Jinia Keotin & Ors vs Kumar Sitaram Manjhi & Ors on 20 December, 2002

Equivalent citations: AIRONLINE 2002 SC 635

Author: D. Raju

Bench: Doraiswamy Raju, Shivaraj V. Patil

CASE NO.:
Appeal (civil) 7247 of 1995

PETITIONER:
Jinia Keotin & Ors.

RESPONDENT:
Kumar Sitaram Manjhi & Ors.

DATE OF JUDGMENT: 20/12/2002

BENCH:
Doraiswamy Raju & Shivaraj V. Patil.

JUDGMENT:

J U D G M E N T D. Raju, J.

The plaintiff (1st respondent herein) filed the suit claiming for 1/6th share in Schedules A to D properties and 1/3rd share in Schedule E properties. From the indisputable facts on record, the ancestral properties have to be divided firstly between Sahadeo Manjhi, his brother Mahadeo Manjhi (defendants Nos. 1 & 2) and their mother Dukhani Keotin (defendant No.7) each one getting 1/3rd share. Out of the 1/3rd share of Sahadeo Manjhi , the properties again will be equally divided in four parts each one of the sharers getting 1/4th share. Defendants 8 to 11 are said to be not entitled to any share on account of the fact that the marriage of the 1st defendant with the 8th defendant was void for the reason that his first wife, Smt. Kamli Devi, was alive and the first marriage still subsisting. The second marriage remarriage, of 1st defendant with the 8th defendant after the coming into force of the Hindu Marriage Act, 1955 cannot be valid. The learned 2nd Additional Subordinate Judge, Dumka, passed a preliminary decree on 27.9.1983 in Title Suit No.40 of 1975 (3 of 1983) for the 1/4th share of the plaintiff in the suit properties out of the 1/3rd, which has got to be allotted to the share of the 1st defendant. On appeal in Title Appeal No.43 of 1983 before the learned Ilnd Additional District Judge, Dumka, the learned First Appellate Judge by his Judgment dated 13.7.1990 also held that the 1st defendant could have remarried the 8th defendant only after 1957 when the judgment of acquittal came to be passed in the criminal case against him for an offence under Section 498, IPC.

In the light of the above, the plaintiff was held entitled to 1/9th share in the Suit A to D Schedules properties and the children of Sahadeo through Smt. Jinia Keotin were held not entitled to any share in the coparcenary property in terms of Section 16(3) of the Hindu Marriage Act, 1955, though they may claim to be entitled to their due share in the property of their parents. During the pendency of the said appeal, the Sahadeo Manjhi died and consequently his 1/9th share was held to devolve upon all his heirs the plaintiff, daughter, defendant No.6- the mother, defendant No.7, the wife, defendant No.5 and his sons from Smt. Jinia Keotin, viz., defendant Nos.9, 10 and 12 and appellant No.7. Since defendant No.11 died even during the lifetime of Sahadeo Manjhi, he was not entitled to any share. Each of the eight heirs of Sahadeo Manjhi was held entitled to inherit an equal share of 1/72 out of the said 1/9th share. The plaintiff was, therefore, held entitled to 2/72 equal to 1/8th share in the coparcenary property comprised in A to D Schedules. The appeal was allowed on the above terms and to the extent indicated. Not satisfied, the matter was pursued by the 2nd wife and her children on Second Appeal in S.A. No.315 of 1991 before the High Court of Patna. The said appeal was dismissed on 20.12.1991. Hence, the above appeal by them before this Court.

Shri Lakshmi Raman Singh, the learned counsel for the appellants, while reiterating the stand taken before the Courts below, vehemently contended that once the children born out of void and illegal marriage have been specifically safeguarded under Section 16, as amended by the Central Act 68 of 1976, there is no justification to deny them equal treatment on par with the children born of wife in lawful wedlock by countenancing claims for inheritance even in the ancestral coparcenary property. It was also contended by the learned counsel that inasmuch as but for the Hindu Marriage Act, 1955 there was no prohibition for an Hindu to have more than one wife and it is by virtue of the said Act such marriages became unlawful or void, once the legislature by amendment of Section 16 chosen to legitimatise the children born of such void marriages, the prohibition must be held to have been relaxed and the stigma wiped out so as to render the progeny, legitimate for all purposes and, therefore, the provisions of Section 16(3) of the Act also should be construed keeping in view the totality of circumstances and the object and purpose of the legislation in respect of right to inherit property also like the children born out of lawful wedlock. Per contra, Shri H.L. Agrawal, learned senior counsel, with equal force contended that acceptance of the plea on behalf of the appellants would amount to rewriting the enactment which has expressed the legislative mandate in clear terms in Section 16(3) and, therefore, no exception could be taken to the concurrent view taken by the courts below, in this regard.

We have carefully considered the submissions of the learned counsel on either side. The Hindu Marriage Act underwent important changes by virtue of the Marriage Laws (Amendment) Act, 1976, which came into force with effect from 27.5.1976. Under the ordinary law, a child for being treated as legitimate must be born in lawful wedlock. If the marriage itself is void on account of contravention of the statutory prescriptions, any child born of such marriage would have the effect, per se, or on being so declared or annulled, as the case may be, of bastardizing the children born of the parties to such marriage. Polygamy, which was permissible and widely prevalent among the Hindus in the past and considered to have evil effects on society, came to be put an end to by the mandate of the Parliament in enacting the Hindu Marriage Act, 1955. The legitimate status of the children which depended very much upon the marriage between their parents being valid or void, thus turned on the act of parents over which the innocent child had no hold or control. But, for no

fault of it, the innocent baby had to suffer a permanent set back in life and in the eyes of society by being treated as illegitimate. A laudable and noble act of the legislature indeed in enacting Section 16 to put an end to a great social evil. At the same time, Section 16 of the Act, while engrafting a rule of fiction in ordaining the children, though illegitimate, to be treated as legitimate, notwithstanding that the marriage was void or voidable chose also to confine its application, so far as succession or inheritance by such children are concerned to the properties of the parents only.

So far as Section 16 of the Act is concerned, though it was enacted to legitimise children, who would otherwise suffer by becoming illegitimate, at the same time it expressly provide in Sub-section (3) by engrafting a provision with a non obstante clause stipulating specifically that nothing contained in Sub-section (1) or Sub-section (2) shall be construed as conferring upon any child of a marriage, which is null and void or which is annulled by a decree of nullity under Section 12, "any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents." In the light of such an express mandate of the legislature itself, there is no room for according upon such children who but for Section 16 would have been branded as illegitimate any further rights than envisaged therein by resorting to any presumptive or inferential process of reasoning, having recourse to the mere object or purpose of enacting Section 16 of the Act. Any attempt to do so would amount to doing not only violence to the provision specifically engrafted in Sub-section (3) of Section 16 of the Act but also would attempt to court relegislating on the subject under the guise of interpretation, against even the will expressed in the enactment itself. Consequently, we are unable to countenance the submissions on behalf of the appellants. The view taken by the courts below cannot be considered to suffer from any serious infirmity to call for our interference, in this appeal.

The appeal, therefore, fails and shall stand dismissed. No costs.