

Privy Council Appeal No. 42 of 1942

Patna Appeal No. 2 of 1941

Veeradhi Birabar Sri Pratapa Ramchandra Ananga

Bhima Deo Kesri Gajapati - - - - - *Appellant*

v.

Sri Chakrapani Deo - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 19TH MARCH, 1945.

Present at the Hearing:

LORD THANKERTON

LORD MACMILLAN

LORD SIMONDS

SIR MADHAVAN NAIR

SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

This is an appeal from an appellate judgment and decree of the High Court of Judicature at Patna, dated the 21st December, 1940, which modified, in favour of the appellant, a judgment and decree of the District Judge of Gamjam-Puri dated the 17th March, 1937.

The appellant is the natural son and heir of his father, who was a Khetriya by caste and the owner of an impartible estate in Orissa known as the Bodokhemidi Estate. The respondent is the illegitimate son of the appellant's father by a regularly kept concubine, and the question raised in the suit is as to the respondent's right to maintenance out of his father's estate.

The respondent's mother died a few days after his birth, and the respondent was brought up under the care of a foster mother. By an order of the late Zamindar dated the 5th May, 1917, the respondent was given the income of 40 acres of land for his maintenance. It appears that he was given also a monthly allowance of Rs. 43-8-0 for pocket money, personal servants, and domestic expenses, but that out of the 40 acres of land the income of 10 acres was given to the foster-mother. After the death of the late Zamindar the estate came under the management of the Court of Wards, the appellant being then a minor, and remained under such management until the 1st December, 1930, when it was handed to the appellant. By an order of the Court of Wards dated the 29th September, 1923, the respondent was given a cash allowance of Rs. 100 monthly in lieu of the allowances he had received during the lifetime of his father, and he continued to receive this allowance until the 1st December, 1930, when the estate was handed to the appellant. When the appellant took over charge of the estate he discontinued the allowance to the respondent, and denied the right of the respondent to receive any allowance whatsoever. Accordingly, on the 31st July, 1933, the respondent instituted this suit claiming maintenance past and future.

The only question which has been argued before their Lordships' Board was that raised in the 5th issue in the Trial Court, which was in these terms: "Is there any custom among the Oriya Zamindars in general, and

the defendant's family in particular, that the personal savings of the Zamindar become accretions to the impartible estate upon his death?" The trial judge answered this issue in the following terms: "No such custom has been proved, nor has any attempt been made to prove it. I find this issue in the negative." Having regard to his findings on this and the other issues, the learned judge awarded to the respondent maintenance at the rate of Rs. 250 a month, and directed that the maintenance be made a charge on the properties described in the plaint schedule.

On appeal to the High Court the only question raised appears to have been as to the quantum of the maintenance, which the Court reduced from Rs. 250 a month to Rs. 150 a month. In other respects the decree of the lower court was upheld.

Before their Lordships' Board it has been contended by the appellant that the learned trial judge failed to consider the evidence led by the appellant upon the 5th issue. It is true that the learned Judge was in error in saying that no attempt was made to prove the alleged custom. The Ruling Chief of Seraikella was examined on commission, and he stated that the savings and the accretions of the holder of an impartible estate in Orissa either movable or immovable went to his successor. But the examples cited by the witness in support of his opinion are derived from Indian States, and districts outside Orissa, where the customs may, or may not, be the same as those affecting Zamindari estates in Orissa. Their Lordships agree that the custom relied upon is not proved. This is sufficient to dispose of the appeal, but their Lordships would add that they are by no means satisfied that, even if the custom were proved, it would dispose of the respondent's claim, regard being had to the manner in which the late Zamindar and the Court of Wards dealt with the respondent, and to the lack of satisfactory evidence as to the property out of which his allowances were provided. However, their Lordships need not discuss this aspect of the matter, nor need they deal with the question, expressly left open by the High Court, whether an illegitimate son can be maintained out of an impartible estate.

Their Lordships will humbly advise His Majesty that this appeal be dismissed. The appellant must pay the costs of the appeal.



In the Privy Council

Veeradhi Birabar Sri Pratapa Ramchandra
Ananga Bhima Deo Kesri Gajapati

2.

Sri Chakrapani Deo

DELIVERED BY SIR JOHN BEAUMONT

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