

Gaya Deen vs Mst. Amrauti on 4 April, 1955

Equivalent citations: AIR1955ALL630, AIR 1955 ALLAHABAD 630

JUDGMENT

Agarwala, J.

1. This is a plaintiff's appeal arising out of a suit for possession of a property which was in possession of one Mst. Newasi while she was alive and which she had, during her life-time, transferred by means of a sale deed to the respondent. The facts briefly stated are as follows:

There were three brothers, Debi Prasad, Shiva Prasad and Mahabir, who formed a joint Hindu family. Shiva Prasad died in 1906 leaving Smt. Sambodha as his widow; Mahabir died in 1916 leaving Smt. Newasi as his widow; and Debi Prasad died in 1925 Leaving Smt. Tulsa as his widow. As the brothers were all members of a joint Hindu family, on the death of Shiva Prasad the estate passed to Debi Prasad and Mahabir; and on the death of Mahabir, Debi Prasad was the sole surviving coparcener of the property, and in law became the exclusive owner of the property, and the widows had only a claim for maintenance.

The plaintiff-appellant is a collateral of Debi Prasad. On the deaths of Shiva Prasad and Mahabir, however, the names of their widows were entered. Smt. Sambodha's name was entered over one-third of the property and so was the name of Newasi entered over another one-third of the property. Apparently the names of Shiva Prasad, Mahabir and Debi Prasad were entered on the record as owners of the property in equal shares, though no village record has been filed in the case showing the nature of the entry.

2. After the death of Shiva Prasad and Mahabir, Smt. Sambodha, jointly with Debi Prasad, executed a simply mortgage in favour of Gaya Deen plaintiff-appellant on 24-6-1922. In this deed of mortgage it was stated that they were mortgaging their one-third shares over which they were in possession . On 31-12-1943, after the death of Debi Prasad, Smt. Sambodha transferred her one-third share in the property to the wife of the plaintiff-appellant on the allegation that she was transferring her share which was in her possession.

The necessity recited in the deed of mortgage was the payment of debts and family expenses; while in the deed of sale it was shown as Kharch Khangri, payment of Malguzari and payment of debts.

3. On 18-1-1944, Newasi made a sale deed of her entire one-third share in favour of the defendant-respondent. In this deed she stated that she was transferring the share in her possession

and that the transferee would become absolute owner of the property. It would be observed that neither Smt. Sambodha nor Smt. Newasi claimed absolute title in themselves in respect of the properties which they were transferring.

4. Smt. Newasi died in 1944, and soon after her death the appellant filed the present suit for possession over her share of the property on the ground that he was the next reversioner of Mahabir, that the sale deed executed by Smt. Newasi in favour of defendant-respondent was without any legal necessity and, as such, he was entitled to the possession of the property.

5. The defence of the defendant-respondent was that since Mahabir and his brothers were members of a joint Hindu family, on the death of Mahabir the sole surviving owner was Debi Prasad, and that Smt. Newasi's possession was adverse and was in the nature of a full absolute ownership and that, therefore, she had every right to transfer her property to the defendant. In the alternative it was claimed that even if Smt. Newasi was in possession as a Hindu widow, the sale deed was made by her for legal necessity.

6. The trial court held that the sale deed was not for legal necessity and that Smt. Newasi's possession was in the capacity of a Hindu widow and that therefore, the transfer was invalid. In the result the suit was decreed.

7. This decree was reversed by the lower 'appellate court holding on the above circumstances that Smt. Newasi's possession was in the capacity of an absolute owner of the property and not as a Hindu widow, and that therefore, her transfer could not be questioned by the reversioner of her husband.

8. In this appeal by the plaintiff it has been strongly urged that the view of law taken by the lower appellate court as to the nature of the estate prescribed by Smt. Newasi was erroneous.

9. After hearing learned counsel for the parties we have come to the conclusion that, the contention of learned counsel for the appellant is correct.

10. It will be observed that Smt. Newasi took possession of the share which stood in the name of her husband and her possession took effect on the death of her husband. It is true that she had no title to the property because her husband was a member of a joint Hindu family with Devi Prasad on whose death Debi Prasad succeeded to his property as the sole surviving coparcener. Smt. Newasi's possession of the property would, therefore, be adverse unless it was shown that she held it under some mutual arrangement with Debi Prasad.

The trial court held in this case that there was a mutual arrangement, but this was a mere surmise because there was no evidence on record in support of this finding and the lower appellate court did not uphold it. It is well settled that where a Hindu widow in a joint Hindu family takes possession over a family property, it is for those who want to assert that her possession was not adverse but in lieu of an arrangement or for consolation, to establish the truth of their assertion, vide -- 'Mt. Lachhan Kunwar v. Anant Singh', 22 Ind App 25 (A); and -- 'Sham Koer v. Dah Koer', 29 Ind App

132 (B).

11. The possession of Mst. Newasi was therefore certainly adverse, but the question, however, is whether she prescribed for a widow's estate merely or for a full absolute ownership.

12. The nature of an estate prescribed by a Hindu widow depends upon the intention with which she takes possession of the property adversely to the true owner. If her intention is that she has an absolute interest in the property, she is prescribing for an absolute estate, which, on her death, would be inherited by her own Stridhan heirs. If, on the other hand, her intention is to take possession of the property as an heir of her husband, she prescribes for a widow's estate and she is making good the property to the estate of her husband which, on her death, would go to the heirs of her husband.

(See. Bnawal Sanyasi's case reported in -- 'Bibhabati Devi v. Ramendra Narain', AIR 1947 PC 19 (C), and the case of --- 'Budhram Rai v. Banarsi Rai', AIR. 1948 All 31 (D). The intention must be exhibited by overt acts which may consist of the conduct of the widow as shown in her dealings with the property. If in dealing with the property she asserts that she is the absolute owner of the property, it will be assumed that she was prescribing for an absolute estate. If, on the other hand, she asserts that she was in possession of the property as an heir of her husband or that she had only a limited estate as a Hindu widow, in that case she would be prescribing only for a widow's estate.

It may be that her statements to any of the above effects may be produced in a case, but the court must be satisfied that the widow did in fact make "those statements after understanding their nature. For instance, in the case of '29 Ind App 132 (B)', the Privy Council had occasion to refer to such statements and, on the facts of that case, came to the conclusion that it was not true that the widows knew of those statements or had made them after fully comprehending their effect.

There are cases in which the observations made by the Privy Council in the above case have been relied upon explain away similar statements. For instance, in the case of -- 'Kali Charan v. Piari', AIR 1924 All 740 (2) (E); and -- 'Udai Pratap Singh v. Narotam Singh', AIR 1946 Oudh 38 (F), such statements were disregarded presumably on the very same grounds on which the Privy Council disregarded them.

13. In the present case it was urged on behalf of learned counsel for the respondent that the mort-gage deed of 1922 and the sale deed of 1943, to which Smt. Sambodha was a party, showed that she was claiming an absolute estate. This is not correct. We have already pointed out that in these two documents the lady did not say that she was claiming an absolute estate. She merely referred to the share in her possession. This is quite consistent with a widow's estate. Further, any statement made by Smt. Sambodha would have no relevancy in determining the nature of the estate prescribed by Smt. Newasi.

Even Newasi did not make any assertion in her life-time excepting in the deed, the validity of which is challenged in this case. Even there she did not assert that she claimed an absolute estate. She no doubt stated that the vendee would acquire an absolute title, but this was quite consistent with a sale

for legal necessity by a widow holding a widow's estate. It must, therefore, be held that in the present case there is no evidence of the intention of Smt. Newasi to hold the estate as an absolute owner.

14. In the absence of any evidence of intention, the question has to be decided on presumption. In our opinion where a Hindu widow enters into possession, on the death of her husband, over the property which stood in his name, then, whether the husband was the absolute owner of the property in his own right or was a coparcener in a joint Hindu family, the presumption is that the widow entering into possession enters as the widow of her husband and claims the property as such.

No distinction to our mind exists between a case in which the Hindu widow enters into possession of a property absolutely owned by her husband as a separated member of the family or as his self-acquired property, and where she enters on that property when her husband was a member of a joint Hindu family with his coparceners. It may be stated here that it is our experience that in this State in the preparation of the record of rights even the member of a joint Hindu family owning a certain property are recorded as owning the property in defined shares. In these circumstances we are of opinion that the presumption in the present case would be that Smt. Newasi entered into possession over the property which was entered in the name of her husband as the widow of her husband and would, therefore, prescribe only a widow's estate.

15. Learned counsel has referred to several cases in support of his contention that where the widow enters into possession over a property which was joint family estate there would be no such presumption. He has referred to the following cases:

"22 Ind App 25 (PC) (A)"; '29 Ind App 132 (PC) (B)'; -- 'Satgur Prasad v. Raj Kishore', AIR 1919 PC 60 (G); -- 'Uma Shankar v. Aisha Khatun', AIR 1924 All 88 (H); 'AIR 1924 All 740 (2; (E)'; 'AIR 1946 Oudh 38 (P)'; -- 'Suraj Bali Singh v. Tilakdhari Singh', AIR 1928 Pat 220 (I); -- 'Ulfat Rai v. Sm. Kamia Devi', AIR 1949 All 458 (J).

We have examined all these cases and we do not think that they support the contention put forward by learned counsel. In almost all these cases the widow had entered into possession of a property either on the death of the last male-owner who was not her husband.

16. In '22 Ind App 25 (PC) (A)', the property was at one time held by one Mangal Singh. He died leaving a widow Jit Kunwar and a son Pahlad Singh, Pahlad Singh died in 1861 leaving a widow Lachhan Kunwar. Instead of Lachhan Kunwar, Jit Kunwar entered into possession of the property on the death of her son, and the finding of the Judicial Commissioner was that Mst. Jit Kunwar treated the estate always as being her own absolute property and that the estate she held was that of an absolute full proprietor, and not the limited estate of a Hindu widow.

On these facts it was held that Jit Kunwar's estate was that of a full proprietor and not the limited estate of a Hindu widow. Learned counsel relied on the following observations in that case:

"The son having the title, she could not take possession excluding him unless she intended to take an adverse possession -- a possession to which she was not in any way entitled."

From this observation it is argued that wherever a widow takes possession of the property without title, she takes it as a full and absolute owner. This inference is not warranted. The Privy Council did not say in the above quotation that whenever a widow takes a property by adverse possession she would take it as an absolute owner.

17. Again, reliance was placed on another observation :

"The contention that although it might be barred as against the son and all persons claiming under him, the effect was only to extinguish those rights, and to let in the rights of any persons who would claim as reversionary heirs of Mangal, does not appear to their Lordships to be supported by authority nor is it tenable unless it were clearly shown that when Jit Kunwar took possession she professed to do it as claiming only the limited estate of a widow,"

It is argued that unless the burden of showing that a widow took possession professedly as a limited owner is discharged, the presumption must always be that she was taking as a full owner. This is not what the Privy Council has laid down. They were referring to the particular case that was before them and in that particular case Jit Kunwar had taken possession of the estate not on the death of her husband but after the death of her son who was the last male owner.

It was in those circumstances that it was held that those who wanted to assert that she took a limited estate of a Hindu widow must prove their assertion. In the present case Smt. Newasi took what was entered in her husband's name, on his death,

18. In the case of 29 Ind App 132 (PC) (B), possession was taken by the widow and the daughter-in-law (the latter being the widow of a predeceased son) of a member of a joint Hindu family. The widow had died and the question was what the nature of the estate prescribed by the daughter-in-law was, and their Lordships held that unless it was shown that she was taking a limited estate, her estate would be an absolute one.

19. In the case of AIR 1919 PC 60 (G), the widows of one of the brothers took possession of an estate which was owned, as the sole surviving member, by their husband's brother. It was held that they held adversely to the reversioners of that brother. It may be noted that in that case there was no question whether the nature of the estate prescribed by the widows by adverse possession was that of a Hindu widow's estate or of a full owner.

That question would have arisen if the reversioners of their husband had claimed title to the property. But as it was, the case was between one of the widows and the reversioners of the husband's brother.

20. In the case of 46 All 769 (E), two widows of two brothers took possession over the property (that would have come to their husband's share if there had been a partition) after the death of their father-in-law, their husbands having died during the life-time of their father. The head-note of the case is erroneous. It was not a case in which a widow of a member of a joint Hindu family took possession, on the death of her husband, of the property which was in his possession during his life-time, as is stated in the head-note.

21. In the case of AIR 1946 Oudh 38 (F), a widow had taken possession of the property of her husband on the husband's death who was joint with his brother, and then after the death of that brother she had also taken possession of his share of the property. The question in the suit was with regard to the brother's share of the property which had been transferred by the widow, and it was held that she acquired absolute interest over that portion of the property.

She had made transfers of the property describing herself as 'owner', and in certain documents she had described herself as being in 'absolute proprietary possession' since the death of her husband and that of his brother. In these circumstances it was held that the acts, conduct and the assertions of the widow during the entire period of possession clearly disclosed that she prescribed as a full owner. But the learned Judges went on to observe as follows:

"The law is clear that where a Hindu female who has no right to the property obtains and retains possession for the requisite period, she will normally prescribe for an absolute title, unless it is shown that she was in possession under some arrangement with the persons best entitled to the property or that she was prescribing only for a limited estate."

To this proposition we would only add that--

"where a Hindu widow takes possession of a property over which her husband's name is recorded or which was in her husband's possession on her husband's death, the presumption is that she is taking the property in the capacity of her husband's widow and, as such, prescribing only for a limited state,"

22. In the case of AIR 1928 Pat 220 (I), the widow of a person took possession over that property on the death of her husband's brother both of whom were members of a joint Hindu family.

23. In the case of AIR 1949 All 458 (J), a learned single Judge of this Court, after reviewing the case law, laid down the following propositions as well-established;

"(1) That, where on the death of a member of an undivided Hindu family, his widow assumes possession of the family property or a portion thereof there is no presumption that she has been allowed this for her mere consolation or in lieu of maintenance -- unless the surviving member proves an arrangement making her possession permissive, it would be deemed to be adverse.

(2) That, where on the death of an absolute Hindu proprietor, his widow, on assuming possession of his property, renounces her character as a limited owner by asserting an absolute title and remains in possession of the property for over 12 years, she prescribes a full estate for herself to the exclusion of her husband's heirs.

(3) That, where the widow in the last case, making no such renunciation or assertion, acquires, adverse possession over a certain property and retains it for the full statutory period, she prescribes only a limited estate in respect of that property which, on her death, would revert to, her husband's heirs.

(4) That the question of the widow's possession as a limited owner can arise only if she claims through the last male owner, that is to say, if she is his heir and not otherwise, and (5) That a fortiori, if she is not the heir of the last male owner, her possession is adverse to the latter's heirs, and after the lapse of 12 years the property becomes her stridhan, descendible on her own heirs."

24. To the first three propositions laid down by the learned Judge no exception can be taken. But the last two propositions need modifications. In proposition No. 4, the question of the widow's possession as a limited owner can arise, not only when she claims through the last male owner as his heir, but also when not claiming through the last male owner she claims the property as an heir of her husband in the capacity of her husband's widow although her husband was not the last male owner.

And, as regards proposition No. 5, it may be stated that if the widow is not the heir of the last male owner, her possession is adverse to the latter's heirs and after the lapse of 12 years the property becomes either her stridhan descendible on her own heirs, or the property is made good to the estate of her husband if she claimed to be prescribing only for a limited estate as a Hindu widow.

25. We think the law was correctly laid down in the case of -- 'Chandra Bali Pathak v. Bhagwan Prasad Pande', 1944 All LJ 344 (K), when their Lordships observed:

"It is true that possession, unless it is based upon title, must be deemed to be adverse, but the possession of a Hindu widow must be treated on a different basis.' The true test has always been furnished by the character in which she steps into possession. If she has entered possession not as a widow of the last male owner or as a widow of the family, the possession will be deemed to be adverse, but if she has entered in possession as a widow of the last male owner or as a widow of the family, her possession cannot be treated as adverse.

If there are no indications to the contrary a woman claiming an estate expressly by inheritance must be deemed to be claiming a limited estate."

26. The statement of the law, so far as it goes, is correctly made in Mulla's Hindu Law, 11th Edn., para 211 at pp. 235 to 237. On p. 237 it is stated--

"The possession of a portion of the joint family estate by the widow of a member of a joint Hindu family governed by the Mitakshara Law, as of right, for twelve years or upwards, as for instance, where mutation has been effected in her name and she remains in continuous possession, bars the claims of the other members of the family."

In this passage the learned author has not stated what the nature of adverse title for which she prescribes, would be, because he had already done so earlier on p. 236. The statement of law would become clear if the following words are added at the end of the passage:

"on the basis of their being surviving members of a joint Hindu family."

27. Our attention has also been drawn to a single Judge decision of the Lucknow Bench of this Court, -- Pirthi Pal Pandey v. Mst. Kalpoo', AIR 1951 All 190 (L). In that case a widow had taken possession of the property entered in the name - of her husband on her husband's death, and it was found that her husband was joint at the time of his death with his brother. It was held that there was no presumption that the widow's name was recorded by way of consolation and that her possession was unlawful at its inception.

It was nowhere stated that she prescribed for an absolute instate. But since the suit of the reversionary heir to her husband was dismissed, it appears that the learned Judge considered that even her husband's reversioners were barred. If that is so, we respectfully differ from the decision of the learned Judge. It does not seem that it was brought to the notice of the learned Judge that although the widow's possession would be adverse because it was unlawful, she would be prescribing only for a widow's estate inasmuch as she took possession over her husband's share on her husband's death, the presumption being that in such a case she would be taking the property as a widow of the husband unless the contrary was established.

28. In our opinion the nature of the estate prescribed for by Smt. Newasi was a widow's estate.

29. The next question that fell for determination before the courts below was whether the transfer in the present case by Smt. Newasi was for legal necessity or not. The trial court held that it was not for legal necessity, but the lower appellate court has not decided this issue. The case will, therefore, go back to the lower appellate court for a decision on that issue.

30. We, therefore, direct that the court below shall proceed to record its finding on the following issue:

"Was the sale deed dated 18-1-1944 by Smt. Newasi in favour of the defendant-respondent for legal necessity?"

The finding shall be sent to this Court within two months. On receipt of the finding, parties shall be allowed ten days' time to file objections. The case will thereafter be listed for final disposal.