
(2003) 08 JH CK 0002

Jharkhand High Court

Case No: L.P.A. No. 448 of 1998 (R)

Dhanai Majhi and
Another

APPELLANT

Vs

Ranga Majhi and
Others

RESPONDENT

Date of Decision: Aug. 25, 2003

Citation: (2004) 1 JCR 198

Hon'ble Judges: P.K. Balasubramanyan, C.J; R.K. Merathia, J

Bench: Division Bench

Advocate: A. Sen, for the Appellant; A.B. Mahata, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. The plaintiffs are the appellants. They filed a suit for declaration of their title over Plaintiff-B and F Schedule properties, for recovery of possession of Plaintiff-B Schedule and for confirmation of possession over Plaintiff-F Schedule properties.

2. The suit was resisted by the defendants. The suit was dismissed by the trial Court and that dismissal was confirmed in appeal by a learned Single Judge of this Court. Hence, this appeal under Clause 10 of the Letters Patent.

3. The plaintiffs are the sons of one Dhuma Majhi. Dhuma Majhi had a brother, Batol Majhi alias Bajol Majhi, who died before 1961, leaving behind his widow and daughter Kandri Majhian. Of course, there is controversy, whether he died in the year 1961 or in the year 1926. Whatever it be, he left a widow and a daughter Kandri Majhian. The defendants in the suit are the husband of Kandri Majhian and her four sons and the daughter. According to the plaintiffs, the suit properties were ancestral and on the death of Batol Majhi, his married daughter Could not inherit and at best his widow had only a limited interest and the plaintiffs were entitled to inherit the property. According to

paragraphs 6 and 7 of the plaint, a custom was prevalent that on the death of a Santhal, his married daughter or widow were not entitled to inherit the property absolutely and the married daughter had no right at all. This was controverted in the written statement. The claim of the plaintiff s that it was the ancestral property was also controverted. It was pleaded that the aforementioned properties were the separate properties of Batol Majhi. It was also pleaded that the Schedule-B properties were recorded in the name of Batol Majhi, long ago, and that Schedule-F (tank) was recorded in the joint names of Dhuma Majhi and the widow of Batol Majhi, since it was an irrigational tank. Thus, the claim of the plaintiffs that they were entitled to inherit exclusively on the basis of custom was disputed. In support of their plea of custom, the plaintiffs examined two witnesses, one an young man of 30 years of age and the other an old man of 70 years of age belonging to a neighbouring village. The trial Court found that the 30 years old young man was not competent to give any evidence on the custom among the Santhals of that village. The trial Court also found that the evidence of the 70 years old witness from the neighbouring village was general and was not specific and he could not say anything about the custom followed by the Santhals in the village in question. As against this, the defendants also examined some witnesses. The trial Court found that those witnesses had given specific evidence to the effect that on the death of a Santhal, the properties were inherited by a married daughter. They spoke of specific instances of such occurrence in the village in their evidence. The trial Court also noticed that in the 1926 Abdul Survey, Schedule-B properties were recorded in the name of the widow of Batol Majhi and that the tank alone was recorded in the joint, names of Batol Majhi and Dhuma Majhi, the father of the plaintiffs. From such evidence, the trial Court came to the conclusion that the defendants have shown there was no custom by which the married daughter was excluded. Whatever it be, the trial Court held that the plaintiffs had not established any custom of exclusion on the married daughter, as pleaded by them. Taking the view that the parties had become sufficiently Hinduised and are governed by Hindu Law, the trial Court proceeded to apply the Hindu Succession Act as governing the succession and dismissed the suit.

4. The learned Single Judge in appeal by the plaintiffs agreed with the trial Court in its finding, on an appreciation of the evidence, that the plaintiffs have not established the custom set up by them. The learned Single Judge also proceeded to confirm the finding that the parties were sufficiently Hinduised so as to hold that they were governed by Hindu Law and in the circumstances the trial Court was justified in dismissing the suit. Thus, the appeal was dismissed. This dismissal is challenged in this appeal.

5. The learned counsel for the appellants drew our attention to the decision of the Supreme Court in *Madhu Kishwar and Ors. v. State of Bihar and Ors.* AIR 1996 SC 1865, wherein, their Lordships have held that Santhals are governed by Customary law and that, that custom varies from people to people and region to region. Their Lordships also held that neither the Hindu Succession Act nor the Shariyat Law governed the tribals and they were governed by customary law.

6. It is, therefore, clear that what is relevant in this case, is, whether the plaintiffs, on whom the burden lay, have established a custom among the tribals in question of exclusion of a married daughter from inheritance. As we have noticed, there was also a controversy whether the Schedule-B property was the ancestral or it belonged exclusively to Batol Majhi, the predecessor of the defendants.

7. We find on an appreciation of the evidence in the case, in the light of the reasons given by the trial Court and the learned Single Judge, that the learned Single Judge was fully justified in affirming the finding of the trial Court that the plaintiffs have failed to prove the custom of a married daughter being excluded from inheritance. Once the plaintiffs failed to prove the custom set up by them, obviously they are to be non-suited. We have also noticed that the plaint Schedule-B property was recorded in the exclusive name of Batol Majhi. The F Schedule, the tank alone, in view of convenience of possession of the properties jointly, was recorded in the joint names of the widow of Batol Majhi and Dhuma Majhi. This shows that there was a difference between the two sets of properties. This circumstance also, in our view, justifies the conclusion of the Court that the plaintiffs have failed to prove that they have exclusive title to the Plaint B Schedule Properties. Even if the Plaint-F Schedule property was a joint property of the parties, obviously, the plaintiffs could not get relief based on a claim of exclusive possession since parties must be considered to be in joint possession. Nor could they get a declaration of their exclusive title or possession as claimed.

8. On an appreciation of the pleadings and the evidence in the case, and on hearing counsel, we are satisfied that no ground has been made for interference with the decision of the learned single Judge. We, therefore, confirm the said decision and dismissed this appeal.

We make no order as to costs.