CALCUTTA HIGH COURT

Kailash Chandra Chuckerbutty

Vs

Kashi Chandra Chuckerbutty

(Banerjee and Rampini, JJ.)

14.01.1897

JUDGMENT

Banerjee and Rampini, JJ.

1. This appeal arises out of a suit brought by the plaintiffs-appellants to recover possession of certain immoveable property, on the allegation that, the said property, along with other properties, belonged to one Radhakrishna Chuckerbutty, the maternal grandfather of the plaintiffs; that upon the death of Radhakrishna's widow in whom they had vested by inheritance, the three daughters of Radhakrishna, vis, Bishakha, mother of the plaintiffs, Gaganeswari, defendant No. 2, and Subhadra, the wife of defendant No. 1 became jointly entitled to the same; that Kali Shankar Chuckerbutty, brother of Radhakrishna, having kept Bishakha out of possession, she brought a suit against him and her two sisters Subhadra and Gaganeswari to recover possession of her share in the properties left by her father; that that suit resulted in a compromise, by which Bishakha and her two sisters obtained certain properties to be held by them separately; that subsequently Bishakha died and Gaganeswari became a childless widow; and that upon the death of Subhadra, the property obtained by her under the terms of the compromise became vested in the (sic)

2. The defence, so far as it is material for the purposes of this appear, to the effect that the properties obtained by Subhadra under the compromise, did not belong to Radhakrishna, and that the plaintiffs are not entitled to claim the same during the lifetime of Gaganeswari, the surviving daughter of Radhakrishna and of defendant No. 1, who is the heir to Subhadra's property in preference to the plaintiff's, her sister's sons.

3. The first Court gave the plaintiff's a decree; but on appeal the lower Appellate Court has reversed that decree, holding that Hindu joint tenants such as widows and daughters, "are incompetent to convert, by mere acts of their own, joint estates into estates of severalty," and that Gaganeswari was consequently entitled to hold Subhadra's share.

4. In second appeal it is contended on behalf of the plaintiffs that the lower Appellate Court is wrong in holding that, under the Bengal School of Hindu law, daughters are incompetent to convert their joint estates into estates in severalty; and that it ought to have held that, under the terms of the compromise, the plaintiffs were entitled to the properties left by Subhadra in preference to Gaganeswari and Subhadra's husband. On the other band, it is contended for the defendants-respondents in support of the decree of the lower Appellate Court, that all that the daughters of Radhakrishna did under the compromise was only to give up their rights in favour of each other during their joint lives, and that, if it be conceded that any estates in severalty were created by the compromise in favour of the three daughters of Radhakrishna, the properties now in dispute did not all belong to him.

5. We are of opinion that the lower Appellate Court is wrong in holding that, under the Hindu law of the Bengal School, when several daughters take a joint estate, they are incompetent to convert that joint estate into estates in severalty. We think that according to the law of the Dayabhaga, when several daughters inherit the estate of their father, they are competent to enter into any arrangement regarding their respective rights in that estate, provided that such arrangement does not interfere with the rights of the reversionary heirs except by way of accelerating their succession. This view is fully home out by the law as laid down in the case of the widow, which is analogous to that applicable to the case of daughters, and also by that laid down in cases relating to the succession of daughters (see the Dayabhaga, chapter XI, Section 2, paragraphs 30 and 31, and the cases of *Janoki Nath Mukhopadhya v. Mothuranath Mukhopadhya*[1] *and Padmamani Dasi v. Jagadamba Dasi*[2] We are also of opinion that the respondents contention that all that the daughters gave up in favour of each other under the compromise related to their rights during their joint lives is untenable; and we think that what the daughters intended to do by the compromise was to create in favour of each an absolute estate in the properties allotted to her, freely alienable by her and descendible to her heirs. How far they were competent to do so and how far this arrangement would entitle the plaintiffs to succeed in the present suit are questions which remain to be considered. Whilst taking this view of the compromise, we must, on the other hand, say that it does not in terms amount to a relinquishment by each daughter of her right of survivorship, so as to make the shares allotted to the other daughters pass on to the reversionary heirs on their death. The petitions of compromise nowhere say that; but, on the contrary, the; distinctly provide that, upon the death of each daughter, the properties taken by her, if not alienated by her in her life-time, should go to her sons, grandsons, etc., that is, to the heirs of her separate property which must mean her stridhan, though the word stridhan is not used in the petitions. That being so, can it he (sic) though the compromise does not in terms entitle the plaintiffs to (sic) state left by Subhadra, still the effect of the Hindu law, which is to prevent the compromise from taking effect to its fullest extent, is to accelerate the succession of the plaintiffs who are the ultimate reversionary heirs at the present date in regard to the properties left by the deceased daughter ? We are of opinion that this question must be answered in the negative. For, we think it was competent to the daughters of Radhakrishna to come to any arrangement amongst themselves as to their respective rights which would last during the continuance of the

daughter's estate, that is, up to the time of the death of the last surviving daughter, and that irrespective of the fact whether the last surviving daughter became disqualified to inherit after the succession had vested in her and her other sisters jointly. In support of the view that the subsequent disqualification of a daughter after the succession has vested in her along with other daughters does not deprive her of her right to continue to hold the daughters' estate, we need only refer to the case of *Amirto Lal Bose, v. Rajonee Kant Mitter*[3]. That being so, the estate that devolved on the daughters of Radhakrishna would not determine until after the death of Gaganeswari; and, until that event happens, the arrangement come to between the daughters, which was assented to by all the daughters, should, in our opinion, remain in operation. This would not in any way interfere with the rights of the reversionary heirs for the simple reason that those rights do not come into existence until after the death of Gaganeswari. Now, what is the effect of the arrangement come to amongst the daughters ? As we have already indicated its effect was to make the properties allotted to each daughter remain her property capable of being alienated by her, and, if not alienated, capable of passing on her death, to the heirs to her separate property as distinguished from the property inherited by her from her father. In this view, the properties obtained by Subhadra, granting that they were properties which, as the plaintiffs alleged, originally belonged to Radhakrishna, would pass to the nearest heir to her stridhan, that is, to her husband, defendant No. 1, in the same way as the properties left by the plaintiffs' mother passed to them, not because they were the reversionary heirs of their maternal grandfather, but because they were the nearest heirs of their mother. We therefore think that the plaintiffs' suit has been rightly dismissed by the lower Appellate Court, though upon a wrong ground. The result then is that this appeal fails and must be dismissed with costs.

Cases Referred.

1I.L.R. 9 Cal. 580
26 B. L. R. 134
315 B. L. R. 10; 23 W. R. 214