
(1985) 09 MP CK 0037
In the Madhya Pradesh High Court
Case No : S.A. No. 104 of 1984

Dalchand	Vs	APPELLANT
Kamalabai and another		RESPONDENT

Date of Decision : 27-09-1985

Acts Referred:

Madhya Bharat Abolition of Jagirs Act, 2008 — Section 38(2)

Citation : (1987) JLJ 284 : (1986) MPLJ 636

Hon'ble Judges : K.M. Agarwal, J

Bench : Single Bench

Advocate : R.D. Jain, for the Appellant; M.L. Gupta and H.D. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Agarwal, J.

This second appeal by one of the defendants in the suit was admitted on 22-6-1984 on the following substantial questions of law:-

(i) Whether the Court below has committed a serious error of law in interpreting section 256 of the Quanoon Mal, Gwalior, Samvat Year 1983 that it prohibits bequest of the suit land and therefore Ex. D. 2, the will executed by Mangal alias Mathura Prasad in favour of defendant No. 1 appellant Dalchand is invalid?

[Note: - By an apparent typing mistake section 256, Quanoon Mal, has been, wrongly mentioned. It must be section 265.]

(ii) Whether the Court below has committed a serious error of law in holding that the Pattas Ex. D. 1 and Ex. D. 4 are invalid, being contrary to the provisions of section 74(2) of the M.B. Land Revenue and Tenancy Act inasmuch as that law was not applicable at the time these Pattas were granted?

The respondent No. 1 filed a civil suit for declaration of her title and possession over the suit properties, consisting of agricultural lands, houses and open plots.

She claimed herself to be the real sister of Mangal alias Mathura Prasad, who was the admitted owner of the suit properties and asserted her right over the suit properties as next reversioner of Mangal after the remarriage of his widow, the respondent No. 2. The suit was contested by the appellant, who claimed the suit properties by virtue of a Will executed in his favour on 12-6-1948 by the deceased Mangal. He further claimed subleases of the agricultural lands in his favour from the respondent No. 2 and acquisition of the right of a "pakka" tenant by virtue of section 38(2) of the Madhya Bharat Abolition Act, Samvat 2008. However, the suit was decreed to the extent of agricultural lands (hereafter called the "suit land") which was affirmed by the impugned decree of the lower appellate Court.

It was not disputed that Mangal alias Mathura Prasad died on 22-9-1948 and on the date of his death, as also on the date of execution of the alleged will by him, Quanoon Mal, Gwalior, Samvat 1983 was in force. He was issueless and had left behind him his mother Smt. Pyari Dulhan and widow, the respondent No. 2, who remarried in Samvat year 2013-14, i.e. in August, 1956. On the date of her remarriage, Hindu Succession Act, 1956 and the Madhya Pradesh Land Revenue and Tenancy Act, Samvat 2007 were in force. It was also not in dispute that the name of the appellant was recorded as subtenant in revenue papers in respect of the suit land since Samvat year 2006 and that after five years, i.e. in Samvat year 2011, he obtained the rights of a "pakka" tenant in the suit land in accordance with the provisions of section 38 of the Madhya Bharat Zamindari Abolition Act from the Revenue Court. In other words, the rights of a "pakka" tenant were acquired by the appellant before the date of remarriage of the respondent No. 2.

It is now well settled that the devolution or the competency or incompetency to dispose of property in any particular mode is governed by the law applicable on the date of devolution or the date of disposition of property. On the relevant dates in the present case, Quanoon Mal was in force. The mode of devolution and power of disposition of agricultural holdings were provided in sections 253 and 265 of Quanoon Mal, which read as follows:-

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The learned counsel for the appellant submitted that section 265 of Quanoon Mal did not specifically prohibit bequest of agricultural lands, and therefore, the Will (Ex. D. 2) executed in his favour by the deceased Mangal should not have been declared invalid or ineffective in law. He also referred to the Chapter on Wills in Mulla's Hindu Law and contended that late Mangal was competent to execute the alleged will in favour of the appellant.

The said contention of the learned counsel for the appellant cannot be accepted. Section 265 Quanoon Mal recognised transfers only by sale or mortgage. Consequently it must be held that by necessary implication, it prohibited bequests, gifts and/or transfers by any other mode, except the modes mentioned

in the section. Accordingly the question number (i) deserves to be answered against the appellant.

Section 74(2) of the Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007 prohibited a sublease by a "pakka" tenant for a term exceeding one year or from year to year without a registered instrument. - "Pattas" Ex. D. 1 and Ex. D. 4, were unregistered documents. They were executed on 17-5-1951. The learned counsel for the appellant submitted that although the provisions of the M.B. Land Revenue and Tenancy Act were brought into force on the date of the "Pattas" Ex. D. 1 and Ex. D. 4; the provisions of Part II of the Act which contained section 74, were not in force on the said date and were brought into force subsequently, i.e. with effect from 2-10-1951. Accordingly the said "Pattas" should not have been held invalid on the ground that they were unregistered documents.

Section 1(2) of the M.B. Land Revenue Act provided "It shall extend to the whole of the United States of Gwalior, Indore and Malwa (Madhya Bharat) but provisions of Part II of this Act shall not apply to villages which have been settled on zamindari system." After the abolition of zamindari system by Madhya Bharat Zamindari Abolition Act, Part II of the M.B. Land Revenue Act became applicable even to areas, which were under the zamindari system. Madhya Bharat Zamindari Abolition Act came into force from 25-6-1951, but Zamindari was abolished from 2-10-1951. The suit land was situated in a zamindari village. Under the circumstances, the learned counsel for the appellant appears to be right in his contention that on the date of execution of the "Pattas", Ex. D. 1 and Ex. D. 4 section 74(2) of the M.B. Land Revenue Act was not applicable. Yet the question remains, if the appellant was entitled to continue in possession of the suit land in pursuance of the alleged lease in his favour, even after the remarriage of respondent No. 2.

It was not disputed that by virtue of section 253(2) of Quanoon Mal, the respondent No. 2 had inherited limited rights in the suit land on the death of her first husband on 22-9-1948. If she continued to be limited owner on the date of her remarriage, the appellant would not be entitled to continue in possession of the suit land. However, if she had acquired an absolute ownership, it would not be open to the respondent No. 1 either to maintain her suit or to eject the appellant from the suit land.

The learned counsel for the appellant submitted that before the date of her remarriage, the respondent No. 2 had become absolute owner of the suit land by virtue of section 14 of the Hindu Succession Act, 1956 and, therefore, the respondent No. 1 did not derive any title over the suit land in consequence of the remarriage of the respondent No. 2. On being pointed out that for acquisition of full ownership u/s 14, it was necessary for the respondent No. 2 to be in possession of the property on the date of enforcement of Hindu Succession Act, 1956, it was argued that she was in constructive possession of the suit land, whereas the actual possession was with the appellant as subtenant of the

respondent No. 2. Taking support from Kotturuswami's case, (AIR 1959 SC 577), the learned counsel submitted that "possession referred to in section 14 need not be actual physical possession or personal occupation of the property by the Hindu female but may be possession in law. The possession of a licensee, lessee or a mortgagee from the female owner or the possession of a guardian or a trustee or an agent of the female owner would be her possession for the purpose of section 14". On being further pointed out that the appellant had acquired the status of a "pakka" tenant u/s 38(2) of the M.B. Zamindari Abolition Act from a Revenue Court, it was argued that the respondent No. 2 was in the category of a disabled person and, therefore, in view of the proviso to section 38(2) of the said Act, a sub-tenant from such person could not acquire the status of a "pukka" tenant. It was submitted that it was not necessary for obtaining any declaration from a Revenue Court about such status and, therefore, in spite of the order of the Revenue Court in his favour the appellant did not become "pakka" tenant of the suit land and continued to be the sub-tenant of the respondent No. 2.

The learned counsel for the respondent No. 1 submitted that the provisions of section 253 of Quanoon Mal continued to be in force on the date of remarriage of the respondent No. 2 and, therefore, she became divested of her limited right over the suit land soon after the remarriage. It was argued that the provisions of section 14 of the Hindu Succession Act, 1956 were not applicable in the present case in the light of the said provisions of section 253 of Quanoon Mal. He placed reliance in Khushilal v. Gajaribai (1983 J.L.J. 167) and Nahar Hirasingh v. Dukalhin (AIR 1974 MP 141 F.B.).

In reply, the learned counsel for the appellant cited Bajya v. Gopikabai (AIR 1978 SC 795), Kumari Ramlali Vs. Mst. Bhagunti Bai and Others, and several other cases of this Court and submitted that section 14 of the Hindu Succession Act, 1956 was applicable to suit land in spite of section 253 of Quanoon Mal. According to the learned counsel, the provisions of Hindu Succession Act, 1956 had overriding effect.

The contention of the learned counsel for the appellant cannot be accepted in the light of the specific provisions of section 4(2) of the Hindu Succession Act, 1956 which are to the following effect:-

4(2). For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings.

The cases relied on by the learned counsel for the appellant dealt with section 151 of the Madhya Pradesh Land Revenue Code, 1954, which provided, "Subject to his personal law, the interest of a tenure-holder shall on his death pass by inheritance, survivorship or bequest, as the case may be." They cannot, therefore, resolve the point involved in the present case. Yet the learned counsel

insisted that the Hindu Succession Act, 1956 would be applicable, because the Parliament was competent to legislate on the matter of succession in respect of agricultural lands, by making reference to the following passage from paragraph 5 of the decision in Ramlali's case:-

It must also be noted that Entry No. 5 of List III of the Seventh Schedule to the Constitution does not exclude agricultural lands from the power of legislation relating to wills, intestacy and succession as was done by Entry No. 7 of List III of the Seventh Schedule to the Government of India Act, 1935 (sic) contained the expression "save as regards agricultural land". That being so the Hindu Succession Act, 1956 applies also to agricultural lands. After the coming into force of the Constitution, the Union Parliament became competent under Schedule 7, List III Entry No. 5 to legislate in the matter of wills, intestacy and succession in respect of agricultural lands also.

I am afraid, the learned counsel for the appellant has mis-read and misconstrued Ramlali's case. The said observation of the Court in the said case may be explained by reference to the provisions of Hindu Women's Rights to Property Act, 1937. u/s 3 of this Act, a Hindu widow was given a right to inherit the property of her husband in the manner and to the extent provided therein, which came to be known as limited interest. The word "property" used in section 3 was held to exclude agricultural lands, because the Central Government was not competent to legislate as regards succession to agricultural lands in the light of the provisions of Government of India Act, 1935, as referred to in Ramlali's case. Under the Constitution, the position has changed. Now the Parliament is competent to legislate even on matters of succession to agricultural lands. But this does not mean that where a special mode of succession is prescribed in respect of agricultural lands under a State law, the legislation of Parliament, say the Hindu Succession Act would prevail over the State law.

The result is that on the date of remarriage of respondent No. 2, the provisions of Quanoon Mal were still applicable and, therefore, she became divested of her limited interest in the suit land soon after her remarriage in the light of Section 253(2) of Quanoon Mal. Under the circumstances, it is not necessary to decide, if the respondent No. 2 was or was not in possession of the suit land on the date of coming into force of Hindu Succession Act, 1956 for the purpose of application of section 14 of the Act.

The question still survives, if the appellant acquired the status of an occupancy tenant on the date of coming into force of the Madhya Pradesh Land Revenue Code, 1959. According to the learned counsel for the appellant, such a status was acquired, as he was lawfully inducted as a sub-tenant by the respondent No. 2 and was in possession of the suit land on the date of coming into force of the M.P. Land Revenue Code, 1959. According to the learned counsel for the respondent No. 1, no such status was acquired by the appellant, because his possession was that of a trespasser. Reliance was placed in *Sunder (Mahila) vs. Prahlad* (1981 J.L.J. 239 F.B.) and *Deorao vs. Ram Chandra* 1982 J.L.J. 375 F.B.).

Similarly the appellant's counsel placed reliance on Laxmi Kumar vs. Ram Bihari (1970 RN 113 F.B.), Gajraj Singh vs. Jagat Singh (1970 RN 133) and Bhawarsingh vs. Shivram, (1981 RN 184).

I do not think it necessary to discuss in detail the various cases relied on by the learned counsel for the parties. Suffice it to say that the law is clear on the point. As earlier found, the respondent No. 2 was only a limited owner of the suit land and she became divested of it soon after her remarriage. Under the circumstances, the alleged sub-tenancy created by her in favour of the appellant would be deemed to have terminated on the date she was divested of her interest in the suit land. The appellant did not and could not have become "pakka" tenant in respect of the suit land at any time prior to the date of remarriage of the respondent No. 2, as admitted by the learned counsel for the appellant himself. Even otherwise, such status could not have extended beyond the date of termination of limited estate due to death or remarriage. Under the circumstances, the possession of the appellant over the suit land after the date of divesting of the limited interest of the respondent No. 2, would be that of a trespasser, which would not confer on him any status of an occupancy tenant under the M.P. Land Revenue Code, 1959.

In the light of my aforesaid discussion, the question No. (i) is decided against the appellant. The question No. (ii) needs no decision, because even if it is decided in favour of the appellant, he would get no right over the suit land.

In the result, this appeal fails and it is hereby dismissed with costs to the contesting respondent. Counsel's fee as per certificate or Schedule, whichever is less.