

(1999) 11 SC CK 0100
In the Supreme Court Of India
Case No : Civil Appeal No. 5029 Of 1985

Dalchand (Dead) through L.R.

APPELLANT

Vs

Kamlabai and Another

RESPONDENT

Date of Decision : 25-11-1999

Acts Referred:

Citation : (2000) 2 SCC 217

Hon'ble Judges : V. N. Khare, J; S. N. Phukan, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. The deceased appellant herein was the defendant in a suit brought by Kamlabai for declaration and possession of the land in dispute. Plaintiff Kamlabai is the sister of Mangal. Admittedly, Mangal died on 22-9-1948 leaving behind his mother and his widow. On the death of Mangal the land devolved on his widow under Section 253 of the Quanoon Mal. In 1956, the Hindu Succession Act (hereinafter referred to as "the Act") came into force. Before the coming into force of the said Act, the widow executed lease deed in favour of the original defendant in the suit. After the coming into force of the Hindu Succession Act, the widow remarried. It is in this background suit was filed by Kamlabai for declaration and possession. The suit was decreed by the trial court which was affirmed by the first appellate court as well as by the High Court. The defendant is in appeal against the said decisions.

2. Learned counsel appearing for the appellant urged that Mangal was the proprietor of the land and therefore on his death his widow acquired the proprietary rights in respect of the land and not as a tenant under Section 253 of the Quanoon Mal. His further case is that the widow on enforcement of the Madhya Bharat Land Revenue and Tenancy Act Samvat 2007 (Act 66 of 1950), became a pakka tenant and had acquired rights to execute lease as well as to induct a sub-tenant.

3. A perusal of the three judgments of the courts below shows that it was never the case of the appellant before any of the courts below as now advanced in this appeal. The parties proceeded on the basis that the land devolved on the widow under Section 253 of the Quanoon Mal and had acquired only a limited right in a sense that she had right till her lifetime or till she remarried. The three courts found that she had a limited right and therefore the lessee could not have been conferred a larger right. The argument sought to be advanced lacks foundation. We are, therefore, not inclined to entertain the argument of learned counsel for the appellant.

4. Learned counsel for the appellant then urged that by virtue of enforcement of sub-section (2) of Section 14 of the Hindu Succession Act, the widow acquired absolute right and therefore she became entitled to confer lessee rights on the defendant. Sub-section (2) of Section 4 of the Act reads as follows:

"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."

5. In view of sub-section (2) of Section 4 of the Act the provisions of Section 14 of the Act cannot be applied where the devolution in respect of agricultural land is governed by tenancy law. Since the devolution of land was to govern by the provisions of the Quanoon Mal, Section 14 of the Hindu Succession Act cannot be pressed into service. We are, therefore, in agreement with the view taken by the High Court. Consequently, we do not find any merit in this appeal and the same is dismissed. There shall be no order as to costs.