
(1988) 05 CAL CK 0009
In the Calcutta High Court
Case No : C.R. No. 78 of 1983

Abani Kumar Pahari

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 20-05-1988

Acts Referred:

Hindu Succession Act, 1956 — Section 14, 14(1), 14(2)
West Bengal Land Reforms Act, 1955 — Section 14S, 14T, 14T(3)

Citation : 92 CWN 984

Hon'ble Judges : Shamsuddin Ahmed, J

Bench : Single Bench

Advocate : Amal Kumar Das, for the Appellant; Ramdulal Manna for the State, for the Respondent

Judgement

Samsuddin Ahmed, J.—In this Rule an order passed by the Revenue Officer in a proceeding u/s 14T(3) of the West Bengal Land Reforms Act being T.A. Proceeding Nos. 232 of 80 as well as an order passed by the appellate authority against the said order passed by the Revenue Officer is under challenge. The writ petitioner's case in short is that he is the owner in occupation of 12.89 acres of agricultural lands, 1.23 of fisheries, 1.48 acres of non-agricultural lands and 27 acres of Orchard. He has transferred some amount of land to different purchasers prior to 7.8.69. Altogether he was owner of 16.05 acres of agricultural lands and some amount of fisheries and non-agricultural lands on 15.2.71. His further case is that Sindhubala Pahari, respondent No. 7 was the wife of his elder brother. She is owner in occupation of 5.44 acres of agricultural lands. She filed a suit for maintenance in the Court of the Subordinate Judge, Midnapore out of the income of the properties of her deceased husband. The suit was decreed on compromise. In terms of the said compromise the petitioner executed a Registered Deed on 10.10.53. By the said deed Sindhubala Pahari was conferred life interest in respect of 5.44 acres of land. She is in possession of the said property on the date of vesting and become absolute owner in possession in terms of the provisions of Section 14(1) of the Hindu Succession

Act, 1956. According to the writ petitioner she had a pre-existing right of maintenance over the properties left by her deceased husband Accordingly, her life estate matured into absolute right by virtue of (sic) section (2) of Section 14 of the Hindu Succession Act. The Revenue Officer decided the case *ex parte* and treated the land held by said Sindhubala as land held by the petitioner. Being aggrieved the writ petitioner preferred an appeal challenging the said order. In the said appeal he raised mainly three points. First was that the lands transferred prior to 7.8.69 cannot be treated as land held by him on the date of vesting. The second point was that the land transferred to said Sindhubala Pahari cannot be taken into account in determining the total amount of land held by him. The third point was that his son was minor on the date of vesting and did not hold any land on that date. The appellate authority directed exclusion of the land transferred by the raiyat prior to 7.8.69. He further directed that the writ petitioner be allowed to retain 1.67 acres of land out of the vested land measuring 7.25. Regarding the interest of Sindhubala the appellate authority held that because of solenama filed in the suit her right, title and interest in the property have extinguished. Accordingly, he held that Sindhubala has only life interest in those properties and the Revenue Officer was right in taking into account these lands a lands owned by the writ petitioner on the date of vesting. On the third point the appellate authority remanded the matter to the Revenue Officer for determination whether the raiyat's son was a minor on the date of vesting.

2. With regard to the second point viz., whether the properties transferred in favour of Sindhu Bala can be taken into account In determining the total quantum of land held by the raiyat the Id. Advocate for the writ petitioner has placed his reliance on the provisions of section 14 of Hindu Succession Act, 1956. Section 14(1) of the Hindu Succession Act runs thus :-

14 (1). Any property possessed by a Hindu whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner:

Explanation - In this sub-section "Property" includes both movable and immovable properties acquired by a female Hindu by inheritance or devise, or at a partition or in lieu of maintenance or arrears of maintenance or by gift from any person, whether a relative or not before at or after her marriage or by her own skill or exertion or by purchase or by prescription or in any other manner whatsoever and also in such property held by her as Stridhan immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way" of gift or under a Will or any other instrument or under a decree or order of a Civil Court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribed a restricted estate in such property.

The question is whether the transfer made in favour of Sindhubala comes within sub-section (2) of Section 14. The Deed in question was filed by the writ petitioner by a supplementary affidavit. It recited that Tarini Kumar Pahari was the husband of Sindhubaia. She with her husband used to live in a joint family with the writ petitioner. Her husband died. Thereafter she instituted a proper" Suit No. 8 of 52 in the Court of Subordinate Judge, Midnapore claiming maintenance at the rate of Rs. 60/- per month and also claimed arrears of maintenance amounting to Rs. 5,220/-. The matter was amicably settled. A family settlement deed was executed but the writ petitioner denied execution. She filed a suit for registration of the said document. The matter was again amicably settled and the Deed in question was executed and registered. The writ petitioner admitted in the said Deed that Sindhubala has a right to get maintenance for her life from the joint estate of the writ petitioner and her husband. As he considered it difficult to pay maintenance every month he transferred the land covered by the deed in favour of Sindhubaia and created a life-estate in her favour in that property. Sindhubaia disclaimed her right in arrears of maintenance. The question is whether this deed comes within the scope of section 14(1) or is excepted by the provisions of section 14(2) of the Hindu Succession Act. Mr. Das, Id. Advocate has placed his reliance in AIR 1977 SC 1944. (Vaddeboyina Tulasamma & Ors. v. Vaddeboyina Sesha Reddi). The short question that cropped up for determination before the Supreme Court was whether sub-section (1) or sub-section (2) of Section 14 of the Hindu Succession Act that applies were properties given to a Hindu female in lieu of maintenance under an instrument which in so many terms restrict the nature of the interest given to her in the property, the Court held that sub-section (1) of Section 14 is large in its amplitude and covers other kind of acquisition of property by a female Hindu including acquisition of property by a female Hindu including acquisition in lieu of maintenance and where such property was possessed by her at the date of commencement of the Act or was subsequently acquired and possessed she would become the, full owner of the property. It further held that sub-section (2) is more in the nature of an exception to sub-section (1). It excepts certain kinds of acquisition of property by a Hindu female from the operation of sub-section (1). Sub-section (2) must be construed strictly in the context of the object of sub-section (1) which is for achieving a social purpose by bringing about change in the social and economic position of women in Hindu Society. According to the Supreme Court Sub-section (2) must be read, in the context of sub-section (1) so as to leave as large a scope for operation as possible to sub-section (1) and so read it must be confined to cases where property is acquired by a female Hindu for the first time a grant without any pre-existing right under a gift, will, instrument, decree, order or award, terms of which prescribed a restricted estate in the property. Where, however, properties acquired by Hindu female at a partition or in lieu of right of maintenance, it is by virtue of pre-existing right of such an acquisition would not be within the scope of and ambit of sub-section (2) even if the instrument, decree order of award allotting the property prescribes a restricted estate in the property. In elaboration of the point taken by the Id.

Advocate he has also referred to a decision reported in 1987 SC 1493. This case is an authority on the point, that a Hindu female should be in actual physical possession or in constructive possession of any property on the date of coming into operation of the Hindu Succession Act, 1958. The expression in property possessed by Hindu female whether acquired before or after the commencement of the Act, appearing in Section 14(2) on an analysis yielded to the expression given hereunder : "(1) any property possessed by a Hindu female acquired before the commencement of the Act shall be held by her as a full owner thereof and not as a limited owner. (2) any property possessed by a Hindu female acquired after the commencement of the Act will be held as a full owner thereof and not as limited owner. The Court ultimately held "there is no escape from the conclusion that possession physical or constructive or in a legal sense on the date of coming into operation of the Act is not the sine qua non for the acquisition of full ownership of the property. In fact, the intention of the legislature was to do away with the concept of limited ownership in respect of the property owned by a Hindu female altogether." This decision has no direct bearing on the facts of the case under my consideration. In this case Sindhubala was in possession of the property on the date of vesting as is found from the records of right prepared in her favour. The law as interpreted in AIR 1977 SC 1944 squarely applies in the facts of this case. Therefore, I have no hesitation in holding that on the date of vesting of the property under the provisions of the West Bengal Land Reforms Act Sindhubala became absolute owner in possession of the property covered by the Deed of family settlement annexure "X" to the Supplementary Affidavit. In this view, both the impugned orders are liable to be set aside. The Rule accordingly succeeds and is made absolute in terms of prayer (a) of the writ petition. But this will not debar the authorities under the West Bengal Land Reforms Act to initiate a fresh case and decide whether lands held by the writ petitioner is liable to vesting u/s 14T read with section 14S of the said Act but they cannot treat the land held by Sindhubala in determining the total quantum of land held by the writ petitioner. Let an appropriate writ be issued in terms of the directions as above.