Sitaji And Ors. vs Bijendra Narain Choudhary And Ors. on 21 April, 1954

Equivalent citations: AIR1954SC601, AIR 1954 SUPREME COURT 601

Bench: Chief Justice, Ghulam Hasan

JUDGMENT

Bose, J.

1. These are an appeal and a cross appeal against a judgment and decree of the Patna High Court in a suit for possession and mesne profits.

2. The property in dispute belonged to one Naubat Lal Jha. He died in 1878 leaving a mother Mst. Sahajwati and two widows Mst. Nunuwati and Mst. Chhemawati. The mother died in 1909 and Mst. Nunuwati in 1911. The surviving widow died on 5-6-1940. The second party plaintiffs claim to be the next reversioners and sue for possession along with the other plaintiffs who are purchasers of a 10 annas share.

3. The defence is of a two-fold character. The first is an attack on the plaintiffs' claim to be the next reversioners. That affects all the property in suit. The second is limited to the properties in Schedule III of the plaint.

4. The family possessed certain deities. On 5-11-1915 Mst. Chhemawati dedicated the Schedule III properties to these deities and they have been in possession through their shebaits ever since. The defendants claim that they are entitled to these properties in any event. The deities are the defendants first party and the fourth defendant is their shebait. He has been described as the defendant second party. We are not concerned in appeal with the defendants third party.

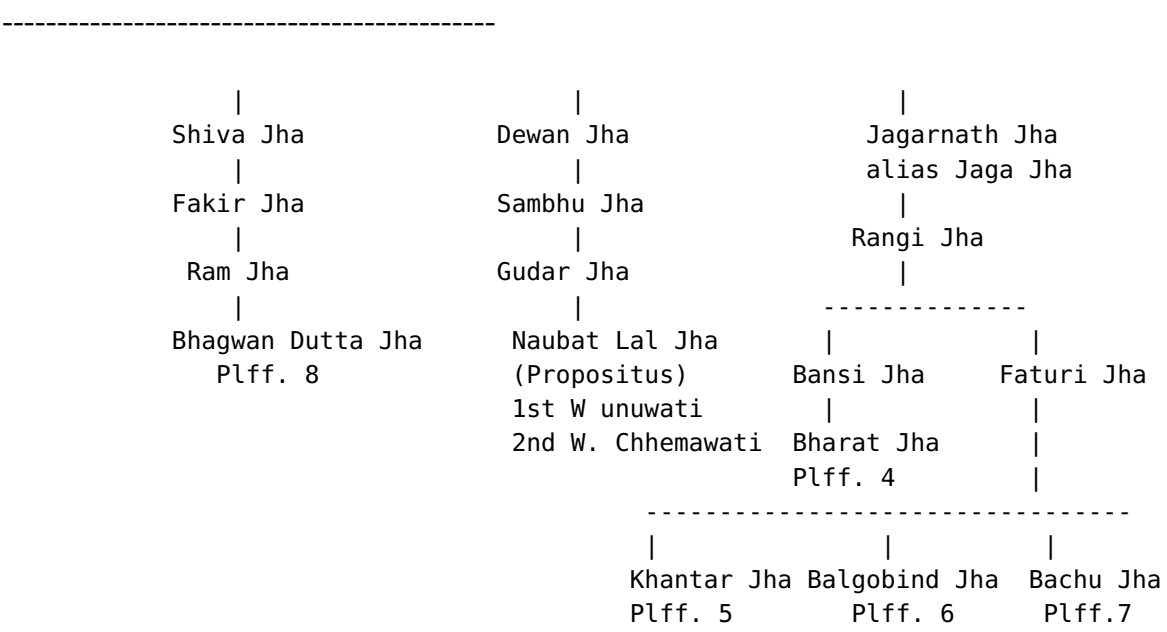
5. In the year 1933 the plaintiffs instituted a suit against the defendants and Mst. Chhemawati for a declaration that Mst, Chhemawati's deed of endowment dated 5-11-1915 did not bind the reversioners. They succeeded in the first Court but the decision was reversed on appeal on the ground of limitation. The other points which arise here were expressly left open for determination after Chhemawati's death.

6. Both the lower Courts hold that the second party plaintiffs have proved their title as the next reversioners to Naubat Lai Hub On the strength of this finding the trial Court decreed the entire claim. The High Court. however, upheld the defendants' contention about the Schedule III properties and so-modified the decree and dismissed the plaintiffs' claim to that extent. Except for that the decree of the first Court was confirmed.

7. Both sides appeal here.

8. The defendants' appeal is Civil Appeal No. 34 of 1953. The only question there is whether the plaintiffs have proved that they are the next reversioners. Both Courts hold they have and as that is a concurrent finding of fact it cannot be attacked here unless it can be shown that the evidence on which the lower Courts have rested their decision is legally inadmissible.

9. The genealogical tree on which the plaintiffs rely is a long one but we need not concern ourselves with all its details because, if the evidence on which the lower Courts rely is admissible, it is enough to prove the tree. The following portion of the tree is all that we need consider. We have omitted unnecessary names.



10. The following is the evidence oft which the Courts below have acted. First, there is the 5th plaintiff Khantar Jha (P.W. 6). He proves the entire genealogy. It is true he has not got personal knowledge of every step in the sense that he knew each one of the persons named; that would be impossible as many died before he was born. But personal knowledge is not necessary in these cases.

A member of the family can speak in the witness box of what he has been told and what he has learned about his own ancestors, provided what he says is an expression of his own independent opinion (even though it is based on hearsay derived from deceased, not living, persons) and is not merely repetition of the hearsay opinion of others, and provided the opinion is expressed by conduct. His sources of information and the time at which he acquired the knowledge (for example, whether before the dispute or not) would affect its weight but not its admissibility. This is therefore

legally admissible evidence which, if believed, is legally sufficient to support the finding.

11. However, the lower Courts have not rested their decision solely on the 5th plaintiffs testimony. They have used certain Panjis as corroboration and the question is, are they admissible in evidence?

The attack made on them is that the 5th plaintiff admits as P.W. 6 that it was he who dictated the genealogy to Nirsoo Jha (P.W. 29) and to another Panjikar, Raghunath Jha (P.W. 40) after the dispute arose. He says he told Nirsoo about five years before he was speaking (that is to say, in or about the year 1939) and Raghunath eight to ten years before (that is, in 1934 or 1936). This was admittedly after the dispute, so it was said that the entries are inadmissible in evidence.

12. These Panjis are maintained by Panjikars who are professional genealogists. They systematically maintain pedigree tables in the community of Naithal Brahmins. They go from place to place and periodically ascertain the genealogies of their clients and enter them in Panjis (palm leaf manuscripts of genealogy) and add to them such fresh additions as occur in the family from time to time. They are considered important in this community because questions of marriage (who may marry whom) and relationship and caste turn on them. Statements about pedigree are not therefore lightly made in such cases.

The weight to be attached to them may, in a given case, be nil; on the other hand, they may be regarded as important because a man in such a position would ordinarily hesitate before giving a false pedigree as so many unforeseen consequences of importance to him and his family may turn on it. But the question of weight is for the Courts of fact to determine; we are only concerned with the admissibility.

13. They can be divided into two categories; first, those which were written to the 5th plaintiff's dictation and next, those which were dictated by others. Both sets have been produced from proper custody and have been duly proved; and both Courts find that they have been properly kept in the ordinary course of a Panjikar's business.

14. We need not decide whether the first set which were dictated by the 5th plaintiff are admissible in evidence because the others are undoubtedly admissible and they are more than enough to corroborate the 5th plaintiff's testimony. The ones dictated by the 5th plaintiff, after the dispute arose, are Ex. 4(c), dictated to the now blind Panjikar Raghunath Jha (P.W. 40), and Ex. 4(g) dictated to the deceased Panjikar Kumar Lal Jha who was examined in the previous suit. Even if these be ignored, there is still the second set.

15. The 5th plaintiff also says that he dictated a genealogy to Nirsoo Jha (P.W. 29) but the only ones produced by Nirsoo Jha, namely Exs. 4 and 4(a), were not written by him, so, either the one dictated to him was not produced or, as the plaintiffs recitation tallied with the genealogies already in existence, no fresh entry was made. In any case, it is clear that Exs. 4 and 4(a) are not the ones which were written to the plaintiff's dictation.

16. The second set consists of those which were dictated by persons other than the 5th plaintiff. Those are Exs. 4, 4(a), 4(b), 4(d) and 4(e). We do not know who dictated these entries but we do know that they were written by the family Panjikars of the plaintiffs' family, that the entries were made by persons now dead, that they were made in properly kept genealogical records and that they come from proper custody.

17. First, there are Exs. 4 and 4(a). These are proved by Nirsoo Jha (P.W. 29). He does not know who dictated the entries but he says that Ex. 4 was written by Krishna putt Jha, the brother of his great grandfather, and Ex. 4(a) by his father. Both are dead. He also proves that the collection of Panjis from which Exs. 4 and 4(a) were taken contains entries in the hand of his father, grandfather, great grandfather and great granduncle. He also says that he saw Ex. 4(a) fifteen years before 1944 when he was deposing, that is to say, in or about 1929. This was before the present dispute arose. Ex. 4(a) is therefore admissible under Section 32(2) and also under Section 32(6) of the Evidence Act: see -- 'Mohansing v. Dalpatsing', AIR 1922 Bom 51 (A) and -- 'Abdul Ghafur v. Hussain Bibi' (B).

18. Ex. 4 was presumably written before Ex. 4(a), first because it contains the earlier portion of the pedigree and next, because it was written by a man who, in the ordinary course, would be much older than the man who wrote Ex. 4(a). Ex. 4(a) was written by Nirsoo's father: Ex. 4 by the brother of his great grandfather. Ex. 4 would therefore be admissible under Section 32(6) but even if it was written after the dispute arose it would also be admissible under Section 32(2) because Section 32(2) does not impose the limitation that the entry should have been made before the dispute arose. It is enough if it was made in the ordinary course of business. It is the business of these Panjikars to collect this evidence about pedigrees and presumably they endeavour to collect correct information because what they put down about one man will affect a whole family and the families of those who marry into it. Also, there are checks and counter checks as information pours in from different members and branches of the family. They would consequently fall into disrepute if their books contained glaring inaccuracies. Therefore, these entries are relevant under Section 32(2) (even if Section 32(6) does not apply) to prove the relationships in dispute and they afford independent corroboration of the 5th plaintiff's testimony.

19. Next comes Ex. 4 (b). This is proved by Lakchmi Narain Jha (P.W. 31), the son of the now blind Panjikar Raghunath Jha (P. W. 40). The witness says that the entries in Ex. 4 (b) are written by his grandfather Bansi Jha. He also tells us that his grandfather died long before the survey which was made in 1901 and that he himself first saw Ex. 4 (b) about fifteen years before 1944 when he was deposing, that is, in 1929. These entries were therefore made before the dispute arose (Section 32(6)) and are in any case admissible under Section 32(2).

20. It is to be noted that Ex. 4 (b) is not the entry about which the 5th plaintiff speaks. He says he dictated a genealogy to Raghunath Jha. Raghunath Jha (P. W. 40) is now blind and his books were produced and proved by his son Lakchmi Narain Jha (P.W. 31). The one written by Lakchmi Narain's father, Raghunath, is Ex. 4(c). The other, Ex. 4(b), was written by his deceased grandfather.

21. Next, there are Exs. 4 (d) and 4 (e). These are proved by Kumar Lal Jha who was examined in the previous case. Kumar Lal was 48 years old when he gave his evidence. He says that Ex. 4(d) was

written partly by his father, who is dead, and partly by an ancestor whose writing he cannot identify because they were written before he was born. His father died in 1896, so it is evident that those entries were made long before the present dispute arose. He is not clear about the earliest entries in Ex. 4(e) but he presumed they had been written by his father. Whether that is so or not, these Panjis are ancient and have come from proper custody. They also are admissible under Section 32(2) and under Section 32(6). Kumar Lal Jha's evidence is admissible under Section 33.

22. The question of weight is not for us. It is enough to say that the evidence of the 5th plaintiff, taken with the Panjis, Exs. 4, 4(a), 4(b), 4(d) and 4(e), is sufficient to afford a good foundation for the decision of the two Courts of fact. The defendant's appeal, Civil Appeal No. 34 of 1953, fails and is dismissed with costs.

23. We now turn to the plaintiffs' appeal, Civil Appeal No. 35 of 1953. This relates to the Schedule III properties. They were purchased by Mst. Chhemawati and did not form part of the estate which came to her from her husband. As the reversioner can only claim property which belonged to the propositus, the burden is on the plaintiffs, to establish that these properties formed part of Naubat Lal's estate. There is no presumption that any particular property in the widow's hands is part of her husband's estate because a widow can have properties of her own. Therefore, he who claims must establish his right to it.

It is admitted here that the widow purchased them out of the savings made by her from the income of her husband's estate but that does not necessarily make it an accretion because a Hindu widow has an absolute right to the income and is not bound to save any of it for the reversioners. She can, if she so chooses, add it to the estate and augment it or she can, if she wants, keep it separate and deal with it as her own: -- 'Venkatadri Appa Rao v. Parthasarathi Appa Rao' at pp. 108, 109 (C). The question is one of intention: -- 'Babu Sheo Lochun Singh v. Babu Saheb Singh', 14 Ind App 63 (PC) (D). But the question is one of fact and must be decided as such: -- 'Raja of Ramnad v. Sundara Pandiyasami Tevar', AIR 1918 PC 156 (E).

24. In the present case, there can be no doubt about the intention because the widow dedicated the properties to the family deities. It is true that she said in the deed of endowment that she was doing this in accordance with her husband's intentions and wishes but that only furnishes the reason for her action. As the income was hers to do what she liked with she had the right to make the dispositions whatever the reason. The plaintiffs have not shown anything which would indicate a contrary intention.

We therefore agree with the High Court that the evidence here establishes that the widow's intention was to keep the property separate and not add it to her husband's estate.

25. This appeal also fails and is dismissed with costs.