

PATNA HIGH COURT

Siveshwar Prasad Narain Singh

Vs

Lata Harnarain Mal Bahal

(Fazl Ali, C.J.)

15.08.1944

JUDGMENT

Fazl Ali, C.J.

1. It appears that the respondent had brought a money suit in a Court at Benares against Mt. Kalawati, widow of Babu Madhusudan Prasad Narain Singh and Babu Shibeshwar Prasad Narain Singh, in which a decree was prayed for against the person and property of Shibeshwar Prasad Narain Singh and the assets of Madhusudan Prasad Narain Singh in the hands of Kalawati defendant 1. The suit was decreed ex parte against both the defendants, and the decree-holder having got the decree transferred to Saran District has applied for its execution in the Court of the Munsif at Siwan by the attachment of 10 annas 6 pies interest of the judgment-debtors in a certain property. In the course of the execution a petition of objection was put forward by Shibeshwar Prasad Narain Singh, Bhabeshwar Prasad Narain Singh and Mangaleshwar Prasad Narain Singh, stating that the execution cannot proceed against the undivided interest of Mt. Kalawati in the joint family property. The objection petition has been dismissed by both the Courts below, and hence this miscellaneous second appeal.

2. The appellants in this case are (1) Sibesh-war Prasad Narain Singh, (2) Bhabeshwar Prasad Narain Singh and (3) Mangaleshwar Prasad Narain Singh. It appears that Bhabeshwar and Mangaleshwar had at a previous stage of the execution proceeding preferred an objection to attachment under Order 21, Rule 58 on the same ground, but that objection was dismissed and they did not institute a suit under Order 21, Rule 63. As they were not parties to the suit or the decree, they cannot prefer an objection under Section 47; nor can they be allowed to reagitate the same question which they tried to agitate in their petition under Order 21, Rule 58. The appeals of these two persons must, therefore, fail on this preliminary ground. Sibeshwar Prasad, Narain Singh was a party to the suit and had not preferred any previous objection in the execution proceeding. He is, therefore, entitled to object in this proceeding, and we have to decide whether there is any merit in his objection.

3. Now, it is not disputed that under the decree which is being executed the decree-holder is entitled to proceed against the assets of Madusudan Prasad Narain Singh in the hands of defendant 1 who is a party to the decree. The only question is whether the interest which she now possesses in the joint family property is such an asset. Section 3 of Act 18 of 1937 (The Hindu Women's Rights to Property Act, 1937) provides among other things that when a Hindu governed by any school of Hindu law other than the Dayabhaga school, or by customary law dies having at the time of his death an interest in a Hindu joint family property, his widow shall, subject to the provisions of Sub-section (3), have in the property the same interest as he himself had. Sub-section (3) provides that any interest devolving on a Hindu widow under the provisions of Section 3 shall be the limited interest known as a Hindu women's estate, provided however that she shall have the same right of claiming partition as a male owner.

4. Now, it is quite clear that Mt. Kalawati did not acquire her interest as a survivor. She had acquired it under a statute and although the statute does not say expressly that she will acquire the interest of her husband as his heir, yet it seems to me that if she does not get the interest by survivorship then she must be held to have acquired it as an heir. If she got it as an heir then the interest is an asset of her husband in her hands and can be proceeded against by the creditor. This is precisely the view which has been propounded in *Saradambal v. Subbarama Ayyar*¹ In that case the plaintiff had obtained a decree for money against a member of the joint family who died sometime after the decree. His wife was then brought on the record as his legal representative. A question arose whether the interest she had acquired under Hindu Women's Rights to Property Act could be attached in the execution of the decree. Venkataramana Rao J. who decided the case, dealt with this question as follows:

Under Section 3 (2) the interest taken by the widow is the same interest as the husband himself had, that is, the interest of an undivided member of a joint family in the joint family property. The said interest is capable of definition and so far as this presidency is concerned, it is liable to separation by partition and alienable inter vivos for valuable consideration and liable to be seized in execution of a decree for the personal debts of the member. Giving the language its plain meaning, the widow takes that interest subject to the rights and obligations attached to that interest and subject to the restrictions placed on her powers by Clause (3) of Section 3 of the Act. That clause leaves the right to partition untouched but restricts the right of alienation because the nature of the interest which she takes is a Hindu woman's interest. "What a Hindu woman's interest is, is well defined in Hindu law, that is, she is competent to alienate that interest only for purposes sanctioned by Hindu law and that interest is liable to be seized in execution of decrees for the payment of debts of the last male owner. Taking both, the clauses together, the property taken by her is liable for the debts of her husband. The contention of Mr. Vedanta Subramaniam is that as the husband died undivided and the other creditor has not taken any steps during his life-time to attach the said property, his remedy is lost. It is true that if the Act had not been passed, as the husband died without leaving a male issue the

property would have gone by survivorship to his undivided brother and his brother's son and the doctrine of survivorship would prevent the creditor from attaching that property. But the Act has taken away that rule of survivorship and allowed the property to descend to his wife. Once the rule of survivorship no longer operates, there is nothing to preclude a creditor from attaching the property. Though the interest she takes is a limited interest of a Hindu woman, she is conferred the same status as that of a male owner. Even in the case of a female who takes a Hindu women's estate, the inheritance vests in her for the time being as fully as it vests in any male succeeding to the property but only with a restricted right of alienation. As pointed out by the Judicial Committee in 5 Cal. 7763 at p. 789, 'the whole estate is for the time vested in her absolutely for some purposes, though -in some respects for only a qualified interest.

5. In my opinion, this decision is a complete answer to the argument which has been advanced before us. The learned advocate for the appellants referred us to para. 289 of Mulla's Hindu Law, 9th Edn., which runs to the following effect:

According to the Mitakshara law as applied in all the provinces, the undivided interest of a coparcener may be attached in his life-time in execution of a decree against him for his personal debt. If it is attached in his life-time, it may be sold after his death whether the order for sale was made in his life-time, or after his death. But it cannot be attached after his death (except where the coparcener is the father) for it then ceases to be his interest and passes to the other coparceners by survivorship. It is only an attachment effected during the life-time of the debtor that will prevent the accrual of his interest to his coparceners by survivorship.

6. The law as stated in this paragraph would have been applicable only if the interest sought to be attached was coparcenary interest if one could hold that the widow had acquired it by survivorship, but as has been pointed out by Venkataramana Rao J., this is not the true position in law. Besides in this case the decree was obtained not against the husband of Mt. Kalawati but against herself, and the decree provided that it should be realized by proceeding against, the assets of her husband in her hands. Therefore if the interest which she has in the property at present is an asset of the husband, then it can be lawfully attached. As I have already stated if she acquired the interest of her husband as an heir, then it must be deemed to be the latter's asset in her hands. In this view I would up-hold the orders of the two Courts below and dismiss the appeal with costs.

Reuben, J.

7. I agree.

¹ AIR 1942 Mad 212

