

IN THE HIGH COURT OF ORISSA AT CUTTACK**W.A. No. 366 of 2014*****Harihar Mohapatra and others* *Appellants***

Mr. Surya Prasad Mishra, Senior Advocate
along with Mr. L. K. Maharana, Advocate
-versus-

Kasinath Nayak @ Mohapatra and others* *Respondents

M/s. A. K. Mohanty and associates, Advocates for Respondent
No.1 and Mr. Debakanta Mohanty, Additional Government
Advocate for State

**CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN**

**ORDER
16.11.2022**

Order No.

Dr. S. Muralidhar, CJ.

06. 1. The present appeal is directed against a judgment dated 29th September, 2014 passed by the learned Single Judge allowing OJC No.5688 of 1998 filed by Respondent No.1, Kasinath Nayak @ Mohapatra, challenging an order dated 2nd May, 1997 passed by the Commissioner, Consolidation, [CC] Cuttack in Revision Case No.1897 of 1995 whereby it was held that the predecessor in interest of the present Appellants, Nisamani Nayak (since deceased) was entitled to inherit her father's property through her mother under the Hindu Women's Right to Property Act, 1937 (1937 Act). This order of the CC was set aside by the impugned judgment of the

learned Single Judge, who held that father of Nisamani Nayak i.e. Laxman Nayak died in 1947 in jointness with his brother, Raghu, leaving his only daughter, Nisamani. It was accordingly held that being a daughter, whose father died prior to Hindu Succession Act, 1956 (Act) coming into force, Nisamani could not succeed to her father's interest in the joint family property.

2. This Court has heard the submissions of Mr. Surya Prasad Mishra, learned Senior Counsel appearing for the Appellants, M/s. A. K. Mohanty and associates, learned counsels for Respondent No.1 and Mr. Debakanta Mohanty, learned Additional Government Advocate for the State.

3. The background facts are that late Bhagabat Nayak had a common ancestral property. He had two sons - late Raghu Nayak and late Laxman Nayak. Raghu had one son, late Ramachandra. The present Respondent No.1 is the son of late Ramachandra. Late Laxman had no son and his son-in-law was Dukhishyam, who predeceased Laxman. Dukhishyam had four sons through his wife, Nisamani viz., Gauranga, Harihar (Appellant No.1), Taranisen and Gopabandhu (Appellant No.2). Taranisen had two sons: Debasis (Appellant No.4) and Debiprasanna (Appellant No.5). In effect, Harihar (Appellant No.1) and Gopabandhu (Appellant No.2) are the sons of Nisamani whereas Lokanath, Debasis and Debiprasanna (Appellant Nos.3, 4 and 5 respectively) are the grandsons of Nisamani.

4. After the death of Bhagabat Nayak, the suit properties were recorded jointly in the name of Raghu Nayak and Laxman Nayak in the current settlement Record of Rights (RoR) of the year 1931. Both were living in joint mess and properties. During such state of jointness, Laxman Nayak died in 1947 leaving behind Nisamani. His wife had predeceased him. Since Nisamani was a pre-Act daughter, the interest of Laxman in the joint family properties devolved upon Raghu by way of survivorship, later inherited by Ramachandra and after the death of Ramachandra by Kasinath, Respondent No.1.

5. The case of Respondent No.1 was that for repayment of the family debt incurred jointly by Raghu and Laxman, Ramachandra son of Raghu sold part of the properties to one Jairam Dash by a registered Sale Deed dated 22nd November, 1948. After the death of Jairam Dash, the properties purchased by him were recorded in the names of his sons jointly. One of his sons, Rajkishore Dash sold part of the properties to the present Appellants by Registered Sale Deed dated 5th August, 1977.

6. The case of Kasinath was that although Nisamani was not entitled to inherit the undivided interest of her deceased father Laxman in the joint family properties, a part of the said properties out of the joint RoR was wrongly recorded in her name exclusively and separately in the major settlement RoR in the year 1985. Some

part of the joint family properties were also jointly recorded in the names of Ramachandra and Nisamani in the major settlement RoR of 1985. According to the Respondent No.1 herein, taking advantage of such wrong recording of RoR, Nisamani gifted away the properties to the present Appellants by Registered Gift Deeds dated 5th April, 25th May, 1st August and 14th October, 1988. Ramachandra then filed objection cases before the Consolidation Officer (CO), Raghunathpur under Section 11 of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act (OCH & PFL Act) with the specific prayer that the name of Nisamani should be deleted from such properties and they should be recorded exclusively in the name of Ramachandra. The present Appellants were arrayed as Opposite Parties in the objection cases. They claimed that since Laxman died in 1957, Nisamani inherited the properties of her deceased father by succession under the Act as his only legal heir.

7. The CO, Raghunathpur relied on his own inquiry report dated 3rd February, 1992 and by a common order dismissed the objection cases filed by Kasinath.

8. Since the date of death of Laxman was disputed, Kasinath filed Misc. Case No.80 of 1991 before the Executive Magistrate (EM), Jagatsinghpur under Section 13 (3) of the Birth and Death Registration Act, 1969 (BDR Act) for issuance of a death certificate in respect of deceased Laxman. The EM then directed the local

police to inquire and submit a report. The police reported that Laxman died in 1949. Later, Nisamani appeared in the said Misc. Case and filed her objection claiming that her father Laxman died in 1957. Thereupon, the EM directed the Tahasildar, Jagatsinghpur to cause an inquiry and ascertain the date of death of Laxman. The Tahasildar conducted the inquiry through the local Revenue Inspector (RI) and reported that Laxman had died prior to 1948. The EM disposed of the Misc. Case with the finding that Laxman had died on 18th January, 1947 and directed the Registrar of Birth and Deaths, Raghunathpur to register the death of Laxman as having taken place on 18th January, 1947.

9. Meanwhile, aggrieved by the order dated 3rd February 1992 of the CO, Raghunathpur Kasinath filed appeals before the Deputy Director (DD), Consolidation, Jagatsinghpur. The said appeals were allowed by the DD with a direction to delete the name of Nisamani from the land register and record the case properties exclusively in the name of Kasinath. It was further held that the Gift Deed executed by Nisamani in favour of the present Appellants were *void ab initio*.

10. Aggrieved by the order passed by the DD, Nisamani filed Consolidation Revision Case No.1897 of 1995 before the Commissioner Consolidation (CC), Cuttack.

11. It appears that during the pendency of the aforementioned Consolidation Revision Case No.1897 of 1995, Nisamani filed OJC No.9073 of 1995 in this Court seeking the quashing of the order passed by the EM as well as the Death Certificate directed to be issued by him. OJC No.9073 of 1995 was dismissed by this Court on 5th September, 1996. Two Miscellaneous Cases were thereafter filed by Nisamani for recall of the said order. The said cases were also dismissed. Thereafter, Nisamani filed yet another writ petition in this Court i.e. OJC No.11648 of 1996 challenging the Death Certificate which recorded the date of death of Laxman as 18th January, 1947. OJC No.11648 of 1996 was also dismissed by this Court on 14th March, 1997.

12. Consolidation Revision Case No.1897 of 1995 filed by Nisamani was heard by the CC and allowed by the judgment dated 2nd May, 1997. It was observed that under the 1937 Act, Nisamani was entitled to inherit her father's property through her mother. Accordingly, the order passed by the DD was set aside.

13. Aggrieved by the judgment of the CC, Kasinath filed OJC No.5688 of 1998 in this Court. By the impugned judgment dated 29th September 2014, the learned Single Judge allowed the said writ petition accepting that Laxman had died in 1947 in jointness with Raghu leaving his only daughter Nisamani and since she was a pre Act daughter with her father having died prior to the Act coming

into force, she could not succeed to her father's interest in the joint family property.

14. In the present appeal filed by the successors in interest of Nisamani while directing notice to issue, this Court by an order dated 16th May, 2016 directed that the status quo with regard to possession of the property in question should be maintained by the parties.

15. It was submitted by Mr. Mishra, learned Senior counsel for the Appellants that the determination of the date of death of Laxman by the CO, relying on the inquiry report, ought to have been accepted by the learned Single Judge. He specifically referred to the portion of the said inquiry report which was enclosed with the writ petition i.e. OJC No.5688 of 1998. Mr. Mishra submitted that the determination of date of death pursuant to the said inquiry had to take precedence over the subsequent determination of the date of death as 18th January, 1947 by the EM. His major objection to the latter determination was that the inquiry was undertaken only at the stage of the pendency of the objection cases before the CO several years after the actual death of Laxman and, therefore, could not be relied upon. Mr. Mishra placed reliance on para 43 of Mulla's *Principles of Hindu Law* 10th Edn. and submitted that Nisamani had a limited interest in the Estate of her father even if she was a pre-Act daughter. He further submitted, on the strength of the judgment of the Karnataka High Court in *H. Subba Rao v. The Life*

Insurance Corporation of India, Vol. XXVI ILR Karnataka Series (1976) 800 that the entry in the dates of births and deaths made by Registrar “cannot carry higher probative value and its proof must necessarily depend upon the facts and circumstances of each case.” Reference was also made to the judgment of the Supreme Court of India in *Vineeta Sharma v. Rakesh Sharma 2020 (II) (OLR (SC) 569*.

16. Learned counsel appearing for Respondent No.1 also relied on certain passages in *Vineeta Sharma (supra)* and urged that neither the 1956 Act nor the Amendment Act of 2005 would reopen the vesting of a right where succession had already taken place. He submitted that those amendments to the Act were only prospective in nature. Reliance was also placed on the decision in *G. Sekar v. Geetha (2009) 6 SCC 99*. It was submitted that the date of death of Laxman was conclusively held to be 18th January, 1947, which was prior to the coming into force of the Act and, therefore, even in terms of para 43 of the Mulla’s *Principles of Hindu Law*, Nisamani would not be able to succeed as sole heir of Laxman. He submitted that the property had to devolve on the reversioners of Laxman i.e. Raghu and Raghu’s heirs.

17. The above submissions have been considered. At the outset it requires to be noticed that the change brought about to the Act, which came into force in 1956 by the amendment in 2005 was the recognition of the rights of even married daughters in the

coparcenary property of a joint Hindu family governed by Mitakshara Law. However, as explained in *Vineeta (supra)* the said changes were prospective in nature. In para 56 of *Vineeta (supra)*, the Supreme Court noted as under:

“56. The prospective statute operates from the date of its enactment conferring new rights. The retrospective statute operates backward and takes away or impairs vested rights acquired under existing laws. A retroactive statute is the one that does not operate retrospectively. It operates in futuro. However, its operation is based upon the character or status that arose earlier. Characteristic or event which happened in the past or requisites which had been drawn from antecedent events. Under the amended section 6, since the right is given by birth, that is an antecedent event, and the provisions operate concerning claiming rights on and from the date of Amendment Act.”

18. The Supreme Court in *Vineeta (supra)* also referred with approval the following observations in *G. Sekar (supra)* with respect to the prospective operation of the Amendment Act, 2005:

“30. Neither the 1956 Act nor the 2005 Act seeks to reopen vesting of a right where succession had already been taken place. The operation of the said statute is no doubt prospective in nature. The High Court might have committed a mistake in opining that the operation of Section 3 of the 2005 Act is retrospective in character, but, for the reasons aforementioned, it does not make any difference. What should have been held was that although it is not retrospective in nature, its application is prospective.”

19. At this stage, it must be noticed that Mr. Mishra contended that according to him although the Act as well as 2005 Amendment Act were prospective, Nisamani would still be able to inherit the

property of her father Laxman since his death occurred only in 1957.

20. In para 43 of Mulla's *Principles of Hindu Law* dealing with "Order of Succession Among Sapindas", the legal position in regard to the inheritance by a daughter has been explained as under:

"(iii) Limited Estate

The daughter takes a limited interest in the estate of her father corresponding to the widow's estate. On her death, the estate passes not to her heirs, but to the next heirs of her father (*Cbotay Lall v. Cbunno Lall (1879) 4 Cal 744*) (see 169). The next heirs of the father are called reversioners. As to Bombay state, see note (iv) below."

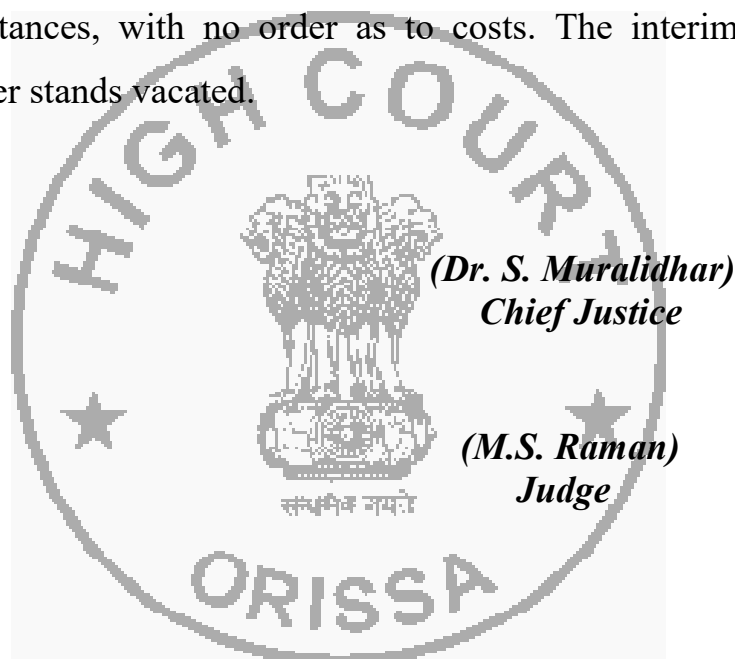
21. It must be noted here that the remaining sub paras of the above portion of para 43 are not relevant for the present case and, therefore have not been extracted. The crucial sentence in the above extract is that the daughter takes "limited interest, in the estate of her father, corresponding to the widow's estate." In the present case, Nisamani's mother predeceased her father. Therefore, there was no occasion for any widow's estate, corresponding to which Nisamani could have had a limited interest in the estate of her father. Therefore, even on that score, as a pre-Act daughter, Nisamani could not have inherited the estate of her father. The property therefore had to devolve on the next heirs of Laxman, who were the 'reversioners' that was the line of Raghu and Raghu's successors in interest.

22. As regards the date of death of Laxman, although it was earnestly pleaded by Mr. Mishra that this Court should have accepted the determination by the CO of the date of death as 18th January, 1947, relying on the report of his own RI. However, the fact remains that a separate inquiry was undertaken under Section 13 (3) of the BDR Act by the EM. His determination of the date of death as 18th January, 1947 was challenged twice by Nisamani before this Court in two separate writ petitions i.e. OJC No.9073 of 1995 and OJC No.11648 of 1996 and both times, she was unsuccessful. Even two Misc. Cases filed for recalling of the order dismissing OJC No.9073 of 1995 were dismissed. In other words, finality got attached to the order of the EM directing recording the date of death of Laxman as 18th January, 1947.

23. While the legal position as explained in *H. Subba Rao (supra)* that an entry in the Register of births or deaths is not conclusive, is unexceptionable, the fact remains that the said entry was put to challenge twice before this Court and negatived by it. With the said recording of the date of death of Laxman as 18th January, 1947 receiving the judicial imprimatur in two orders of this Court, it is not open to Nisamani to contend that the said orders of the EM directing the recording of the date of death of Laxman as 18th January, 1947, determined under Section 13(3) of the BDR Act, should be ignored in favour of the determination of the date of death as 1957 by the CO based on the report of the RI.

24. The Court is unable to find any error having been committed by the learned Single Judge in placing reliance on the above determination of the date of death of Laxman by the EM as 18th January, 1947.

25. For all of the aforementioned reasons, the Court finds no grounds made out for interference with the impugned order of the learned Single Judge. The appeal is accordingly dismissed, but in the circumstances, with no order as to costs. The interim order passed earlier stands vacated.



M. Panda