CALCUTTA HIGH COURT

Chhatradhari Singh

Vs

Saraswati Kumari

(Ghose and Gordonm , JJ.)

20.07.1894

JUDGMENT

Ghose and Gordon, JJ.

1. One Atlanta Narain Singh was the holder and possessor of an ancestral ghatwali tenure in the Sonthal Pergunnahs described in the plaint as "Mehal No. 38 ghaiwali taluk Noniad within towji No. 1, within pergunnah Shaontadi tuppeh Sewruth in Deoghur." He died without issue on the 14th Agrahan 1295, leaving a widow, Srimati Saraswati Kumari, who is the plaintiff in this suit, and who claims to be entitled as her husband's heiress to succeed to the ghatwali in preference to her husband's brother, Chhatradhari Singh. Her case as set out in the plaint is substantially this : According to long-established custom the ghatwali is held by one person and descends to his eldest son, and in default of male issue to his widow; that after her husband's death she applied to have her name recorded as her husband's successor to the ghatwali, but that the Doputy Commissioner rejected her application and illegally appointed her late husband's brother, the defendant Chhatradhari Singh, to be ghatwal; that the defendant is not her husband's heir, that he separated from her husband during the life-time of his father, the late Darbar Singh, and has ever since remained separata in food and transaction; and that according to the custom prevailing in ghatwali tenures he was allotted certain mouzahs for his maintenance. She accordingly brought this suit to establish her right to the ghatwali tenure as heiress of her husband, and to set aside as illegal the order appointing her husband's brother as his successor to the ghatwali. The defence raised by Chhatradhari Singh was that he was not separate from but joint with his brother, and that under the Benares School of Hindu Law he was his brother's successor and not the plaintiff; and the defence of the Secretary of State, who was subsequently added as a defendant, was that the plaintiff is not a descendant of the deceased ghatwal, within the meaning of Section 2, Regulation XXIX of 1814, and is therefore not entitled to succeed to the ghatwali in question. The learned Subordinate Judge has decreed the suit. He finds that the Deputy Commissioner was not legally competent to appoint Chhatradhari to succeed his deceased brother as ghatwal; that the word "descendants" in Section 2 of Regulation XXIX of 1814 is not necessarily restricted to actual issue of the body but includes natural or legal heirs; that Chhatradhari Singh was separate

from his brother in estate and transactions at the time of his brother's dead that, therefore, the plaintiff, and not Chhatradhari, was the legal heir of Ananta Narain, and that there was no bar to the plaintiffs right by reason of her being a female, it being established that there is a custom prevailing in tuppeh Sewruth Deoghur of females succeeding to ghatwali tenures.

2. Against this decree, the defendant Chhatradhari appealed to this Court. He has since died, and his eldest son has been substituted as his legal representative for the purpose of the present appeal. His learned pleader has attacked the judgment of the lower Court mainly on two grounds, viz., (1) that plaintiff being the widow of the late ghatwal is not a "descendant" within the true meaning of the term as used in a. 2 of Regulation XXIX of 1814; and (2) that Chhatradhari was joint with his brother at the time of his death, that the ghatwali tenure was joint family property, and therefore that Chhatradhari was entitled to succeed under the law of the Mitakshara.

3. As regards the first ground, we are not prepared to give the word descendants the restricted meaning contended for by the learned pleader for the appellant. No doubt in its strict grammatical sense, the word denotes issue of the body, but having regard to the origin, character and incidents of these Beerbhoom ghatwali tenures as described in Regulation XXIX of 1814 (the tenure in the present case is admittedly a Beerbhoom ghatwali) it seems to us very doubtful whether the framers of the Regulation intended to give to it that restricted meaning. Mr. Justice JACKSON in the case of Lall Dharee Roy v. Brojo Lall Singh 10 W.R. 401 observes in reference to Regulation XXIX of 1814: "By this enactment a hereditary tenure was secured to the ghatwals and their descendants, subject only to the condition of punctual payment of the rent assessed upon them and fulfilment of their other obligations." We entirely concur in the remarks of that learned Judge. We think that these tenures are in fact tenures to be held in perpetuity, and are descendible from generation to generation subject to certain conditions and obligations, and that it would be inconsistent with the true character of these tenures to hold that the Legislature intended that they should devolve on issue of the body only and not on heirs generally according to the law which may govern such succession. Moreover, the case of Kustooree koomaree v. Monohur Deo W.R. Gap. No. (1864) 39, appears to us a clear authority in favour of the view we take. In that case the learned Judges held that under the Mitakshara the mother of the last ghatwal, in default of issue of the body, had a preferential right to the ghatwali tenure as against a collateral male member of the family. It is true that the meaning of the word "descendants" in Regulation XXIX of 1814 does not appear to have been discussed in that case, the principal point for determination being whether a female could hold a ghatwali tenure, but at the same time we do not think it likely that the learned Judges, in arriving at the conclusion they did arrive at, entirely overlooked this matter. In describing the nature of these tenures they observed as follows: "These tenures, it must be remembered, were in existence in many parts of the country long before the accession of the present Government, and were grants of land made either by the authority or sanction of the Government to certain persons as remuneration for their services as police. The head or sirdar of each of these police stations was required to keep up a certain number of men properly armed to apprehend criminals, protect travellers, keep the peace and to

perform other police duties. They were liable to be dismissed for misconduct or neglect, and any stranger might have been appointed in their room. Some of these grants were hereditary in their origin, and all very soon became so, and it being inconvenient and wholly subversive of the ghatwali system to admit the element of Hindu law, which requires an equal mission of the deceased father's property among his sons, the ghakwali tenure "descended undivided to the eldest son, to the exclusion of the others, who either lived with, or were supported by him, or followed their own pursuits."

4. We think that these observations indicate that the learned Judges then understood that the word "descendants" in the Regulation was not meant to be confined to the heirs of the body but that it included heirs generally according to the particular law applicable to the case.

5. The plaintiff then being, as we think, a descendant of her husband within the meaning of the Regulation, the next question which arises is whether she or her husband's brother is the preferential heir of Ananta Narain Singh, ft is admitted that by custom the ghatwali tenure is impartible and descends to the eldest son, and further that this family is governed by the law of Mitakshara. In the case of Nilkristo Deb *Barmono v. Bir Chandra Thakur* [1]*[see also Sartaj Kuari v. Deoraj Kuari*[2]*],* their Lordships of the Privy Council at page 542 of the report in Moore's I.A. observed: 'Where a custom is proved to exist, it supersedes the general law which however still regulates all beyond the custom." Applying this principle to the present case, the point for determination is whether Chhatradhari, at the time of the death of his brother Ananta Narain, was joint with or separate from him. We have examined the evidence bearing on this matter, and we have no hesitation in accepting the conclusion of the learned Subordinate Judge that Chhatradhari was separate from his brother in food, estate, and transactions. We think the evidence proves that Chhatradhari separated in 1262 during the life-time of his father Darbar Singh, who then assigned to him for his maintenance five villages appertaining to the ghatwali holding-an assignment which after his father's death was renewed by Ananta Narain in 1292. The evidence further proves that Chhatra-dhari exclusively enjoyed the profits of these five villages; that he held some other villages on lease from his father, two of which he dealt with as his own property by sale to Muktaram Dutt and Torab Khan; and also that his transactions generally were separate from those of his brother. We find also on the evidence that the ghatwali was exclusively the property of Ananta Narain, who was in sole enjoyment of the profits thereof with the exception of the villages assigned to Chhatradhari according to the prevailing, custom. In this view the plaintiff, being the widow of Ananta Ram (sic), is clearly his heiress under the Mitakshara, and neither Chhatradhari nor any of his sons has any right to succeed by survivorship.

6. The learned pleader for the appellant has however contended before us that, although this ghatwali tenure is impartible, yet, according to the decision of their Lordships of the Privy *Councilin Chintaman Singh v. Nowlukho Koonwari*[3] it is not necessarily separate property, and that as their Lordships observe, "whether the general status of a Hindu family be joint or

undivided, property which is joint will follow one and property which is separate will follow another course of succession." The decision referred to is no doubt an authority for the proposition that there may be impartible joint family property, such as a raj or other estate similar to a raj, but whether such property is to be regarded as joint or separate would appear to depend generally upon the character of the property at its inception, such as the nature of the grant, &c, creating it. Having regard however to the view we have already expressed as to the status of the family in the present case, and as to the ghatwali tenure having been the exclusive property of Ananta Narain, we think it is unnecessary to determine what was originally the character of this tenure, although, if we were called upon to decide the question, we should be disposed to say, with reference to the peculiar character of these tenures as described in Regulation XXIX of 1814, that they were intended to be the exclusive property of the ghatwal for the time being, and not joint family property in the proper sense of the term. And in this connection we would refer to some observations of the learned Judges who decided the case of Kustooree Koomaree v. Monohur Deo W.R. Gap. No. (1864) 39 already referred to. They say: "The party who succeeds to and holds the tenure as ghatwal must be, and has always been, looked upon as sole proprietor thereof, and therefore the other members of the family cannot claim to be coparceners and entitled to share in the profits of the property, though they may by the permission and goodwill of the incumbent derive their support, either from some portion of the property which he may have assigned to them or directly from himself, and if it be so with the nearer members, the distant members of the same family cannot be considered as holding in common with the incumbent so as to bar the widow or mother's right to succeed."

7. For the above reasons we think the learned Subordinate Judge has rightly decreed this suit, and we accordingly dismiss this appeal with costs.

Cases Referred.

112 Moo. I.A. 523 : 3 B.L.R. P.C. 13
2I.L.R. 10 All. 272 : L.R. 15 I.A. 51
3I.L.R. 1 Cal. 153 : 13 W.R. P.C. 21