

(1984) 07 PAT CK 0011

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4308 of 1978

Bindeswari Parsad Yadav

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-07-1984

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 2(ee), 4

Citation : (1984) PLJR 806

Hon'ble Judges : S.S. Hasan, J; Hari Lal Agrawal, J

Bench : Division Bench

Advocate : Balbhadra Prasad Singh and Arjun Prasad, for the Appellant; R.B. Mahto, A.A.G. and S.K.P. Sinha, J.C, for the Respondent

Judgement

H.L. Agrawal and S.S. Hasan, JJ.—In this application, the question of law that falls for our determination is as to whether all the major members including the major grandsons and a widow of a deceased coparcener after the Hindu Succession Act, 1956, can be said to be land-holders within the meaning of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short the "Act"). The relevant facts are as follows:

A proceeding under the provision of the Act was started by the Sub-divisional Officer, Bettiah, being case No. 34/73-74 against the petitioner. The petitioner, at the relevant time, had two major sons, (1) Brij Kishore Prasad and (2) Dhrub Prasad, Brij Kishore Prasad had also, at the relevant time, two major sons, namely, (1) Shambhu Sharan Prasad and (2) Umesh Prasad, besides some other minor children. Besides the above persons there was Mosst. Laxmina Kuer, widow of late Kamleshwari Prasad Yadav, younger brother of the petitioner and a married sister of the petitioner, Mano Devi.

2. The petitioner is a big land-holder having more than 500 acres of land and respondent No. 3, the Sub-divisional Officer has allowed him four units by his order dated 24.3.1977 vide annexure-4, and rejected his claim for more units

and disallowed certain transactions of sales and gifts. He also failed before the Collector as well as the Board of Revenue in his appeal and revision, vide orders contained in annexures 5 and 6 respectively.

3. From the perusal of the above orders, it appears that the petitioner had claimed various units and placed three, main points before the Board of Revenue: (1) the lands transferred to different persons by gift were ignored, (2) the major members of the family were separate, who were separate land-holders on account of a partition, but the family was wrongly treated as joint family with him and (3) the claim for separate units for his second wife, Manju Devi, and her adult children had been ignored.

4. It has been submitted before us that the question of transfer under the various gifts was pending before the Supreme Court in SLP No. 532 of 1979. It is obvious that the decision of the Supreme Court will, ultimately, decide this right of the parties and, therefore, we need not examine this aspect of the matter.

Then there are certain other alienations made by the petitioner by various sale deeds, which have been annulled in an annulment proceeding started separately. That dispute is pending decision in C.W.J.C. Nos. 3390/78 and 3391/78 in this court. Therefore, no argument has been advanced before us by Mr. Balbhadra Prasad Singh, appearing for the petitioner, on this part of the petitioner's grievance.

5. The third question, namely, the right of the second wife and her adult children need not detain us for long, inasmuch as, the revenue authorities, on the materials placed before them, have concurrently held that she (Manju Devi) was not a legally wedded wife of the petitioner, and was simply his concubine. No material has been placed before us to upset this finding of fact in our limited writ jurisdiction. Obviously, in view of this finding, she as well as her adult children cannot claim any interest in the properties of the land-holder in law, and, therefore, they have been rightly excluded from getting any unit by the revenue authorities.

6. We have already indicated the constitution of the family of the petitioner, and on the back ground of the relevant provision of the Act, it has to be seen as to whether any other member of his family should have any further unit.

7. Section 4 of the Act fixes the limit of the ceiling area of land for one family consisting of not more than five. Section 5 makes it unlawful for any family to hold any surplus land beyond the ceiling area except as provided under this Act. In this regard explanation to section 5 also should be noticed. According to the explanation "all lands owned or held individually by the members of a family or jointly by some or all of the members of such family shall be deemed to be held by the family". Then section 6 lays down the procedure for declaring surplus lands possessed by a land-holder.

8. It has been noticed that the ceiling on the area for a land-holder has been

fixed u/s 4 with reference to a "family" which expression has been defined in section 2(ee) of the Act and "which means and includes a person, his or her spouse and minor children". Section 2(g) defines the word "land-holder" "which means a family, as defined in clause (ee) holding land as raiyat or as under-raiyat and includes a mortgagee of land in possession".

It was observed in a Full Bench decision of this court in case of Imamul Hassan Choudhary Vs. State of Bihar and Others, that "a member of undivided Hindu family acquires a right by birth and becomes entitled to a share in the land. He is deemed to be a land-holder for the purposes of the Act, whether or not a partition has taken place before commencement of this Act."

9. A major person, his or her spouse, and their minor children will constitute one family and entitle to possess one unit of land within the ceiling area. On the basis of this provision, the respondents have allowed four units to the family of the petitioner giving one unit to him and two units to his major sons, namely, Brij Kishore and Dhrub Prasad. From the orders of the respondents, it is not clear to whom the fourth unit has been allotted. Obviously, it could not be allotted to Mano Devi, the sister of the petitioner, in absence of any material that the father died after 1956. Prima-facie, his father would have died earlier as when the proceeding was started, he was aged about 65 years.

10. Mr. Balbhadra Prasad Singh has, however, submitted that in view of the own finding of the authorities that the petitioner had failed to prove that there was a separation in the family, it must be held that Laxmina Kuer, the widow of Kamleshwari Yadav, brother of the petitioner along with her sons also was entitled to the share of her husband in the properties of the joint family. She must be held to be entitled to one unit.

The Supreme court in the case of Inder Singh and Another Vs. State of Punjab and Others, deals with a somewhat similar provision in Pepsu Tenancy Agricultural Lands Act, 1955 and found that "the rights of the descendents as members of a Hindu undivided family or the relationship of the family inter se except to the extent of depriving the descendents of their right to claim the ceiling area for each of them." This provision does not affect the right.

11. After coming into force of the Hindu Succession Act, Mosst. Laxmina Kuer was fully covered within the definition of the expression "family" along with her sons and thus entitled to get one unit in her own right in the properties of the joint family when the story of partition has been disbelieved and the entire properties have been subjected to the ceiling proceeding.

12. Now, the question remains for our consideration the right of the two major grandsons of the petitioner.

13. According to Mitakshara Law of inheritance, the property of Hindu male belonging to a joint undivided family" devolves on his coparceners by survivorship except for his self acquired or separate properties, which goes to his

heirs by succession. According to Hindu Law, grandsons have got vested interest in the joint family properties being coparceners having unascertained and undefined interest. Each of them must, therefore, be held to be a land-holder within the meaning of the Ceiling Act. By adding the second explanation to the definition of joint family, the application of personal law has been excluded for taking into consideration in determining the composition of the joint family, but otherwise as observed by the Supreme Court in the above cited authorities, the law does not aim to deprive the major members of the family, who can answer the definition of the expression "family" for the right of holding lands within the ceiling area. We find full support for this view in an unreported decision of this court in Ajoy Shanker Prasad Singh and others v. The State of Bihar and others (C.W.J.C. No. 484 of 1976) where five units were allowed to the Karta of the family including his three major grandsons. The position of minor grandsons or that of minor children of the Karta of a joint family on account of the second explanation, referred to above, may be otherwise as although their interest is equal to that of the major coparceners. The law does not recognise their right to get an unit for the purpose of the Ceiling Act. Once this situation in law is clarified and properly understood, then it has to follow as a matter of course that the petitioner's family was entitled to six units, i.e., for (1) Bindeshwari Prasad Yadav (2) Laxmina Kuer, (3) Brij Kishore Prasad, (4) Dhruv Prasad (5) Shambhu Sharan Prasad and (6) Umesh Prasad.

14. If the entire properties of the family of which Bindeshwari Prasad Yadav was the Karta have been taken into account for working out the surplus land and fixing the ceiling area and if the ratio of the authorities quoted above is to be applied, then lands, which the sons of grandsons will be deemed to have held in the eye of Hindu Law, could not be clubbed with the share and interest of the petitioner and should be excluded. The petitioner will get sufficient relief, if two more units are allowed to him. As a result of the above discussion, this application is allowed in part to the extent indicated above, namely, that the petitioner will get two more units for his two major grandsons. Let appropriate writ be issued, accordingly. In the circumstances, we shall make no order as to costs.