

# ORISSA HIGH COURT

Sansir Patelin

Vs

Satyabati Naikani

Second Appeal No. 307 of 1953

(Mohapatra and Das, JJ.)

19.11.1957

## JUDGMENT

### **Mohapatra, J.**

1. This is a defendants' appeal against the judgment dated 22nd September, 1953 of Sri S. K. Mohapatra, Subordinate Judge of Sambalpur, setting aside the decree passed by the Munsif of Sundargarh arising out of a reversionary suit brought by the plaintiffs for a declaration that the Kabala executed on 26th August 1950, (Ext. A) by defendant No. 1 (Sansir Patelin) in favor of defendant No. 2 (Lochan Patel) is not binding against the reversioners of the last male owner Paramananda Patel. Paramananda had no son but only four daughters, Satyabati, Nilabati, Hirabati and Sansir. It is the common ground that Nilabati and Hirabati are well provided for and rich in their husbands' places. Paramananda having died in the year 1940, plaintiff No. 1 and defendant No. 1 inherited the property of Paramananda as the only heirs as the other two daughters are rich and plaintiff No. 1 and defendant No. 1 are unprovided for. Plaintiff No 2 is the son of plaintiff No. 1.

2. The plaintiffs brought the suit on 12th October, 1950 for a declaration that the sale-deed (Ex. A) is not binding against the reversioners as it was not for legal necessity. The consideration was for Rs. 4,000/- and the acreage covered by the sale-deed is 12.59 acres. It also appears, as the case of both parties, that plaintiff No. 1 and defendant No. 1 were joint till the year 1945 when defendant No. 1 filed a suit for partition in respect of half share which ended in a compromise decree dated 20th June, 1945 which was finalized in 1948. Defendant No. 1 got to her share 18.75 acres and the suit property is included within this 18.75 acres allotted to defendant No. 1 on the basis of the compromise decree.

3. The defense was two-fold, (1) that this was the absolute property of defendant No. 1, and (2) that the transaction impugned by the plaintiffs is binding on the reversioners as it was supported by legal necessity

4. The trial Court found that defendant No. 1 was only a limited owner having only a woman's interest in the property at the time of the transfer as she inherited it from her father. He, however,

found that the transaction was supported by legal necessity, and, as such, he dismissed the plaintiffs' suit. The lower appellate Court, while confirming that in fact defendant No. 1 had limited interest at the time of the transfer came to the conclusion that the transaction was not for legal necessity, and, as such, he allowed a decree in favor of the plaintiffs declaring that the transaction (Ext. A) was not binding against the reversioners.

5. Mr. Misra, appearing on behalf of the appellants, does not challenge the finding that defendant No. 1 had only woman's interest at the time of the transfer. On a perusal of the judgment of the Courts below we feel satisfied that the finding of the lower appellate Court that the transaction was not supported by legal necessity is bound to be upheld. Mr. Misra also does not seriously contest the position.

6. Mr. Misra, however, has taken up an interesting point of importance that the reversionary suit must fail on account of the new provisions of the Hindu Succession Act, 1956 (Act 30 of 1956), hereinafter called "the Act", as being not maintainable. His contention is that reading the several provisions of the Act which has brought about a revolution in the Hindu Law of Succession it is quite clear that the widow's estate, as such, stands abrogated. The conception of a reversioner is possible only when a widow's estate intervenes between the death of the last male owner and the actual reversioner coming as the heir of the last male owner on the of the female heir having the woman's interest for life time. The widow's estate having been abolished by the provisions of the Act, there is no such interest as 'reversionary right' and, therefore, a reversioner's suit, as such, must be dismissed as not maintainable. Mr. Misra supports his argument mainly by referring to the provisions of Sections 14, 15 and 4 of the Act. Section 14 of the Act runs as follows :

"14. Property of a female Hindu to be her absolute property : (1) 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 a limited owner.

Explanation:- x x x

2. x x x"

The explanation elucidates what is meant by property as used in sub-section (1). In sub-section (2) it is provided that sub-section (1) will not apply to the property described in that sub-section with which we are not concerned in the case. Section 14 applies even to the property acquired by a Hindu female before the commencement of the Act and confers the most valuable right of an absolute owner. Hitherto indeed she was having a limited interest. But it is very significant and important to note that the application of the provisions of Section 14 conferring full ownership on the female heir is dependent upon the clause "that she must be possessed of the property."

It is plain from a bare reading of the provisions that it has no application to the properties which are not in possession of the female heir. In our view, therefore, it is absolutely clear that the female heir cannot claim absolute ownership in respect of properties of which she is not in possession at the time of commencement of the Act. The inevitable conclusion, therefore, is that the conception of limited rights prevailing in Hindu law up to the commencement of the Act is not completely abrogated. Such properties, in respect of which under the provisions of Section 14 of the Act, she has no absolute ownership, must be governed by the provisions of Hindu law

prevailing prior to the coming into force of the Act. We are prepared to accept that the word 'possessed' has been used in a liberal sense. The female heir may be taken to be in possession of the property, if the property is in possession of a licensee, a lessee, a mortgagee; but in a case of this nature when she had transferred whatever interest she had at the time of the transfer in favor of the purchaser, it can never be suggested for a moment that the property is in her possession. The provisions of the Act are never meant to enhance the rights of the purchasers who at the time of their purchase knew full well that the transaction was not for legal necessity. That finding on the question of legal necessity is final and in such a case the transferee would be entitled to the interest that the female heir had at the time when the transfer took place and it was certainly not full ownership but it was only an interest of a Hindu widow. We may, however, observe on a careful perusal of the several provisions of the Act that it was never the intention of the Parliament to abrogate all other previous laws on Hindu law prevailing before the Act came into force on 17th June 1956.

7. It would be relevant in this connexion to refer to Section 4 of the Act on which Mr. Misra relied very much. It runs as follows:

- "(4) Over-riding effect of Act:- (1) 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.
- (2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings." Any specific provision of law codified in this Act must prevail if it is inconsistent with any of the prevailing propositions of Hindu Law prior to this Act. But the Act does not abrogate all other provisions of Hindu Law. In our opinion, therefore, the conception of a reversioner will still remain in respect of the properties in which the widow does not get the right of a full owner by virtue of the provisions of Section 14 of the Act.

8. We will clarify the provisions by reference to some illustrations in this connexion. Suppose a certain property which was inherited by a Hindu female heir is in possession of an out and out trespasser at the time of the commencement of the Act; and within a few years before the trespasser matures his title by adverse possession the female heir dies. In our opinion, Section 14, in such property, cannot confer on the female heir absolute ownership as she was not in possession of it. She would therefore, have only a limited right. We will give a further illustration. A female heir executes a deed of gift; the donee on the basis of the deed of gift obtains only a limited ownership of the female heir and it will enure during the life time of the female heir as she is not the full owner in respect of this property and the property is no longer hers as she had parted with all her right, title and interest therein on the basis of the deed of gift.

On her death, the property must revert back to the heirs of the last male owner, and, therefore, the conception of a reversioner can never be said to have been abrogated.

9. We will now refer to a few decisions on the point. Even though the Act is very recent, the point has come up before the several High Courts in the meantime, and we have the advantage of very recent decisions on the topic of different High Courts which we propose to review. We will first take up a decision of our own High Court reported in *Laxmi v. Surendra*<sup>1</sup>, which was decided by Narasimham C. J and my learned brother. In that case during the life-time of the widow, the reversioner came with a simple suit for declaration of his right as a reversioner. On a plain reading of Section 14 of the Act, it was decided by their Lordships that the widow who was found by their Lordships as being in possession of the entire estate had full ownership and therefore this reversionary suit was not maintainable. There was no question of any transfer having been made by the widow, and: it was not a suit for a declaration that the transfer was not binding on the reversioner. Their Lordships, therefore, in paragraph 13 of the judgment left the question entirely open in the following manner:

"If actually the widows had alienated any of these properties before the coming into force of the Act and which were not in their possession at the time the Act came into force, they do not become full owners in respect of those properties, by virtue of Section 14 of the Act, and may continue to remain as limited owners. Whether the plaintiff, as one of the reversioners would be entitled to challenge those alienations, if any, on the ground of necessity or otherwise, is a question which it is unnecessary to decide in this litigation as no such relief has been asked for, and we leave the question entirely open." This pertinent question, therefore, having been left open, the other point decided by their Lordships follows as a simple proposition from the plain reading of the section itself.

10. The next decision that we will take up is the case of *Venkayamma v. Veerayya*<sup>2</sup>, It is a Bench decision of Viswanatha Sastri and Satyanarayana Raju JJ., where the judgment was delivered by Viswanatha Sastri J. This is a case exactly to the point as it was a suit brought by a reversioner for a declaration that the alienations made by the widow were not binding on the reversioners as not being supported by legal necessity. Their Lordships decided that Section 14 was retrospective only in so far as it enlarges a Hindu woman's limited estate into an absolute estate even in respect of property inherited or held by her as a limited owner before the Act came into force, and its operation was confined to property in the possession of the female when the Act came into force. Sastri J., made an observation, giving a wider meaning to the word 'possessed'. Thereafter his Lordship categorically observed:

"Where, however, before the Act came into force, the female owner had sold away the property in which she had only a limited interest and put the vendee in possession, she should in no sense be regarded as 'possessed' of the property when the Act came into force. The object of the Act was to confer a benefit on Hindu females by enlarging their limited interest in property inherited or held by them into an absolute estate, with retrospective effect, if they were in possession of the property when the Act came into force and therefore in a position to take advantage of its beneficent provisions.

The Act was not intended to benefit alienees who, with eyes open, purchased property from female limited owners without any justifying necessity before the Act came into force and at a time when the female vendors had only the limited interest of a Hindu woman." Their Lordships further decided that the transferee cannot possibly have, by virtue of the transfer, any more interest than what the transferor had on the date. Therefore, the suit of the plaintiff was held to be maintainable. Indeed the position whether the conception of a reversioner stands completely abrogated by the provisions of the Act was not raised before their Lordships; but nevertheless as we have discussed above it followed as a matter of course from the interpretation of the provisions of Section 14. We respectfully agree with the observations made by their Lordships of the Andhra High Court excepting one point. Viswanatha Sastri J., while giving a wider meaning to the word 'possessed' had made an observation that it might also include the possession of a trespasser. In my opinion it is putting too wider a meaning. A trespasser's possession can never be taken to be a possession in any mode of the rightful owner as his possession is completely adverse to the interest of the rightful owner.

11. The next case is that of the Kerala High Court reported in *Thailambal Ammal v. Kesavan*<sup>3</sup>, There also the appeal was by the plaintiff in a suit for declaration of their reversionary title as against the limited estate-holder and its alienees. Their Lordships did not add anything more but quoted the judgment of Viswanatha Sastri J., in extenso and followed it.

12. It is worthwhile to refer to a Bench decision of the Calcutta High Court, reported in *Gostha Behari v. Haridas Samant*<sup>4</sup>, which supports the view that we have expressed so far. P. N. Mookerjee and Sarkar JJ., constituting the Bench, wrote two separate judgments, but the reasonings are substantially the same. There an argument was advanced that on its plain language Section 14 will apply to all estate of a Hindu woman which were or are acquired before or after the Act and whether in her possession or not on the date of its commencement. The learned advocate contending this position was advancing the argument that it was sufficient, if the Hindu female was possessed of the property at any time whatsoever, to confer absolute title on her under Section 14. This argument was negatived. In our view, it should be summarily negatived. Their Lordships opined:

"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 interest

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." A further argument was advanced on the interpretation of the provisions of Section 4 of the Act that 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 the learned counsel. This contention was also negatived. Their Lordships observed that there was nothing in Section 4 which compelled or even favored or warranted 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. As we have observed earlier, Section 4 admits of no other explanation and by virtue of the provisions of Section 4 it can never be suggested that all other provisions of Hindu Law are abrogated. It is only those provisions which are inconsistent with the provisions of Act that stand annulled and the other provisions must be taken to be prevailing.

13. In the case of *Hari Kishen v. Hira*<sup>5</sup>, their Lordships Bishan Narain and Chopra JJ., also accepted the same view to the extent that the provisions of Section 14 (1) of the Act will not restore to the female heir any property or any rights in the property which she had parted with before the Act came into force.

14. Mr. Misra strongly relies upon a decision of the Patna High Court reported in *Ram Ayodhya Missir v. Raghunath*<sup>6</sup>, the decision being of Ramaswami C.J., and Raj Kishore Prasad J. This decision supports to a great extent the contention of Mr. Misra. Their Lordships have analysed the position of a reversioner recognised in Hindu Law and observed that it was not a vested interest but was a *spes successionis*; a reversionary heir was, however recognised by Courts of law as having a right to demand that the estate be kept free from danger during its enjoyment by the widow or other limited heir; a reversionary heir may sue to restrain a widow or other limited heir from committing waste or injuring the property. Their Lordships have further discussed the position that a reversionary heir may also bring a representative suit for a declaration that an alienation by a widow is not binding on the reversioner. After this analysis their Lordships observed:

"But there has been a revolutionary change in law in this respect because of Sections 14 and 15 of the Hindu Succession Act (Act 30 of 1956). The effect

of these Sections is that the plaintiff in the present case is no more a reversioner and that the estate of Mst. Parkalo Kuer is not a limited estate but an absolute estate and that the plaintiff has no vested interest in the property nor has he a right of reversion or any kind of *spes successionis*." Their Lordships have further observed:

"If that is the effect of Sections 14 and 15 of the statute it must be taken that the plaintiff has no right to bring a suit for a declaration that the sale deed executed by Mst. Suroba Kuer in favor of defendants 2 and 3 was a farzi or collusive document or that there was no legal necessity. We, therefore, hold that the suit of the plaintiff must be dismissed and this appeal must be allowed."

The decisions that we have already referred to were not placed before their Lordships, manifestly

for the reason that they were not reported by them. With very great respect, I must say, the learned Judges have missed the point if they meant to lay down, as a general proposition of law the widows' estates were completely abrogated. It was abrogated only in respect of the property in possession of the widows on the date of the commencement of the Act and as such it cannot be said that a reversioner recognized by Hindu Law with the rights as discussed by them stood abrogated on account of the provisions of the Act. Indeed it stood abrogated to the extent of the property in possession of the widow where she gets an absolute estate by virtue of Section 14. But where a widow had already parted with some items of property inherited as a female heir from the last male owner, the transferee cannot have greater interest than the widow had at the time, and when the provisions of the Act do not apply to such cases, the old law prevailing amongst the Hindus regarding the rights of a reversioner must remain intact and must be followed by Courts of Justice.

15. The case of Madhya Pradesh High Court reported in *Dhirajkunwar v. Lakhansingh*<sup>7</sup>, only follows the Patna decision. It appears, no other decision was cited before them and their Lordships also have unfortunately overlooked, this aspect of the matter. We would therefore, very respectfully differ from the view expressed by Patna and Madhya Pradesh High Courts and agree with the view expressed by Andhra, Kerala, Calcutta and Punjab High Courts and decide that the plaintiffs' suit in respect of this property is maintainable and not affected by the provisions of the Act.

16. We cannot close the judgment without making a reference to Section 15 of the Act which also Mr. Misra has relied upon. Section 15 runs as follows:

"15. General Rule of Succession in the case of female Hindus :

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16-

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs

referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-

section (1) in the order specified therein, but upon the heirs of the husband."

This must be read along with the provisions of Section 14 and the property of a female Hindu will mean only the property which will remain with the female Hindu at the time of the commencement of the Act and it does not mean the property already transferred before the Act came into force, the transferor having already extinguished all her rights before the commencement of the Act.

17. In conclusion, therefore, on the findings that the transferor Sansir Patelin (defendant No. 1) had only a limited interest and that the transaction was without any legal necessity, the plaintiffs' suit must succeed. The lower appellate Court, therefore, had rightly decided the case. The appeal, therefore fails and is dismissed but, in the circumstances of the case, without costs of this Court. The respondents are entitled to the costs of both the Courts below.

**Das J.**

8. I agree.

Appeal dismissed.

Cases Referred.

<sup>1</sup> ILR (1956) Cut 599

<sup>2</sup> AIR 1957 Andh-Pra 280 (B)

<sup>3</sup> AIR 1957 Ker 86

<sup>4</sup> AIR 1957 Cal557

<sup>5</sup> AIR 1957 Pun 89

<sup>6</sup> AIR 1957 Pat 480

<sup>7</sup> AIR 1957 Madh-Pra 38