ORISSA HIGH COURT

Narayan Patra

Vs

Tara Patrani

Appeals Nos. 424 and 427 of 1964

(B.K. Patra and S. Acharya, JJ.)

09.10.1969

JUDGMENT

B.K. Patra, J.

1.These two appeals S. A. 424/64 and S. A. 427/64 arise out of Title Appeals 22/64 and 24/64 respectively disposed of by the Additional Subordinate Judge, Berhampur. Those two appeals in the Court of the Subordinate Judge had been filed against the decisions in T. S. 19 of 1959 and T. S. 22 of 1960 on the file of the Munsif of Parlakhimedi respectively. As the parties in both the appeals are the same and common questions of fact and law are involved in both the litigations, these appeals have been heard together and would be governed by this common judgment.

2. The relationship between the parties will appear from the following genealogical table: The undisputed facts of the case are theses Magata and his brother Damodar were divided from each other and the properties in dispute consisting of A and B schedule houses and C schedule lands admittedly belonged to Magata. Magata died leaving behind him his widow Musi and his three sons, Gopinath, Kalia and Madan. Before 1915, these three brothers also died leaving behind them their widows Rambha, Tara and Lalita respectively. Disputes arose between Musi and her three daughters-in-law and Damodar in 1915. By agreement dated 18-4-1915 (Ext. A in T. S. 19/59) executed by the four widows on one side and Damodar Patra on the other, the disputes were referred to arbitration. The Arbitrators gave their award dated 21-4-1915 (Ext. 1 in T. S. 19/59). The salient features of the award are theses:

> "xx xx xx

Taking into consideration the above facts and in view of the services rendered to you by no. 5 (Damodar) of you, we award no. 5 of you to get for the present Rs. 500/- from the properties. The remaining moveable and immoveable properties are to be distributed equally among members 1 to 4 of you (the four widows). Therefore, the properties detailed in schedule 'A' herein shall be enjoyed by member no. 1 of you till life time, while those detailed in schedule 'B'. schedule 'C' and schedule 'D' are to be enjoyed by members nos. 2, 3 and 4 of you respectively till your life time, having no right of alienating by way of gift, sale or any other encumbrance in

respect of the immoveable properties of the said scheduled properties. But in respect of the moveable properties of these schedules. nos. 1 to 4 of you are at liberty to utilise the same in any manner as you deem fit. In the event of death of any one of the four of you, the properties of the said deceased member shall be enjoyed by the rest of the surviving members of four of you, and on the death of four of you, the entire properties of the schedules shall vest absolutely and be enjoyed by Damodar Patra or his heirs, xx xx xx ". The award was accepted and acted upon by all parties thereto. Of the four widows, Musi died in 1932 and Rambha in 1955.

3. In 1959, the two widows Tara and Lalita brought Title Suit No. 19 of 1959 against Narayan Patra alleging that the defendants had trespassed on the A and B schedule houses which belonged to them and were in their possession, and praying for recovery of possession thereof after evicting the defendant therefrom. They averred inter alia in the plaint that the widow's estate which they had over the disputed properties had been enlarged into an absolute estate on the coming into force of the Hindu Succession Act, 1956 (hereinafter referred to as the Act). The defendant Narayan Patra resisted the suit on the ground that shortly after the award of 1915, the plaintiffs left Parlakhimedi and went and stayed with their parents and were not in possession of the house at any time thereafter. Musi and Rambha were residing in those houses and after Musi's death in 1932, Rambha became sick and took shelter in the house of Lokanath and since then the latter was in possession of those houses and acquired adverse possession thereto. He denied the plaint allegation that the plaintiffs had the right of a Hindu widow over the disputed properties and this right was enlarged to that of an absolute ownership by the coming into force of the Act.

4. Shortly afterwards, Narayan Patra along with his son and nephew filed a suit (T. S. 22/60) against Tara and Lalita praying for a declaration that the two widows are not the absolute owners nor have they any right to alienate or encumber the 'A' and 'B' schedule houses and the 'C' schedule lands. The cause of action for the suit is stated to be the assertion made by the two widows in the suit (T. S. 19/59) filed by them that by the coming into force of the Act, the right of a Hindu widow which they had over these properties had been enlarged into full ownership.

5. The learned Munsif held that by the time the award of 1915 was passed, the two widows Lalita and Tara had only right of maintenance and had no higher rights in the family properties and that as by the Award they were given only life interest over the properties, the case is governed by Section 14 (2) of the Act and not by Section 14 (1) and their right consequently was not enlarged to that of an absolute estate, and that on their death, Narayan Patra and his heirs would be entitled to the properties. In this view of the case he passed a decree in favour of Narayan Patra, his son and nephew in T. S. 22/60. The learned Munsif further held that during the life time of the two widows, they are entitled to remain in possession of the disputed properties and having disbelieved Narayan's case that he acquired a right of adverse possession over the disputed houses he passed a decree in favour of the widows for recovery of possession of the houses.

6. Against the decision of the Munsif in T. S. 19/59, Narayan Patra filed Title Appeal No. 22/64 and against the Munsif's decision in T. S. 22/60, Tara and Lalita filed Title Appeal No. 24/64. Both the appeals were heard analogously by the learned Subordinate Judge. He held that by the time the Act came into force, Tara and Lalita were in possession of the disputed properties having the right of a Hindu widow over them, and that under Section 14 (1) of the Act which according to him applies to the case, the right was enlarged into an absolute right. He therefore allowed T. A. 24/64 and dismissed the other appeal T. A. 22/64 filed by Narayan. As against

these decisions, Narayan had filed S. A. 424/64 and Narayan, his son and nephew have filed S. A. 427/64.

7. These two appeals came up in the first instance before our learned brother A. Misra, J., who in view of the fact that these appeals involve important questions of law relating to interpretation of Sections 14 (1) and 14 (2) of the Act referred it to a Division Bench to be heard along with Second Appeals 209 and 210 of 1964. This is how the matter has come before us.

8. Section 14 of the Act runs thus:

> "14. Property of a female Hindu to be 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 :- In this sub-section "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise or at a partition, or in lieu of maintenance, or arrears of maintenance or by gift from any person, whether a relative or not, before at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhan immediately before the commencement of this Act.
>
> (2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will, or any other instrument or under a decree or order of a Civil Court or under an award when the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."

It being the admitted case of the parties that the Award exhibit 1 is genuine and was acted upon, and it being the further case of the parties that the properties mentioned in the schedules 'A', and 'B' and 'C' of the suit schedule were given under the Award to Musi and her three widowed daughters-in-law towards maintenance to be enjoyed by them during their life time, it was contended by Mr. Ramdas appearing for the respondents that by virtue of the Explanation these should be considered properly falling under sub-section (1) of Section 14 of the Act and on the basis of the finding that these properties were in possession of the respondents when the Act came into force they must be deemed to have acquired an absolute title thereto. Sub-section (2) is an exception to sub-section (1) of Section 14 and takes out of the application of sub-section (1) property that would fall under sub-section (2). It is contended by Mr. Pal appearing for the appellants that although the respondents might have had a right to get maintenance out of the family properties, they had no right to any portion of the family property as such and that as they acquired their right to the property for the first time under the Award which gives them only a restricted estate therein, it would be property falling under sub-section (2) and as such sub-section (1) would have no application. It is, however, conceded that if the respondents had a pre-existing right over the suit properties and all that the Award did was to recognise that right and conferred no better rights on them, it cannot be said that the respondents "acquired" for the first time a fresh right under the Award and the Award would not in that event be construed as a fresh source of title for the respondents in respect of the suit properties. In view of this undisputed position of law Mr. Ramdas contended that the position as it stood in 1915 when the Award was passed was that the respondents on the death of their husbands possessed rights of a Hindu widow over the disputed properties and the Award only recognised that right and no better rights

were conferred thereby and that as such sub-section (2) of Section 14 of the Act would have no application. The facts of the case however belie such a contention. D. W. 5 in T. S. 19/59 has deposed and his evidence on this point has gone unchallenged that of the three sons of Magata who were living joint, it is Kalia husband of respondent no. 1 Tara) who died first and then Madan (husband of respondent no. 2) died and that Gopinath, husband of Rambha, died last. Admittedly, all the three brothers were dead by 1915. Gopinath being the last male-holder of the disputed properties, the position in 1915 therefore was that it is his widow Rambha who held the properties as a "widow's estate" and the other three widows, namely, Musi and the two respondents had only the right to be maintained out of the family properties. This was the position that obtained in 1915 when the Award (Ext. 1) was passed. If Rambha was alive and was in possession of the properties by the time the Act came into force in 1956, she could have contended that the right which she got under the award was no better than the right she had over the properties and that as such Section 14 (1) of the Act would apply. But Rambha died in 1955 before the Act came into force and but for the Award, the appellants would have got the properties as the next reversioners of the last male-holder Gopinath. In view of the evidence and circumstances referred to above, the contention put forward by Mr. Ramdas must fail.

9. Mr. Ramdas next contends that although the respondents were entitled to get only maintenance out of the family properties, when certain properties in lieu of maintenance were given to them, such property would by virtue of Explanation to sub-section (1) be treated as property referred to in sub-section (1) and that sub-section (2) would not have any application. Such a contention again is untenable. The right to be maintained out of the family properties by itself does not confer on a widow any possessory lien or proprietary right or title in the property of the family. A widow's right to be maintained out of her husband's property or out of joint family property is an indefinite right which can no doubt be made certain and charged on specific properties by agreement, decree of court or award or otherwise, but even when a charge is created over a specified property, that does not amount to transfer of the property or of any right in the property. Such a charge creates only a right of payment out of the property. But if in discharge of an obligation to maintain out of the estate of the husband or of the property of the family, a particular property is transferred to the widow and placed in her possession, she would acquire the property in lieu of maintenance. But in that event, the instrument under which such a transfer takes place would be the source of her title to the property and it cannot be said that the instrument does no more than recognize her pre-existing right which she had over the property. If in that instrument there are no restrictions on the estate thus conferred on her, or no limitation on the property thus provided for her maintenance, then by virtue of the Explanation, sub-section (1) would apply. But if the instrument which creates the right gives only a restricted estate to her, sub-section (2) would apply.

10. In support of the contention advanced on behalf of the respondents, reliance is placed on a Bench decision of the Madras High Court reported in *Rangaswami Naicker v. Chinnammal*[1]. We fail to see how this decision can help the respondents. In that case one Kariakali Naicker with his son Sinnamman constituted a joint family and owned certain properties. Sinnamman predeceased his father leaving behind him his son Rangaswami. Kariakali died in 1951 in a state of jointness with the appellant leaving behind him his widow Angammal and three daughters besides his grandson, the appellant. By virtue of the provisions of the Hindu Women's Rights to Property Act, 1937, Angammal became entitled to a half share in the properties of the family, the other half vesting in the appellant. Subsequently, disputes arose between the grandmother and the

grandson, the outcome of which was a suit which had terminated in a compromise. The substance of the compromise was that Angammal was to be declared entitled to half a share of the properties, the appellant was to enjoy the properties without prejudice to the rights of Angammal and that after her death, he would become entitled to her share of the properties. Both parties to the compromise enjoyed their properties in accordance with the terms therein. On 7-3-1967, Angammal claiming by reason of Section 14 (1) of the Act which by then had come into force, that she became entitled to a full disposable interest in what she held, made a testamentary disposition of the same in favour of her daughters and died shortly thereafter. The rights of the legatees having been disputed by the appellant, the suit for partition was filed by the daughters of Chinnammal and the question arose whether by the time the will was executed by Chinnammal she had absolute interest in the properties. It was contended on behalf of the appellant that a widow obtaining property under the Hindu Women's Right to Property Act is neither a case of acquisition nor inheritance but one by virtue of a statutory right and that therefore Section 14 will not apply, as the Explanation does not envisage such a case. Their Lordships negatived this contention holding that sub-section (1) of Section 14 of the Act is not confined in its operation to the cases specified by the Explanation which is not exhaustive but that the Explanation only includes certain cases which the legislature felt might not come within the main part of the section and that the right got by a Hindu widow under the Hindu Women's Rights to Property Act being a right obtained under the law and not under any of the categories mentioned in sub-section (2), sub-section (1) would apply. This is therefore a case where Chinnammal did not obtain any right to property which she did not possess previously. In *Smt. Sharbati Devi v. Pt. Hiralal*[2], on which reliance is placed on the respondent's side, the properties were mutated half and half between a widow and her husband's brother and the widow was put in possession of a part of the estate in lieu of maintenance. Thereafter in a suit between the two, there was a compromise decree declaring the husband's brother as sole owner and the widow was given possession of the suit land for her life, her rights being restricted regarding alienation etc. The widow however sold the suit lands. The question arose whether sub-section (2) would govern the case
because the widow had acquired the land under the consent decree. It was held that as under the compromise she did not get any larger interest or was not put in possession of more properties or share in the properties than what was in her possession already by virtue of the mutation, it cannot be said that by virtue of the decree she came into possession of the property and that therefore section 14 (1) applied and on the coming into force of the Act her right in the property was enlarged to that of an absolute estate. On the facts, therefore, this case is distinguishable.

11. Lastly, Mr. Ramdas relied on a Bench decision of the Andhra Pradesh High Court in *Gadam Peddayya v. Venkataraju*[3], Plaintiff, the adopted son of one Chellamma filed a suit for recovery of possession of certain properties against the defendant, the nephew of the adoptive mother. The properties were given to the mother under a settlement of disputes between her and the adoptive son to be enjoyed by her and her adopted son, for life, without right to contract any debt on the security of those properties. She bequeathed those properties to the defendant under a will executed in 1955 and died on 20th August, 1956, that is, after the Hindu Succession Act came into force. The defendant resisted the suit on the ground that his rights under the Will were enlarged by Section 14 (1) of the Act. It may be stated here that Chellamma had become a widow prior to 1937. It was held by the High Court that the adoptive mother had a right to be maintained by the adopted son out of the estate and it is pursuant to that right that her claim to maintenance was settled under the deed of family settlement whereunder differences between the parties were resolved and the pre-existing rights of each other were recognised, and as such it

was not a new right that was conferred upon the widow under the document. It was observed that the restriction in the deed of settlement that she could not contract any debt on the security of the property merely set out the legal effect on her estate as a maintenance holder and that it was another way of stating that the widow could have a life estate in the property which she was enjoying in lieu of her maintenance. In the circumstances it was held that the case falls outside the sub-section (2) and is governed by sub-section (1).

12. Although apparently this decision lends some support to the contention which is being advanced by Mr. Ramdas, the correctness of this decision was challenged in a subsequent case in the same High Court in *G. Kondiah v. G. Subbarayudu*[4] Jaganmohan Reddy, C. J. speaking for the Bench observed at page 463 that the decision in Gadam Peddaya's case must be understood in the context of interpretation given by the learned Judges to the terms of the deed of family settlement, namely, that under the same, differences between the parties were resolved and the pre-existing rights of each other were recognized. Their Lordships repelled the contention that Gadam Peddayya's case militates against the view that even where properties were given in lieu of maintenance with a restriction, Section 14 (2) of the Act will apply to make the estate conferred upon the widow a restricted one. Referring to this their Lordships stated:

> "If the basic concept of a Hindu Woman's right to maintenance is appreciated, namely, that she has no right in property as such, except to the extent indicated
> already then if property is transferred to her in lieu of that right of maintenance
> by an instrument, she acquires the property by that instrument, and if that instrument places a restriction upon her right of enjoyment, which as we have stated earlier is not prohibited under the law, she gets only a restricted estate, because that is the condition upon which she has agreed to acquire the property of her husband or the joint family. In such an event, section 14 (2) will apply."

In Kondiah's case, (1968) 2 Andh WR 455 one Patharaju died in 1918, leaving behind him his mother Chellamma and his widow Parvatamma. Shortly before his death he had executed a Will under the terms of which the property bequeathed was to be divided between the mother and the wife and that after mother's death, the property was to be enjoyed absolutely by the wife. On October 14, 1956, that is, after coming into force of the Act, Chellamma gifted away her share of the properties to her brother's daughter's son. Parvatamma filed a suit against them for recovery of possession of these properties on the ground that Chellamma had no absolute right therein. It was contended by the defendants that an absolute right had been conferred on Chellamma. Their Lordships held that it is clear from the recitals of the Will that the deceased while intending to give the entire properties absolutely to his wife had interposed a life estate in respect of a moiety in favour of his mother and after her death there was to be a gift over to the wife absolutely. The right which the mother had, was a right to maintenance out of the joint family properties but she had no right to the property as such. Any right which had been conferred on her under the Will was a new right and, therefore, would confer a restricted estate under Section 14 (2) of the Act. The contention that in the context of her right to maintenance from out of her husband's properties, the conferment of an estate was in recognition of the antecedent title to property itself, and consequently her right would not be restricted, was repelled with the observation that there was no warrant for the assumption that a right to maintenance is a right in property which is a

preexisting right.

13. The above view also finds expression in *Thatha Gurunadham Chetty v. Thatha Navaneethamma*[5] One Guruviah Chetty died in 1932 leaving surviving his widow Muniamma and four sons, Venkatachalam, Gurunadham, Narasimhulu and Bangaru. The four sons partitioned their family properties in 1946, and in so doing, allotted a share to their mother for her maintenance. Under the terms of allotment, the widow had no powers of alienation of any kind and had only the right to enjoy the income from the properties allotted, to her. It was further provided that after her death, the properties allotted to her would be divided among her four sons, the deed particularizing the items respectively to be taken by the sons after her life time. Under this provision, the suit property had to go to the share of Venkatachalam on her death. Venkatachalam died issueless in 1954. After Venkatachalam's death, his mother Muniamma conveyed the suit property to her son Gurunadham. The widow of Venkatachalam filed a suit for a declaration of the invalidity of the conveyance of the suit properties in favour of Gurunadham contending that Muniamma had no power of alienation thereof beyond her life time. In defense, it was contended inter alia that Muniamma's right had become absolute by reason of the coming into force of the Act. It was held that Muniamma had only a right to be maintained out of the joint familyproperties and when particular property was allotted to her to be enjoyed during her life time towards maintenance, the document under which those properties were allotted to her was the foundation of her title. As the document itself stipulated that she should have a restricted right in the property, Section 14 (2) would apply and on the coming into force of the Act, that right would not be enlarged into an absolute right.

14. On a consideration of the general principles of the Hindu Law bearing on the subject, and on an examination of the provisions of Section 14 of the Act, and the judicial pronouncements on the subject, the following conclusions follow:

> (a) The right of a Hindu widow to be maintained out of the family properties by itself does not confer on her any possessory lien or proprietary right or title in the property of the family.
> (b) If any rights in the property of her husband or joint family property are acquired by a Hindu widow in lieu of her maintenance, she would obtain the property for the first time under the instrument notwithstanding the fact that the property is transferred to her in lieu of her pre-existing right of maintenance.
> (c) If such document under which she obtains the property gives her only a restricted right therein, sub-section (2) of Section 14 of the Act would apply and any restriction put on the property will have its full effect.
> (d) If a female Hindu de hors the instrument has an independent right to the property, in other words, if the instrument does not constitute the source or foundation of her right to the property, she takes the property absolutely under sub-section (1) despite the fact that the instrument indicates that a restricted right had been given to her.

15. In the present case, the respondents in 1915 were only entitled to a right to be maintained from out of the family properties. They had no right to any portion of the property as such. It is under the award that certain properties were allotted to them in lieu of maintenance but

thereunder they obtained only a restricted estate to be enjoyed by them during their life time. These being the facts, Section 14 (2) of the Act applied to the case and their rights were not enlarged to that of an absolute estate on the coming into force of the Hindu Succession Act. The appellants would therefore be entitled to the declaration sought for by them in T. S. 22/60 on the file of the Munsif, Parlakhimedi that the two widows Tara and Lalita are not the absolute owners of the 'A' and 'C' schedule properties and that they have no right to alienate or encumber the same. Second Appeal No. 427 of 1964 must therefore be allowed.

16. Despite, however, the fact that the widows have no absolute right to the 'A' and 'B' and 'C' schedule properties, they are entitled to enjoy these properties during their life time, because the Award provided that on the death of any of the four widows, who were parties thereto, the properties allotted to them will be enjoyed by the surviving widows. In T. S. 19/69 on the file of the Munsif, Parlakhimedi from which Second Appeal No. 424 of 1964 arises, the plaintiffs complained that they were dispossessed from the 'A' and 'B' schedule houses by the defendant Narayan Patra. The defendant admitted his possession of the houses, but put forth a plea of adverse possession which was found against him. The widows are therefore entitled to recover possession of the houses from the defendant and their suit was rightly decreed by the learned Munsif. Second Appeal No. 424 of 1964 has therefore to be dismissed.

17. In the result, Second Appeal 424/ 64 would stand dismissed. We would allow Second Appeal 427/64, set aside the decree passed by the learned Subordinate Judge and restore that of the Munsif. There would be no order as to costs of this Court.

Acharya, J.

18. I agree.

Order accordingly.

Cases Referred.

[1] AIR 1964 Mad 387
[2] AIR 1964 Pun 114
[3](1964) 2 Andh. W. R. 470
[4](1968) 2 Andh WR 455
[5](1967) 1 Mad LJ 454