
(2000) 07 RAJ CK 0007
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3304 of 1989

Chander Kaur and Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 11-07-2000

Acts Referred:

Transfer of Property Act, 1882 — Section 5

Citation : (2000) 3 RLW 1898 : (2000) 3 WLC 746 : (2000) 3 WLN 137

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—The Instant writ petition has been filed against the judgment and order of the Board of Revenue dated 26.6.1989 (Annx. 2), by which the judgment and order of the Ceiling Authority dated 20.3.1986 has been up-held on different grounds not agreeing with the grounds on which the said Authority had assessed the predecessor-in-interest of the petitioner and also against the review petition dismissed by the Board of Revenue vide judgment and order dated 14.8.1989 (Annx. 3).

2. The facts and circumstances giving rise to this case are that one Ujagar Singh, the predecessor-in-interest of the present petitioners, was assessed under the Ceiling Law (Chapter III of the Rajasthan Tenancy Act, 1955) and the Authority, vide order dated 31.8.1971, dropped the proceedings holding that there was no surplus land with him. After commencement of the new Act i.e. the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973, the proceedings were re-opened under the provisions of Section 15(2) and Ujagar Singh was assessed and the assessment order dated 30.3.1986 was passed declaring that he possessed 74.15 Bighas land excess to the ceiling area. Being aggrieved and dissatisfied, petitioners preferred the appeal before the Board of Revenue which was decided vide judgment and order dated 26.6.1989. The reasoning given by the Prescribed Authority was not accepted by the Board of Revenue but it based the decision on

the ground that the said assessee Ujagar Singh had transferred the land measuring 98.14 Bighas to his four sons, viz., Jang Singh, Chand Singh, Nand Singh and Harnek Singh, who are petitioners before this Court in equal shares, vide Settlement Deed dated 19.5.1955. Though the said settlement deed was prior to 25.2.1958 but the Authority did not recognise it and included the said land also while assessing the ceiling area of the said assessee Ujagar Singh and treated his sons as members of his family. The Board of Revenue held that as on 1.4.1966 Ujagar Singh was having 67.17 Bighas land excluding the land already transferred to his four sons by Settlement dated 19.5.1955 and his sons cannot be included as his "family" only for the reason that they could not have been dependent upon him after the said settlement and there were only two family members, he was entitled to retain only 46.8 Bighas of land and, thus, 21.9 Bighas of land was declared surplus. Hence this writ petition.

3. The sole contention raised in this petitioner is : whether the "settlement deed" dated 19.5.1955 makes his sons independent and whether they are entitled to be included in the "family" of Ujagar Singh as on 1.4.1966, as the matter is to be considered with reference to the said appointed date. Vide *Bansidhar and Others Vs. State of Rajasthan and Others, Smt. Durga Devi and Ors. v. Board of Revenue and Ors.* 1997 R.R.D. 501 ; *Raghunath Laxman Wani and Others Vs. The State of Maharashtra and Others*, and *Kesari Lal Vs. Sub-divisional Officer, Ramgajmandi and Others*,

4. The Board of Revenue, in the impugned judgment as well as in the judgment on review petition, has categorically held that by the settlement deed dated 19.5.1955, Ujagar Singh had partitioned the land measuring 99.14 Bighas in his four sons and it was their own case before the Board of Revenue that the assessee Ujagar Singh had partitioned the land by way of settlement to his four sons in equal shares and kept the remaining land with him. Thus, the only question involved herein is as what is the meaning of "Settlement."

5. "Settlement" means an instrument (other than a Will or Codicil as defined in the Indian Succession Act) whereby the destination or devolution of successive interests in movable or immovable property is disposed of or is agreed to be disposed of (vide Section 2 of the Specific Relief Act, 1963). Similarly, "settlement" has been defined as any non-testamentary disposition in writing of movable or immovable property made for the purpose of distributing property of the settler, i.e. among his family members or for the purpose of providing for some person dependent on him and it also includes an agreement in writing to make such a disposition. (Section 2(24) of Stamps Act, 1899).

6. In *The Commissioner of Gift Tax, Madras Vs. N.S. Getty Chettiar*, the Apex Court considered the term "family settlement" in the context of Gift Tax Act, 1958 and held that it does not amount to gift or transfer for the reason that settlement means settling the property, right or claim-conveyance or disposition of property for the benefit of another. While deciding the said case, the Apex Court relied upon its earlier judgment on *Commissioner of Income Tax, Gujarat*

Vs. Keshavlal Lallubhai Patel, wherein the settlement among the family members was considered as a partition of family properties not amounting to transfer of property in strict legal sense.

7. In Ram Charan Das Vs. Girjanandini Devi and Others, , the Hon"ble Supreme Court held that settlement among the family members does not amount to transfer for the reason that by settlement, each party take a share in the property by virtue of independent title which is admitted to that extent by the other parties. While deciding the said case, the Apex Court placed reliance upon various judgments of the Privy Council including Mst. Hiran Babi v. Mst. Sohan Bibi AIR 1914 P.C. 44; Rangaswami Gounden v. Nachiappa Gounden AIR 1918 P.C. 196; Sureshwar Misser v. Maheshrani Misrain AIR 1921 P.C. 107; and Man Singh v. Nowlakhbati AIR 1926 P.C. 2.

8. In Kale and Others Vs. Deputy Director of Consolidation and Others, the Hon"ble Apex Court considered the issue of "settlement" elaborately, placed reliance upon a large number of its earlier judgments and held that settlement means a fair and equitable division or allotment of properties between various members of the family.

9. In Sahu Madho Das and Others Vs. Mukand Ram and Another, the Supreme Court held that a settlement is always "based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognising the right of others, as they had previously asserted it, to the portions allotted to them respectively." The Court further observed as under-

That explains why no conveyance is required in these cases to pass the title from the one in whom it resides to the person receiving it under the family arrangement. It is assumed that the title claimed by the person receiving the property under the arrangement had always resided in him or her so far as the property falling to his or her share is concerned and therefore, no conveyance is necessary.... Under the arrangement, one set of members abandons all claim to all title and interest in all the properties in dispute and acknowledges that the sole and absolute title to all the properties resides in only one of their number and are content to take such properties as are assigned to their share....

This is the reason why the settlement is not necessarily required to be registered under the Registration Act, 1908. Even the oral settlement reached bonafide and acted upon by the parties is acceptable.

10. In Maturi Pullaiah and Another Vs. Maturi Narasimham and Others, the Apex Court had held to the extent that "even dispute based upon ignorance of parties as to their rights may up-hold a sufficient ground to sustain" the settlement."

11. In V.N. Sarin Vs. Ajit Kumar Poplai, , the Hon"ble Supreme Court held that the true effect of settlement is that each co-parcener got a specific property in

lieu of his undivided right in respect of the totality of the property of the family.

12. In *Sk. Sattar Sk. Mohd. Choudhari Vs. Gundappa AMabadas Bukate*, , the Apex Court considered that a settlement cannot be a transfer within the meaning of Section 5 of the Transfer of Property Act for the reason that transfer contemplates that a person, who has a title in the said property, alienates the same to the another person who has no title. By way of settlement, on the contrary, a transaction takes place between the members of the same family for the benefit of the family so as to preserve the family's property, peace and security of the family, avoidance of family dispute and litigation and also for saving the honour of the family. Such an arrangement is based, on the assumption that there was an antecedent title in the parties, who, by way of settlement, have not only acknowledge the same but also defines it. Such a settlement does not amount to conveyance of property from a person who has title to a person not having title in the property.

13. "Settlement" has been termed as a memorandum of understanding of the rights of various members of the family which has finally been settled and adjusted. Vide *K.K. Modi Vs. K.N. Modi and Others*,

14. In view of the above, it can safely be summarised that "settlement" amounts to giving the share in the properties to a person, based on his antecedent title, as a full and final settlement of his rights, i.e. in lieu of undivided right in the family properties as a measure of fair and equitable distribution of family properties among its members.

15. Section 30-B(a) of the Act defines "family" as consisting husband and wife and their children "dependent on them." After the settlement deed dated 19.5.1955, sons of the assessee could not be held to be "dependent" on him, nor the land settled with them could be held to be in the hands of the assessee as on the appointed date, i.e. 1.4.1966, for the reasons that it is no body's case that settlement was not accorded bonafide or had not been acted upon by the parties.

16. Thus, I am of the candid view that submission of Mr. Sharma that even after the said settlement, sons of the assessee could be included in the "family" of the assessee or they could claim share in the properties in his hands as on 1.4.1966, is preposterous. If the submission is accepted, it would lead to absurdity and defeat the basic purpose for which the Act had been enacted.

17. Thus, in view of the above, I am of the considered opinion that as the four sons of assessee Ujagar Singh had been given land by the Settlement dated 19.5.1955, they were not entitled to be included in the "family" of assessee Ujagar Singh on 1.4.1966 and no fault can be found with the impugned judgment and order of the Board of Revenue.

18. The petition is devoid of any merit and accordingly dismissed. No order as to costs.