband, inherited the property according to the custom of Santhal tribe where females are excluded from the right of succession. He further challenged the gift made by the widow of the deceased Lakhiram, namely, by appellant No. 1 to appellant nos. 2 and 3. The trial court dismissed the suit by holding that par ties have become sufficiently Hinduised and as such the Hindu Law of Succession would apply and thus the widow will inherit the property of the deceased, consequently gift made by her to the appellant nos. 2 and 3 is also valid. The appeal filed by plaintiff-respondent was allowed . In second appeal, High Court remanded the case back to the first Appellate Court for recording the finding whether the parties were sufficiently Hinduised after setting aside 1 st Appellate Court judgment.

4. After remand the first Appellate Court held that parties were sufficiently Hinduised and Hindu Law of Succession would be applicable and confirmed the judgment of the trial court.

5. The respondent filed second appeal before the High Court challenging the said finding contending that courts be low had committed error in recording the finding that Hindu Succession Act will apply. However, the High Court allowed the appeal of the respondent by holding that Hindu Law as it stood prior to enactment of Hindu Succession Act, 1956 would apply, hence the appellant No. 1 inherited the property during her lifetime and on her death it would devolve to the agnates of her husband viz. contesting respondent no1. Challenging the said finding, the submission on behalf of the appellant is that the High Court committed error in concluding that the parties would be governed by the law as prevailed prior to coming into force of Hindu Succession Act, 1956. The submission is, once finding is recorded by the first Appellant Court and confirmed by the High Court that the parties are Hinduised then they would be governed by the law as is applicable

on any Hindu and if that be so the Hindu Succession Act, 1956 would be applicable to the parties. Challenging this submission, learned Counsel for the respondent submits that the parties being tribals by virtue of Sub-section 2 of Section 2, the Hindu Succession Act, 1956 would not be applicable. It excludes the members of any Scheduled Tribes from their application to the said Act. Based on this submission is, even if the parties have Hinduised, the parties being of Santhal tribe, they are following their customary law of Santhal, hence Hindu Succession Act would not be applied. Reliance being placed to the decision of Patna High Court, reported in 1967(15) Bihar Law Journal 323 (Satish Chandra Brahama v. Bagram Brahma and Anr.) This decision deals with the case of Scheduled Tribes, namely, Uraon. The court held that Uraon Tribe is a member of Scheduled Tribe within the meaning of Clause 25 of Article 366 of the Constitution of India and by virtue of Sub-section 2 of Section 2 of the Hindu Succession Act, the provision of that Act will not apply to this tribe, consequently Section 14 would also not apply. The said decision further records, the Uraon can change their religion but by changing of the religion alone they do not cease to be Uraon for other purposes. The Court's findings based on various other factors, such as religious functions, marriages, disposal of the dead bodies by cremation or by burying the dead body etc., has to be tested before such changes.

6. The question which arises in the present case is, whether the parties who admittedly belong to Santhal tribe are still continuing with their customary tradition or have they after being Hinduised changed their customs to that what is followed by the Hindus. It is in this context when the matter came first before the High Court, the High Court remanded the case for decision in this regard. After remand, the first appellate court recorded the findings, that most of the names of their families of the parties are Hindu names. Even P.W. 1 admits in the cross examination that they perform the pindas at the time of death of anybody. Females do not use vermillion on the forehead after the death of their husbands, widows do not wear ornaments. Even P.W. 2 admits that they perform Shradh ceremonies for 10 days after the death and after marriage, females use vermillion on their foreheads. The finding is that they are following the customs of the Hindus and not of the Santhal's. In view of such a clear finding, it is not possible to hold that Sub-section 2 of Section 2 of Hindu Succession Act excludes the present parties from the application of the said Act. Sub-section 2 only excludes members of any Scheduled Tribe admittedly as per finding recorded in the present case though the parties originally belong to the Santhal Scheduled Tribe they are Hinduised and they are following the Hindu traditions. Hence, we have no hesitation to hold that Sub-section 2 will not apply to exclude the parties from application of Hindu Succession Act. The High Court fell into error in recording a finding to the contrary. In view of this, the widow of Lakhiram would become the absolute owner by virtue of Section 14 of the said Act, consequently the gift given by her to appellant Nos. 2 and 3 were valid gift, hence the suit of respondent No. 1 for setting aside the gift deed and inheritance stand dismissed.

7. The appeal is allowed. The order dated 27th January, 1986 passed by the High Court is set aside. No order as to costs.