

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

RSA No. 4 of 2008

NG. Babudhon Singh

.....Appellant/Defendant

- Versus -

Smt. Ngnaokunjamani

.... Respondent/Plaintiff

BEFORE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

Judgment & Order (Oral)

04.12.2023

[1] Heard Mr. H. Ishwarlal, learned senior counsel assisted by Mr. Khaidem Rohit, learned counsel for the appellant and Mr. S. Devajit, learned counsel for the respondent.

[2] The brief fact of the case is that the respondent herein filed a suit being OS No. 10 of 2005 before the Court of Civil Judge (Jr. Divn.), Imphal seeking declaration of title and considering the reliefs including partition and permanent injunction of the suit land i.e. homestead land under patta No. 25/160(Old)/95(New) covered by C.S. Dag No. 325, measuring 0.73 acre, situated at Village No. 25, Soibam Leikai, Imphal East District, Manipur. It is the case of the plaintiff that she and defendant are son and daughter of one Ng. Padal Singh and Smt. Yaima @ Toyaima Devi. Their father Ng. Padal Singh died on 17.10.1948 and upon the demise of Ng. Padal Singh, the suit land was recorded in the name

of their mother Ng. Yaima Devi and their mother died on 12.07.1983. Later on, the plaintiff found out that the suit land was registered in the name of the defendant alone without any information to her and as such, she filed the suit on 05.02.2005 claiming the following reliefs:

- “(a) a decree for declaration of the title of the plaintiff over the suit land,*
- (b) a decree for partition of the suit land in equal share (half) each of the plaintiff and the defendant on the strength of inheritance,*
- (c) a decree for declaration that the entry of the name of the defendant over the suit land is illegal and not binding to the plaintiff,*
- (d) a decree for permanent injunction against the defendant in respect of the half share of the plaintiff,*
- (e) cost of litigation, and*
- (f) any other relief(s) where the Hon’ble Court deems fit and proper, for the ends of justice.”*

[3] Defendant filed written statement on 08.04.2005 inter-alia taking the stand that the plaintiff is not entitled to any share of the suit land as their father died before the enforcement of the Hindu Succession Act, 1956. The Trial Court framed 7 (seven) issues and the issues are reproduced herein below:

- “1. Whether late Ng. Padal Singh, father of the parties died before or after the enactment of Hindu Succession Act, 1956?*
- 2. Whether the plaintiff and defendant are joint owners of the suit land after the death of their father?*
- 3. Whether there were family settlements amongst the plaintiff, defendant and their mother during the life time of their mother (Late Yaima @ Toyaima Devi)?*
OR
Whether the plaintiff has absolute right and title over the suit land? If so, to what extent under the Hindu Succession Act, 1956?
- 4. Whether the plaintiff has been living in the suit land before and after her marriage in the year 1940-41 or not?*
- 5. Is there cause of action?*
- 6. Whether the Court fee properly paid?*

7. *Whether the plaintiff is entitled to the reliefs claimed?"*

[4] Vide impugned judgment and decree dated 25.04.2007 in O.S. No. 10 of 2005, the Ld. Civil Judge (Jr. Divn.), Imphal held that the plaintiff had no right and share over the suit land. Accordingly, the suit was dismissed. Being aggrieved by the judgment and decree passed by the Trial Court, the plaintiff approached the Court of Ld. District Judge, Manipur East by way of Civil Appeal No. 18 of 2007. Vide judgment and decree dated 11.08.2008 passed in Civil Appeal No. 18 of 2007, the Ld. District Judge, Manipur East held that the plaintiff was entitled to half share of the suit land and the judgment and decree of the Trial Court was modified accordingly.

[5] Being aggrieved by the judgment in first appeal holding that both the plaintiff and defendant were entitled to half shares of the suit land, the defendant approached this Court by way of second appeal being RSA No. 4 of 2008.

[6] Vide order dated 07.01.2009, this Court framed 3 (three) substantial questions of law and the same are reproduced herein below:

- “(i) Could the Courts below decide the case on wrong application and illegal interpretation of provision of Section 14 of the Hindu Succession Act, 1956?*
- (ii) Whether under the Hindu Women’s Right to Property Act, 1973 only the widow and son of the deceased are entitled to inheritance to the property of a Hindu?*
- (iii) Could the courts below go outside and beyond the pleadings of the parties and decide the case on extraneous consideration and materials and beyond its jurisdiction?”*

[7] Mr. H. Ishwarlal, learned senior counsel for the appellant, submits that the plaintiff has not right over the suit land as their father died

before the enforcement of the Hindu Succession Act 1956 and prays that the impugned order passed by the Ld. District Judge in first appeal may be set aside and to restore the judgment and decree passed by the Ld. Trial Court.

[8] On the other hand, Mr. Devajit, learned counsel for the plaintiff, fairly submits that even assuming that the plaintiff is not entitled to any share as per the Hindu Women's Right to Property Act, 1947 or by customary law prevailing in Manipur, she would be entitled to half share of the mother's share, who died in the year, 1983 after the enforcement of Hindu Succession Act. By operation of Section 15 of the Hindu Succession Act, 1956, both the son and daughter are equally entitled to the shares of the deceased mother.

[9] This Court is of the opinion that the present appeal can be disposed of at this stage by considering the questions raised in the second appeal.

[10] By the operation of Section 3 of the Hindu Women's Right to Property Act, 1937 if a Hindu male dies intestate, both the widow and the son are entitled to equal shares of the deceased male hindu. With the introduction of the Hindu Succession Act, 1956, the limited share of the widow as per Section 3 of the Act of 1937 becomes absolute. Accordingly, both the mother and the defendant are entitled to equal share of the suit land as per Act of 1937 and the share of widow becomes absolute by the provision of Section 14 (1) of the Hindu Succession Act.

[11] In the present case, the mother died on 18.07.1983 and on that date, she was absolute owner of the 50% share of the suit land

inherited by her under the Act of 1937. On the demise of the mother of the plaintiff and the defendant on 18.07.1983, by the provisions of Section 15 (1)(a) of the Hindu Succession Act, 1956 son, daughter and husband are the first class legal heirs of a female hindu dying intestate. The plaintiff being daughter of a hindu dying intestate, she will be entitled to half share of the mother as the defendant, who is son. In short, the plaintiff will be entitled to $\frac{1}{4}$ of the whole suit land by joint reading of Section 3 of the Act of 1937 and Section 14 (1) and Section 15 (1)(a) of the Hindu Succession Act, 1956. Even though the plaint is for declaration of 100% share of the suit land, both the learned counsel fairly admit to the entitlement of at least 25% share by the plaintiff as a daughter from 50% share of the mother.

[12] Recording this submission and considering the provisions of Section 3 of the Hindu Women's Right to Property Act 1937 and Section 14 (1) and Section 15 (1)(a) of the Hindu Succession Act, 1956, this Court is of the opinion that the plaintiff will be entitled to 25% of the suit land and the defendant to 75% as his share. Accordingly, the judgment and decree of the Trial Court as well as the first Appellate Court are modified as stated above.

[13] Registry is directed to prepare the decree as directed in para 12 herein above.

[14] Mr. S. Devajit, learned counsel for the plaintiff/respondent, submits that there is prayer for partition of her share and the revenue authority may be directed to complete the investigation.

[15] Rule 90 of the MLR & LR Rules, 1960 provides for recording the name of the person in the land record as per the decree

passed by a Court of competent jurisdiction. Rule 90 of MLR & LR Rules are reproduced herein below:

“90. Whenever any court of competent jurisdiction makes a decree confirming any transfer of possession of a transferable estate or holding or gives effect to any decree transferring any such possession, such court may order the transfer to be registered in the mutation register and the Deputy Commissioner shall cause necessary entries to be made in the mutation register.”

[16] Hence, no separate mutation proceeding is required for the plaintiff and her name is to be recorded in the land record by revenue authority in terms of Rule 90 of MLR & LR Rules, 1961. Section 51-C of the MLR & LR Act, 1960 stipulates that Deputy Commissioner shall be guided by the decision of the civil court of competent jurisdiction while conducting partition of a property and Section 51-C is reproduced herein below:

*“51-C. Partition in accordance with finding of civil court:
The Deputy Commissioner shall be guided by the decision of the civil court of competent jurisdiction on the question of title and the proceedings stayed under sub-section (3) and (under) sub-section (5) of Section 51-B shall be disposed of when the decision of the civil court is communicated to the sub-Deputy Collector (Deputy Commissioner) by an interested party and after notice has been given to the other parties.”*

[17] Accordingly, send a copy of this order to the Deputy Commissioner, Imphal East for doing the needful as per Rule 90 of the MLR & LR Act, 1961 and Section 51-C of the MLR & LR Act, 1960 for recording the name of the plaintiff and defendant in the land record and partition thereto.

[18] The learned counsel appearing for the parties submit that the parties may be allowed to approach DC, Imphal East with a mutually agreed term of settlement for allocation of their shares in the suit land for the purpose of partition.

[19] With this observation, the second appeal is disposed of.

[20] Send a copy of this order to the DC, Imphal East for information and necessary compliance. No cost.

JUDGE

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