

## PATNA HIGH COURT

Janki Kuer

Vs

Chhathu Prasad

A.F.O.D. No. 304 of 1948

(Sinha and Dayal, JJ.)

23.07.1957

### JUDGMENT

#### **Sinha, J.**

1. This appeal was originally filed by defendant No. 1, Mosammat Janki Kuer. Later, some other defendants were transposed to the category of appellants. The suit was by the reversioner for a declaration that the several alienations mentioned in the plaint made by defendant No. 1 were not binding upon the reversioners because the alienations were not justified by any legal necessity. In the view which we have taken of this case, it is not necessary to deal elaborately with the facts, but it would be better to state a short genealogy of the family of defendant No. 1. The suit is by Chhathu Prasad, one of the two sons of Jadunandan Lal.

2. The defense was that the alienations were justified by legal necessity, and, therefore, binding on the reversioners.

3. The Court below held that several of the alienations were valid and for legal necessity and others were not valid and binding upon the reversioners. Defendant No. 1, the alienor, as already mentioned, originally filed this appeal, and, thereafter the alienees have also got themselves transferred to the category of appellants.

4. Mr. De, appearing on behalf of the appellants, has submitted that in this case the Hindu Succession Act, 1956 (XXX of 1956) applies, and this appeal is concluded by the authority of this Court in *Ram Ayodhya Missir v. Raghunath Missir*<sup>1</sup>, The facts of that case were as follows : The plaintiff asked for a declaration that the sale-deed executed on the 11th July, 1914 by one Mosammat Sureba Kuer in favour of one Sitaram was farzi, without consideration and without legal necessity and, as such, not binding upon the plaintiff. It was also alleged by the plaintiff that, after the death of defendant no. 1, Mossammat Barkalo Kuer, he was entitled to the properties as the next reversioner. Mosammat Parkalo Kuer was the daughter of Sureba Kuer. The suit was contested by defendants 2 to 4, and the learned Munsif held that the plaintiff was the next reversioner and that the sale deed in question was farzi, without consideration and without legal necessity. The plaintiff's suit was thus decreed.

The decree was affirmed on appeal by the Subordinate Judge, and the second appeal to this Court was dismissed. In this Court, in the Letters Patent Appeal, it was submitted on behalf of the defendants, the alienees, that the plaintiff had no right to institute the suit in view of the provisions of sections 14 and 15 of the Hindu Succession Act, 1956. Their Lordships accepted the submission made on behalf of the appellants and held :

".....as the law stands at present the plaintiff has no interest in the property either of Mosammat Parkalo Kuer or of Mossammat Sureba Kuer. The plaintiff has no vested interest nor has he any spes successionis in the property which is the subject-matter of the present litigation. Under the Hindu Law as it stood before the Hindu Succession Act (Act 30 of 1956) every female who succeeded as an heir, whether to a male or to a female, took a limited estate in the property inherited by her.

The heirs of the last full owner, who would be entitled to succeed to the estate of such owner on the death of a widow or other limited heir, if they be then living, were called "reversioners'

.....The reason why such a suit (suit by a reversioner) was allowed was that the suit was in a representative capacity and on behalf of all the reversioners, and the object of the suit was that the corpus of the estate should pass unimpaired to those entitled to the reversion. 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 Mosammat 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. 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 Mosammat Sureba Kuer in favour of defendants 2 and 3 was a farzi or collusive document or that there was no legal necessity." This case was followed in the case of *Mt. Dhanwatia v. Deonandan Mahton*<sup>2</sup>, 5. Mr. Prem Lall, appearing on behalf of the respondent, has submitted that the Patna view, as expressed in the above two cases, has not been accepted either expressly or impliedly by some of the other High Courts in this country. To appreciate the arguments of Mr. Prem Lall, it is necessary to quote Section 14 of the Hindu Succession Act, 1956 - I am quoting only the relevant portion of the provisions contained in that section :

"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.

Mr. Prem Lall's contention is that, as soon as a Hindu female has alienated her property, she cannot be said to be possessed of that property within the meaning of Section 14 of the Act, and in the present case, therefore, after the defendant No. 1 had alienated some of her properties, which are the subject-matter of this suit, it cannot be said that defendant No. 1 was 'possessed' of those properties. Consequently, he submitted that Section 14 does not stand in the way of the plaintiff in getting a declaration that the alienations were not justified by legal necessity and

were, therefore, not binding on the reversioners. He has relied upon the following case : *Gosta Behairi Bera v. Hardas Samanta*<sup>3</sup>; *Hari Kishen v. Hira*, (8)<sup>4</sup> *Thailambal Animal v. Kesavan Nair*<sup>5</sup>, *Sm. Laxmi Devi v. Surendra Kumar Panda*<sup>6</sup>, and also referred to the case of *Smt. Kamla Devi v. Bachulal Gupta*<sup>7</sup>, In my opinion, none of these cases has approached the question from the point of view taken by this Court in the cases mentioned above. I shall briefly deal with these cases. So far as the Calcutta case is concerned, the widow, whose alienations were sought to be impugned, had died long before the Act of 1956 (30 of 1956) had come into force, she had died sometime in the year 1946 or 1947, and, therefore, the question whether the widow was possessed of the property at the time when the Act came into force did not arise for consideration. In the Punjab case, again, their Lordships considered the meaning of the word 'possessed', and so also in the Kerala case. In the Orissa case, it was held that the effect of the Act was to confer absolute ownership on a female Hindu in respect of all properties left by a male Hindu which was in her possession on the date of the commencement of this Act, even though the husband or the male Hindu had died long before the commencement of this Act. According to that case, therefore, to take the benefit of Section 14 of the Act, the female Hindu must be in existence at the time this Act came into force. The Supreme Court case did not refer to this question at all, and, therefore, it is no use referring to that case. It will thus be seen that in none of these cases the Patna view was considered, accepted or dissented from, and the reason was that the cases before those Courts were not presented in the way it was done before this Court. Mr. De, however, has referred to the case of *Dhirajkunwar v. Lakhan Singh*<sup>8</sup>, and that case has accepted the view taken by this Court. Their Lordships observed as follows in regard to the view taken by this Court.

"An objection has been raised that since the passing of the Hindu Succession Act 1956, the plaintiff's character as reversioner has ceased to exist and accordingly his suit is liable to be dismissed. This question was considered recently by the Patna Rich Court in 1956 BLJR 734 , in which, in similar circumstances, the suit of the plaintiff was held to be untenable and was dismissed. The learned counsel for the respondents has only formally demurred to this view, but was not able to give any particular points against it. On a reading of the Hindu Succession Act, it appears to us that the case of Ram Ayodhya Missir, was correctly decided."

6. Under Section 42 of the Specific Relief Act, which finds place in Chap. VI and is headed as "of Declaratory Decrees", "Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying....." In the present case, the plaintiff, who had brought the suit as a reversioner, was entitled to do so at the time when the suit was brought, because the suit was brought before the present Hindu Succession Act of 1956 came into force. At that time, the plaintiff was entitled to a declaration of his title as a reversioner because he fulfilled the legal character of being a reversioner. Under the present enactment (Hindu Succession Act, 1956), there could be no reversioner for the simple reason that, under Section 14 of the Act, the female Hindu gets absolute right in the property. Judged from this point of view also, the plaintiff, having lost that character, cannot maintain the suit. It is now firmly established that the appellate Court is entitled to take into consideration the change in the law. I would, therefore, relying upon the Patna cases mentioned above, held that the plaintiff's suit is not maintainable, and, as such, it must be dismissed.

7. In the result, the appeal is allowed and the suit dismissed but as this point has become available to the appellants during the pendency of this appeal, there will be no order for costs throughout.

8. The cross-objection was not pressed; it is, accordingly, dismissed, but without costs.

**Dayal, J.**

9. I agree.

Appeal allowed.

Cases Referred.

<sup>1</sup>1956 Pat LR 486 : 1956 BLJR 734

<sup>2</sup>1957 Pat LR 92

<sup>3</sup> 61 Cal WN 325

<sup>4</sup> AIR 1957 Pun 89

<sup>5</sup> AIR 1957 Ker 86

<sup>6</sup> AIR 1957 Oris 1

<sup>7</sup> AIR 1957 SC 434

<sup>8</sup>AIR 1957 Mad Pra 38