PATNA HIGH COURT

Lakshmi Devi

Vs

Shankar Jha

A.F.A.D. No 227 of 1970

(Madan Mohan Prasad, J.)

29.08.1973

JUDGMENT

Madan Mohan Prasad, J.

1. This second appeal by the plaintiffs arises out of a suit for declaration of title and recovery of possession.

2. The plaintiffs' case was as follows. One Mohan Choudnary was the owner of 25 plots of the lands in suit which stood recorded in his name. Two other plots 700 and 728 were recorded in the name of one Srinath Choudnary, his Gotia. Mohan had two sons Naubat Lal and Bhopal and a daughter Merowati. In the year 1912 Naubat died leaving behind him his widow Basantwati Mohan died thereafter in the year 1925. Bhopal also died issueless in the year 1941. Merowati died in the year 1946 and her son Sahdeo Thakur is plaintiff No. 2. Basantwati died in the year 1957. As a result of the death of Mohan, Bhopal his son had become the sole survivor and thus the absolute owner in the year 1925 and after his death his sister Merowati inherited the property. The widow of Naubat, namely, Basantwati, had however, only got maintenance after the death of her husband. At the death of Bhopal in the year 1941 she was the sole heir and inherited the entire property and came in exclusive possession thereof. At that time, however. Basantwati started claiming an interest in the suit lands and the dispute was, therefore, referred to arbitration by an agreement dated 25-5-1942 entered into by Basantwati Sahdeo, Merowati and Srinath Choudhary aforesaid. A deed of agreement was then executed by the aforesaid parties on 31-5-1942 and signed by the Panches. According to it, half of the lands was given to Basantwati as her life interest in lieu of maintenance and the other half was given to Merowati. It was further decided by the Panches that 1 bigha and 5 kathas of lands be given to Srinath Choudhary. In spite of the deed, however, neither Basantwati nor Srinath came in possession of the lands allotted to them and Merowati continued in possession. Under a wrong advice, however, Merowati filed a title suit in the year 1945 in the Court of the Deputy Collector for a declaration that the award was illegal and inoperative. The matter went up to the Commissioner in a civil revision and it was held that the award was legal so far as Basantwati was concerned but illegal so far as Srinath was concerned. According to the plaintiffs, in spite of this decision Basantwati could not get possession. The lands remained in the cultivating possession of Merowati and Sahdeo. They used

to divide the produce with Basantwati who had got a right of maintenance but after her death in the year 1957 Sahdeo became the absolute owner of the property. In the year 1958, however, there was a family arrangement in the family of Sahdeo by which the first plaintiff got the lands situated in village Motia and the other heirs of Sahdeo got other properties. At the instigation of defendants second party who were inimical to Sahdeo and the father-in-law of the first plaintiff the first defendant was set up to claim title and possession. This led to a proceeding under Section 144 of the Code of Criminal Procedure which started in November, 1958. In that proceeding the defendants first party alleged that Basantwati had left a daughter named Bhawani who had been married to one Bhuneshwar Jha and defendant No. 1 was their son and entitled to the property. Defendants second party, the heirs of Srinath claimed the two plots recorded in his name. The proceeding was converted into one under Section 145 of the Code of Criminal Procedure. Possession was found with the defendants. Hence this suit.

3. The defendants' case was that Mohan Choudhary had died leaving behind him both his sons Naubat and Bhopal who had separated from each other and Naubat had died leaving his widow Basantwati, that Basantwati had a daughter who died during the lifetime of her mother leaving a son defendant No. 1 and two daughters. Their further case was that Basantwati was in possession of the lands and Became full owner thereof and after her death the defendants first party inherited the properties and came to be in possession thereof, that Merowat had never come in possession of the suit lands, that in view of the family arrangement Srinath had been given the two plots of land that the defendants second party were in possession thereof since then.

4. The trial Court found that the property in suit belonged to Bhopal, the last male holder. It did not accept the case of the defendants regarding Bhopal and Naubat having got the properties after the death of Mohan and the case of separation between them. It found that after Bhopal's death in the year 1941 Basantwati came into possession of all the lands except those allotted to Srinath and continued in possession until her death in the year 1957 and that she was a full owner of these properties at her death by virtue of Section 14 of the Hindu Succession Act (hereinafter referred to as the Act). It further found that in view of her possession for a long period she had acquired title by adverse possession. With regard to the lands allotted to Srinath it found that he and his heirs had perfected their title by adverse possession. The plaintiffs' title had thus been lost and they had thus failed to prove their title or possession. Therefore, the suit was dismissed.

5. The lower appellate Court formulated three points for consideration; firstly, whether defendant No. 1 was the son of the daughter of Basantwati and answered the question in the affirmative, secondly whether Basantwati was an absolute owner of the property at her death. This question also was answered in the affirmative. It found Basantwati to have been in possession of the lands since the death of Bhopal and until her own death. The third point raised was relating to tin title and possession of the defendants second party, namely, the heirs of Srinath. It found that they had remained in adverse possession of the two plots of the suit lands. The last point raised was whether the appellants had proved their subsisting title over the disputed lands. On this point it found that the plaintiffs were not in possession within 12 years of the suit and the suit was barred by limitation. Accordingly it dismissed the appeal.

6. Learned counsel for the appellants has raised the following points. Firstly, that the Courts below have erred in holding that Section 14(1) of the Act applies to the circumstances of the present case. He contends that it will be Sub-Section (2) thereof which will apply. Secondly, that

the claim of adverse possession and the finding thereon is illegal in view of Section 69 of the Santhal' Parganas Tenancy Act Thirdly, that the case of defendants second party could not be entertained as it was bit by the principle of res judicata. Fourthly, that the lower appellate Court has erred in applying Article 142 of the Limitation Act, the propel article which would apply being Article 47.

7. On the first point learned counsel has contended that in the present case Basantwati had got the property under an award in lieu of maintenance and therefore, it came within the exceptions mentioned in Sub-Section (2) of Section 14 of the Act Section 14 is as follows :-

> "14. (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 hot 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 stridhana 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 where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."

Reading the explanation it is quite clear that a property given in lieu of maintenance is included within the ambit of Sub-Section (1). Thus, a property possessed by a female Hindu even if it was a property granted in lieu of maintenance would be held by her as full owner after the commencement of the Act Sub-Section (2), however, makes an exception in favour of property acquired in the manner mentioned therein.

8. In the present caw it has been urged that by virtue of the award die property had been given to Basantwati only in lieu of maintenance which obviously means that she had a life interest therein and further that by virtue of the decree of the civil Court she had also been given a life interest and, therefore, since she had got the, property in lieu of maintenance by virtue of an award or a decree it falls within the exempted limits of Sub-Section (2) aforesaid. The lower appellate Court has found that the deed (Ext. D-I) does not contain any restricting clause. The question which thus emerges is whether she acquired the property by virtue of the award or the decree or not It is obvious on the findings of the two Courts below that Basantwati had come in possession of the land in the year 1941. The dispute arose subsequently and the settlement also came in the year 1942. It is clear that she had the light to be maintained out of the family property. The deed thus merely acknowledged her right to be maintained. Even so, the decree passed by the Commissioner did not create any new right in Basantwati. There also the question was whether the deed was legal and enforceable. He found in favour of Basantwati. Obviously, therefore, the property was not acquired by Basantwati by virtue of either the deed or the decree. In my view, therefore, Sub-Section (2) of Section 14 of the Act has no application. It, therefore, comes within

the ambit of Sub-Section (1) of Section 14 of the Act Accordingly, Basantwati acquired full ownership of the property which was in her possession at the date of commencement of the Act in the year 1956. She was thus owner of the property at her death and the Courts below have rightly come to this conclusion.

9. The point aforesaid had been raised in two cases in this Court. The decisions therein support the view which I have taken. The first one is the case of *Sumeshwar Mishra v. Swami Nath Tewari*[1], and the other is of *Bindbashni Singh v. Smt. Sheorati Kuer*[2], In the former case it was held by a Bench of this Court that a property which a Hindu widow gets for maintenance, she gets as her right under the Hindu law and in such a situation even if there be a restrictive clause in an instrument conferring only a limited right on the widow it will have no effect because in view of the explanation to Sub-Section (1) of Section 14 the widow becomes a full owner of die property. This is so because the acquisition of the property is referable to a pre-existing right. If, however, it is not so referable and the acquisition is by virtue of the instrument of decree or award which prescribes a restricted estate, the widow cannot get full ownership but continues to have the restricted estate by virtue of Sub-Section (2) of Section 14. In the latters case aforesaid another Division Bench of this Court took the same view. In view of the two Bench decisions of this Court the point raised by learned counsel is of no avail. There it thus no substance in the first contention.

10. I now come to the second point raised by learned counsel. The relevant portion of the provision of Section 69 of the Santal Parganas Tenancy (Supplementary Provisions) Act, 1949 is as follows :-

> "69. Bar to acquisition of right over certain lands- Notwithstanding anything contained in any law or anything having the force of law in the Santal Parganas, no right shall accrue to any person in -
> (a) land held or acquired in contravention of the provisions of Section 20, or
> (b) .....
> (c) .....
> (d) .....
> (e) ....."

Turning to Section 20, I find that it provides for a restriction on the transfer of a raiyat's right and lays down as follows :-

> "(1) No transfer by a raiyat of his right in his holding or any portion thereof, by sale, gift, mortgage, will, lease or any other contract or agreement express or implied shall be valid unless the right to transfer has been recorded in the record-of-rights and then only to the extent to which such right is so recorded :
> XX XX XX "

It is followed by several provisos which are not relevant to the present case. Sub-Section (2) provides that such a transfer shall be made to a *bona fide* cultivating aboriginal. Sub-Section (3) lays down that "no transfer in contravention of Sub-Section (1) or (2) shall be registered or shall be in any way recognized as valid by any Court whether in exercise of civil, criminal or revenue

jurisdiction". Sub-Section (4) provides that no decree or order shall be passed by any Court or officer for the sale of the right of a raiyat in his holding or any portion thereof nor shall any such right be sold in execution of any decree or order, unless that right is recorded in the record-of-rights. Sub-Section (5) relates to the right of the Deputy Commissioner to evict the transferee of a transfer made in contravention of Sub-Sections (1) and (2).

11. The argument made on the basis of these provisions is that the deed of agreement amounted to a transfer of the interest in the suit lands in favor of Basantwati and Srinath and, therefore, it was in contravention of the provisions of Sub-Section (1) of Section 20 and in view of clause (a) of Section 69 no right accrued to them. This argument must be repelled so far as the acquisition by Basantwati is concerned. In view of the concurrent findings of the Court below to the effect that Basantwati had come into possession of the property in lieu of maintenance the question of her making any new acquisition under the deed of agreement does not arise.

12. Another argument made on the basis of the aforesaid provisions is that a finding of adverse possession in favor of the defendants is bad in law since the defendants could not prescribe after the passing of the Santal Parganas Tenancy (Supplementary Provisions) Act in the year 1949. This argument is of no avail so far as the right acquired by Basantwati is concerned for the same, reason, namely, that she had not either held or acquired the rights over the lands in contravention of the provisions of the aforesaid Section 20.

13. The next question is whether the acquisition of the right in the lands by the defendants second party, Srinath's is hit by the provisions of Section 69 of the Santal Parganas Tenancy (Supplementary Provisions) Act, In order to decide this the question arises whether the deed of settlement was a transfer within the meaning of Section 69 aforesaid. If it be so, then undoubtedly it would come within the mischief of Section 20 and thus also of Section 69. In the circumstances of the present case the deed of settlement cannot be held to be a deed of transfer. It is a case of family arrangement. The plaintiffs themselves said that there was a dispute in respect of the properties of Bhopal and the dispute was referred to arbitration by the parties concerned including Srinath Choudhary. The Panches settled the dispute by giving an award and the terms of the award were accepted by the parties and they entered into an arrangement accordingly and the deed of settlement signed by all the parties concerned was executed. It may be mentioned that Srinath Choudhary had also made a claim to the property and raised a dispute. The plaintiffs themselves alleged that Srinath was an agnate of Bhopal. According to his own case, Srinath claimed to be a close agnatic relation being the first cousin of Mohan Choudhary. He claimed to have performed the funeral rites of the aforesaid Bhopal and further that be had been adopted as the Karta Putra, by Bhopal Choudhary. Accordingly he claimed to have taken possession of the entire properties of Bhopal at his death as his adopted son. This claim and the counter-claims made by the other parties had led to the reference of the dispute to arbitration which resulted ultimately to the deed of settlement executed by the parties. There cannot be the slightest doubt, therefore, that the deed of settlement was a family arrangement and it cannot be said to be a deed of transfer.

14. In this connection I may refer to a decision of a Division Bench of this Court in the case of *Kisto Chandra Mandal v. Mst. Anila Bala Dasi*[3], The question there was whether a deed amounted to a gift or a family arrangement and their Lordships held that in order to determine whether the transaction amounted to a family transaction, the nature of the document and the

surrounding circumstances had to be taken into consideration. The nature of a family settlement has also been discussed in the case of *Sahu Madho Das v. Mukand Ram*[4], Their Lordships said that a compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognizing a right of the others as they had previously asserted it to the portion allotted to them respectively. It was further held that the Court will lean towards upholding family settlement as it is intended to bring about family peace and avoid future disputes which may nun the family and further that it is not for the Court to determine whether at the time of the settlement the parties had antecedent title or not, it is sufficient that the parties asserted some kind of antecedent title or semblance of title.

15. In this case admittedly Srinath was an agnate and had performed the last rites of Bhopal. Admittedly be had made claim to the properties which had been partially recognized and only a small area of land was allotted to him in settlement of the dispute raised by him. A memorandum of the aforesaid family settlement with the aid of the Panches was drawn up. There cannot thus be any doubt that the transaction in question was a family arrangement under which Srinath had acquired title to the lane's.

16. A deed of family arrangement is not a deed of transfer within the meaning of the word as defined in Section 5 of the Transfer of Property Act in a case of transfer there must be an act by which a living person conveys property to another. A family settlement, as well settled, is a settlement between die several members of the family of their dispute, each one relinquishing all claims in respect of property in dispute other than that falling to his share and recognizing the right of the others to the portion allotted to them. The transaction thus recognizes rights and does not create new rights or new title (see *Khunni Lal v. Gobind Krishna Narain*[5], *Fateh Singh v. Thakur Rukmini Rawanji Maharaj*[6], and *Mt. Mahadei Kunwar v. Padarath Chaube*[7],

17. It is thus clear that a deed of family settlement ending disputes between the parties
respecting title to lands not being a transfer within the meaning of Section 20 of the Santal Pargana Tenancy (Supplementary Provisions) Act, is not hit by the provisions thereof. In that view of the matter Section 69 of that Act cannot be held to bar any accrual of rights in the lands which are the subject matter of such a family arrangement. Therefore, it must be held that the acquisition of title by Srinath in the lands in suit cannot be said to be illegal. On the findings of the Courts below he had been in possession over the lands in question since then and had perfected his title by continuous possession for over 18 year. There is thus no substance even in this contention.

18. Learned counsel did not press the third objection regarding the question of application of the principle of res judicata. The point was not raised before the two Courts earlier nor could he put forward the facts relating to the previous case in order to show whether the Court which had tried the former suit was competent to try the subsequent suit. Similarly, learned counsel has given up the last point raised with regard to the application of Article 47 of the Limitation Act for the simple reason that even if the limitation be three years from the date of the final order under Section 145 of the Code of Criminal Procedure, the concurrent finding of the Courts below in the present case is that the plaintiffs were never in possession at any time before the suit and their title, if any, had been lost.

19. There is thus no merit in this appeal. It is accordingly dismissed with costs.
Appeal dismissed.

Cases Referred.

[1]1970 BLJR 735
[2]1970 BLJR 952
[3] AIR 1968 Pat 487
[4] AIR 1955 SC 481
[5](1911) ILR 33 All 356
[6] AIR 1923 All 387
[7] AIR 1937 All 578 (FB)