ORISSA HIGH COURT

Maguni Padhano

Vs

Lokananidhi Lingaraj Dora

Second Appeal No. 422 of 1952

(Panigrahi, C.J. and Narasimham, J.)

27.09.1955

JUDGMENT

Narasimham, J.

1. This is an appeal from the appellate judgment of the Subordinate Judge of Berhampur setting aside the judgment and decree of the District Munsif of Berhampur and dismissing the appellant-plaintiff's suit with costs.

2. The dispute relates to 1.48 acres of land in village Kumarad within the estate of Badakhimedi. The admitted previous owner of the property was one Sarathi Padhano, the father of plaintiff-appellant Maguni. Sarathi died sometime in 1917 leaving a widow named Lakshmi, a son (the plaintiff) and two daughters. The finding of the lower appellate Court was that for a period of twenty or twenty-five years the plaintiff remained in Rangoon eking out his livelihood leaving his mother in charge of his property in the village. During his absence his mother practically acted as the manager of the family, maintained her two daughters and also celebrated their marriage. For that purpose her only source of income was 2.3 acres of land left by her husband Sarathi. Sometime in July, 1935 she took a loan of Rs. 60/8/0 from the father of the defendants by executing a promissory note (Ext. B). On 1-7-1939 she executed a sale deed (Ext. C) in favour of the defendants' father conveying the disputed property to him with a view to discharge the previous debt incurred on the hand-note (Ext. B). It was further found by the lower appellate Court that the sale was for legal necessity inasmuch as it was made for discharging an antecedent debt which was incurred for the purpose of celebrating the marriage of the plaintiff's sisters.

3. The main question of law that arises for decision is whether during the absence of the plaintiff in Rangoon his mother as the de facto manager of the joint family property was competent to alienate a portion of the same for legal necessity. The lower appellate Court relied on a Nagpur decision reported in - *'Commissioner of Income Tax C. P. and Berar v. Laxmi Narayan[1]',* and held that such alienation would be valid and binding on the plaintiff. Mr. Mohapatra on behalf of the appellant however challenged the correctness of this decision and urged that it was dissented from in a later Madras decision reported in - *'Radha Ammal v. Commissioner of Income Tax, Madras[2]'*and that, moreover, it was opposed to the fundamental principles of Hindu

Law that a coparcener alone can be the Karta of a Hindu joint family and a female though a member of the joint family cannot be its Karta and consequently has no right to bind the property of the family by alienations for legal necessity.

4. The question is undoubtedly not free from difficulty, especially in view of the sharp conflict between the Nagpur and the Madras High Courts. As early as 1926, a Full Bench of the Nagpur High Court in a case reported in - "*Kesheo v. Jagannath*[3]*',* held that any adult member of a joint family (male or female) was entitled to be its manager and that consequently an alienation by a Hindu widow who was managing the estate of her minor son and step-son for legal necessity was valid and binding. This view was followed in - *'Pandurang Vithoba v. Pandurang Ramchandra*[4]*',* Doubtless, these two decisions could be distinguished from the present case inasmuch as there the alienations were made by the female manager while acting as the guardian of her minor son. The powers of a mother guardian of her minor son stand on a slightly different footing. Doubtless, there are some observations in those decisions to the effect that there is no bar to a Hindu female being the manager of Hindu joint family. In AIR 1949 Nagpur 128, these decisions were followed and it was further held that the right or status of a coparcener was not a sine qua non of competency to become the manager of a Hindu joint family.

5. On the other hand, the Madras High Court, in - '*Seethabai v. Narasimha Shet*[5]*',* and AIR 1950 Madras 538, has held that a Hindu female though a member of a joint family cannot be its manager or Karta. It was further pointed out in the latter Madras decision that

> "the right to become a manager depends on the fundamental fact that the person on whom the right devolves was a coparcener of the joint family."

The latest Nagpur decision was commented upon and dissented from on the ground that though the judgment made out a plea for reform of Hindu law it did not lay down the correct law as it stood. There was some discussion about the right conferred on Hindu widow by the Hindu Women's Rights to Property Act, 1937 and it was further pointed out that her right even under that Act was restricted to the limited right of a Hindu widow and that it did not confer on her the right of a coparcener so as to entitle her to manage the joint family property. In the present case, however, any discussion about the effect of the provisions of the H. W. R. P. Act 1937 may be academic inasmuch as admittedly Lakshmi's husband died sometime in 1917, long before the Act came into force.

6. With respect, I am inclined to follow the Madras view. It seems to be opposed to the fundamental principles of Hindu law that a person who is not a coparcener though a member of the joint family, should be capable of being the Karta of the family so as to bind the family by alienations for legal necessity. Doubtless, this view may cause
great hardship to females who are left in charge of the families when the adult male
members go away to distant places like Calcutta or Rangoon for eking out their livelihood. But mere hardship in individual cases can hardly be a ground for stretching the principles of Hindu law to such an extent as to hold that a female can be the manager of the family. It is the look-out of the alienee to see that valid title is conferred on him by insisting on the alienations being made by an adult male member of the family who is the Karta.

7. Mr. Misra on behalf of the respondents relied on the following passage in the well-known case of - *'Hunoomanpershad Pandey v. Mst. Babooee Mundraj Koonweree*[6]*',* and urged that the plaintiff's mother as the de facto manager could make valid alienations for legal necessity :

> "Upon the third point, it is to be observed that under the Hindu law the right of a *bona fide* encumbrancer who had taken from a de facto manager a charge on lands created honestly for the purpose of saving the estate or for the benefit of the estate, is not (provided the circumstances would support the charge had it emanated from, a de facto and de jure manager) a fact by the want of union of the de facto with the de jure title."

But in that particular case their Lordships were dealing with a case of alienation made by a Hindu widow at a time when she was also the guardian of her infant son. The position of a mother-guardian of her minor son is quite different and that case is therefore no authority for the broad proposition that a mother as the de facto manager of the joint family could, even when her son has become a major, make alienations for legal necessity. In the absence of any clear .authority in the texts of Hindu law I am not inclined to follow the Nagpur view.

8. In the result, the appeal is allowed, the judgment of the lower appellate Court is set aside and the plaintiff's suit is decreed with costs throughout.

9. We would, however, direct that in view of the concurrent findings of both the Courts below to the effect that the respondents further had paid Rs. 100/- at the time of the execution of the sale deed and the said sum was utilized for legal necessity of the family, the appellant should pay that sum to respondent 1 before taking delivery of possession of the property.

Panigrahi, C.J.

10. I agree.

Appeal allowed.

Cases Referred.

[1] AIR 1949 Nag 128
[2]AIR 1950 Mad 538
[3] AIR 1926 Nag 81
[4] AIR 1947 Nag 178
[5] AIR 1945 Mad 306
[6]6 Moo Ind App 393 (PC)