CALCUTTA HIGH COURT

Gostha Behari Bera

Vs.

Haridas Samanta

A.F.A.D. No. 575 of 1954

(P.N. Mookherjee and Sarkar, JJ.)

19.12.1956

JUDGMENT

P.K. SARKAR, J.

1. This second appeal is by the defendants and arises out of a suit instituted in Sub-Judge's Court, Midnapore, for a declaration of the plaintiff's title to 8 as. share of the suit-properties and for recovery of possession thereof. The properties in question belonged to two brothers, Ramchand and Balaichand in equal shares. Defendants No. 5 to 7 are the heirs of Balai. Ramchand died leaving behind a widow Haripriya and three daughters and Haripriya inherited a widow's estate in his properties. She died in 1352 B. S. and was survived by two of the daughters, namely, Barada, a sonless widow, and Basanta Kumari, defendant No. 4, and by a son of the predeceased daughter named Sripati, defendant No. 3. Haripriya had during her lifetime sold her share of the properties of ka sch. of the plaint to defendant No. 1 and had executed two deeds of gift in respect of the properties of schs. kha and ga in favor of defendants No. 2 and 3 respectively. The plaintiff purchased 8 as. share of all the properties from Basanta Kumari in 1353 B. S. after the death of Haripriya. He challenged the transfers made by Haripriya by way of sale and gift as without legal necessity and as such not binding on the sole reversionary heir Basanta Kumari and claimed to have acquired title to the properties by his purchase from the latter.

2. Defendant No. 1 pleaded that the sale to him was for legal necessity and was therefore binding on the reversioner Basanta Kumari. Defendant No. 2 pleaded that the gift to him was for religious purposes and hence bound the reversioner, while defendant No. 3 pleaded that he had been brought up by Ramchand who had expressed a desire to give him a share of the properties and that the gift by Haripriya was in pursuance of that desire and hence binding on the reversioner. Other objections raised in the suit are not material at this stage.

3. The trial Court decreed the suit and this decree was affirmed on appeal by the Additional District Judge, Midnapore. Both the Courts have concurrently found that Haripriya had a widow's interest in the properties and that the sale in favor of defendant No. 1 was not justified by legal necessity. This finding has not practically been challenged before us. No evidence of legal necessity was adduced by defendant No. 1 and no attempt was made to prove that Haripriya

had any debts or was in want of any money for her maintenance, as recited in the document, or that the purchaser had made any enquiry worth the name.

4. As to the gift in favor of defendant No. 2 the document recites that the done was a deity named Hari Thakur represented by the defendant No. 2 as shebait. Both the Courts have found that no such deity was in existence and that the gift was also void as a gift for a charitable and religious purpose because it was not a gift for tne spiritual welfare of Haripriya's husband. This finding has been challenged before us and it has been contended by Mr. Sen for the appellants on the authority of the decision in the case of *Khublal v. Ajodhya*[1], and tne Privy Council decision in *Sardar Singh v. Kunj Behari, 49 IA 383* , that the widow was entitled to alienate a small' portion of the property inherited from her husband for pious and religious purposes which conduced to the bliss of the soul of her deceased husband. It is not, however, necessary to decide in this appeal whether the gift could be upheld on that ground because, on the finding of both the Courts, the gift was invalid as beng in favor of a non-existent deity. It has been found and is no longer in dispute that there is no deity in existence as Hari Thakur. There is only a place in the village covered by a mancha or platform with Tulsi plants where the villagers perform worship of Hari. But that place belongs to the landlords and no deity is installed there and there is no endowment in favor of Hari Thakur. The defendant No. 2 who claimed to be a shebait of the deity stated that he had been appointed such shebait by the villagers, but this was not proved and his statement remained uncorroborated. Both the Courts have found that the defendant No. 2 used to look after the affairs of Haripriya and are of the opinion that it was a colourable transaction. It has been argued that this opinion was not based on any evidence, but this was a legitimate inference from the facts and circumstances proved in this case.

5. So far as the gift in favor of defendant No. 3 is concerned, he sought to make out a case at the hearing of the suit that Ramchand had made an oral gift of the properties to him and put him in possession thereof. As this case was not mentioned in the written statement and was in conflict with the recitals in the deed of gift, it was rightly rejected by the Courts' below. Both the Courts also found that there was no proof either of the case in the written statement that Ramchand had expressed a desire to make this gift in his favor and that the widow merely carried out his wishes. This case was equally in conflict with the recitals in the document. A further plea of adverse possession was advanced by this defendant which was negatived by the Court below as unsupported by evidence. We have been taken through the relevant evidence and we are satisfied that these findings of fact have been properly made on the evidence.

6. It has finally been contended by Mr. Sen that under the provisions of Section 14 of the Hindu Succession Act, 1956, Haripriya should be deemed to have had the interest of a full owner in the properties inherited from her husband and that as such the transfers made by her in favor of defendants No. 1 to 3 by sale and gift were not open to challenge by Basanta Kumari or the plaintiff. The provisions of Section 14, sub-section (1), of the aforesaid Act relied upon by Mr. Sen are these: "Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as limited owner". Then follows an explanation defining and describing the term 'property' used in the sub-section and then sub-section

[1] ILR 43 Cal 574: AIR 1916 Cal 792

(2) provides that the provisions of sub-section (1) shall not affect any restricted estate in property granted to a female Hindu by any instrument of gift, Will, etc., under a decree or order of Court

or under an award.

7. There can be no doubt from the words of sub-section (1) that it refers to property held and possessed by a Hindu female at the date of the commencement of the Act and it enacts that such property shall be held by her as full owner thereof and not as limited owner under the Hindu Law. Section 4, sub-section (1) of the Act declares: "Save as otherwise expressly provided in this Act - (a) any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act; (b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act." So the effect of Sections 4 (1) and 14 (1) read together is that the Hindu Law regarding the Hindu widow's estate will not apply to property held and possessed by a Hindu female from the date of the commencement of the Act and that such Hindu female shall hold the property thereafter not as limited owner under the Hindu Law but as full owner. These provisions affect property held and possessed by a Hindu female at the date of the commencement of the Act and cannot affect any property which was held and possessed in the past by such female but which she had transferred and thereby ceased to hold and possess at the date of the commencement of the Act or to which succession had opened on her death before the commencement of the Act.

8. Mr. Sen contended that the expression 'possessed by a female Hindu' in sub-section (1) of Section 14 should be interpreted as 'possessed at any time' and he referred to the expression 'whether acquired before or after the commencement of this Act' which follows this expression. But the expression 'whether acquired before or after the commencement of this Act' should be interpreted, according to the context, as applying to the word 'property' and not to the word 'possessed'. The plain meaning of the expression is that any property irrespective of the fact whether it had been of acquired before or after the commencement of this Act - which is in the possession of a Hindu female shall after the commencement of this Act be held by her as full owner. That is to say, there will be a change in the nature of the interest in the property in the hands of a Hindu female in consequence of this Act and she will no longer hold the same as limited owner under the Hindu Law but as full owner. Mr. Sen's argument ignores the use of the expression 'shall be held by her'. If his interpretation is to be accepted, then this expression would have to be read as 'shall be deemed to have always been held by her' as full owner. But to interpret the expression in this way would amount to importing new words which would not be justified and which would be inconsistent with the plain meaning of the sub-section. The sub-section only declares the law which will come in force on the enactment of the Act. It does not enact that the law should be deemed to have been always so. Such an interpretation would be impossible in view of the provisions of Section 4, sub-section (1), already referred to. If the Legislature had intended to affect the interests which had already been acquired from a Hindu female or which had vested in the reversioners on the death of a Hindu female before the commencement of the enactment, it would have said so in express words. The sub-section cannot be interpreted in the manner suggested by Mr. Sen as it would affect interests already acquired or vested and such cannot be deemed to have been the intention of the Legislature, in the absence of express words to that effect.

9. The result therefore is that this appeal fails and is dismissed with costs to the plaintiff-respondent.

P. N. MOOKERJEE, J.

10. I agree that this appeal should fail.

11. I would only like to add a few words on Section 14 of the new Hindu Succession Act, 1956. That section was relied upon by Mr. Sen in support of his argument that his clients, who are prior or pre-Act transferees from a Hindu widow, Sm. Haripriya, became absolute owners of the land, claimed by them, as soon as this new Act came into force; that is on and from June 17, 1956, when it received the President's assent.

12. Mr. Sen's argument was of a two-fold character. His first submission was that, on its plain language, Section 14 would apply to all estates of a Hindu female, whether acquired before or after the Act and whether in her possession or not at the date of its commencement. I am unable to accept this submission. The opening words "any property possessed by a female Hindu" obviously mean that, to come within the purview of the section, the property must be in the possession of the female concerned at the date of commencement of the Act. They clearly contemplate the female's possession when the Act came into force. That possession might have been either actual or constructive or in any form, recognized by law, but, unless the female Hindu, whose limited estate in the disputed property is claimed to have been transformed into absolute estate under this particular section, was at least in such possession, taking, the word "possession" in its widest connotation, when the Act came into force, the section would not apply. A fortiori, the section would not be attracted where the female concerned had parted with the property and thus lost both title and possession before the Act. At the date of the Act, she would not have, admittedly in such a case, possession, actual, constructive or otherwise; and, the title to the property having been lost, even the right to possession would be altogether gone. Mr, Sen's first submission cannot, therefore, succeed.

13. Mr. Sen laid particular stress upon the words, "whether acquired before or after the Act", but it is clear that they do not dispense with the requirement of possession as contained in the preceding-words "possessed by a female Hindu". Such possession, as I have said above, have obvious reference1 to the point of time when the Act came into operation. The words "whether acquired before or after the Act" merely refer to the time of acquisition of the property by the female concerned and they seek to embrace all acquisitions, whenever made, thus making the Act applicable even to pre-Act limited titles, and, to that extent, they make the Act somewhat retrospective, though probably in loose sense, but that is clearly subject to the requirement, stated in the earlier part, namely, of possession of the Hindu female concerned at the relevant date which, as we have explained above, means the date of commencement of the Act. Past possession is of no avail. If the Hindu female had lost possession before the Act and was not in possession of the property, either actual or constructive or in any sense of the term, at the date of its commencement, Section 14 would not obviously apply If the section had contained the words 'shall be deemed to have always been held' or some such words in addition to the words "shall be held", Mr. Sen's argument might have been acceptable, but, as I remarked during arguments and Mr. Sen had to concede, no such words occur in the section and they cannot be imported into it through the process of construction. The section, as its language shows, states or declares what the law would be from the time it comes into operation. It is, in form, clearly an enacting section, stating what the law will be in future from that time. It does not seek to affect past transactions by

declaring that the law (which was admittedly different and which was being changed by the section) shall be deemed to have been always or in the past as enacted in the section. It is, in that sense, purely prospective legislation and in no way retroactive or retrospective. Mr. Sen's argument on Section 14 must, therefore, fail.

14. Mr. Sen also argued that, in view of Section 4 of the Act, the old law of limited estates under the Hindu Law would absolutely cease and, therefore, the reversioner would altogether disappear from the picture and that, accordingly, Section 14 should be given a meaning, consistent with that change or policy of the law and should be interpreted as suggested by him. I am unable to accept this argument too. As I have said above, the section (S. 14), on the language, used by the legislature, cannot bear that interpretation and there is nothing in Section 4 which compels or even favours or warrants a different view. Section 4 in its relevant Clauses (a) and (b) of sub-section (1), merely abrogates the Hindu Law and other laws, so long applicable to Hindus, as against provisions, made in the Act, and, if Section 14 had applied to this particular case by its own force, Section 4 would have excluded operation or application of the relative rules of Hindu Law or any other inconsistent law and it would possibly have done so, so far as Section 14 is concerned, having regard to the operative language of this latter section, even in proceedings, pending at the date of the commencement of the Act. No greater effect, however, can be given to Section 4 and there is nothing in it to control or direct the meaning or interpretation of the words of Section 14. It has, indeed, no bearing on such interpretation and neither its scheme nor its language would justify any interference in that matter.

15. I, therefore, agree with the order, proposed by my learned brother.
Appeal dismissed.