
(1927) 05 AHC CK 0060
In the Allahabad High Court

Deo Narain Singh and Others	Vs	APPELLANT
Jagat Narain Singh and Others		RESPONDENT

Date of Decision : 27-05-1927

Acts Referred:

Agra Tenancy Act, 1926 — Section 20

Citation : AIR 1927 All 662 : 103 Ind. Cas. 237

Hon'ble Judges : Sulaiman, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sulaiman, J.—This is a defendant's appeal arising out of a suit for declaration of title and joint possession. The properties have been given different nomenclatures. I, however, adopt those given in the lower appellate Court's judgment. The plaintiff's case was that Jaipal, the common ancestor, was joint with his four sons and grandsons, and while the family was joint, properties in lists A, B, C, D and E, were acquired under permanent leases, and were joint family properties and that later on property in list F was acquired out of the joint family funds, though in the name of Deo Narain, defendant. The plaintiffs allege that Jaipal died in 1922, while still joint, and they have, therefore, an interest in all the properties in suit.

2. Deo Narain Singh and others contested the claim on the ground that Jaipal separated from his sons before 1916, that properties in lists A, B, C and D were the exclusive properties of Jaipal, and that under a will, dated the 10th of February 1916, he gave properties in lists A, B, C and D to the defendants, who have acquired exclusive title thereto. It was further pleaded that properties in list E were not covered by the leases, but were subsequently acquired by the defendants under another lease of 1919, and that properties in both the lists E and F were the self-acquired properties of the defendants. With regard to the will, the plaintiffs replied that all the properties were non-occupancy tenancies and were not transferable and the will was invalid.

3. The lower appellate Court has found distinctly that the properties acquired under the permanent leases in the time of Jaipal was not his separate properties but were joint family properties. It has thus held that all the members of Jaipal's family had an interest in the properties acquired under the permanent leases. The lower appellate Court has also found that Jaipal had actually separated from his sons in 1915, that is some time before the execution of the will of 1916. He has also found that the will was genuine and was executed out of free will, and without any undue influence.

4. The learned Judge, however, has held that the plots being non-occupancy tenancies Jaipal had no transferable interest in them, and that his will is, therefore, invalid. As regards properties in list E he has remarked that they are covered by the lease and are not the self-acquisitions of the defendants. As regards the properties in list F he has found that they are the self-acquisitions of defendant 1.

5. One of the learned vakils for the appellants examined the record and certified that "the plots detailed in list E were not acquired prior to 1915." On this certificate being brought to the notice of Mr. Asthana he has pointed out that some of the plots in list E, which constitute its first group, were recorded against the names of Deo Narain in the khewat of 1319 F and that, even though they do not appear to have been acquired under the permanent leases they were acquired at a time when the family was joint. The certificate was, therefore, misleading to this extent. As regards the remaining plots of list E, namely the last six plots mentioned there and measuring 587 acres Mr. Asthana is not in a position to say that the certificate is in any way wrong. I must, therefore, accept that there is no evidence on the record that these last-mentioned six plots were acquired at a time, when the family was joint. As a matter of fact these are included in the subsequent lease of 1919, in favour of the contesting defendants. The plaintiffs' claim with regard to these six plots must, therefore, fail.

6. As to properties in lists A, B, C and D the position is clear. These were joint family properties up to the year 1915, when a disruption took place although there was no division by metes and bounds. In the eye of the law Jaipal and his four sons became co-sharers of 1/5th share each in all these properties. There is, therefore, no doubt that if Jaipal made a gift of his 1/5th share in all these properties in favour of Deo Narain the gift would have been valid because Deo Narain was a co-sharer.

7. The learned vakil for the appellants has first argued that the law governing the will should be taken to be the Bent Act of 1881. I am unable to accept this contention. The question whether the will was valid or invalid must be answered on the provisions of the Agra Tenancy Act of 1901, which was in force at the time when the will was made. Holders of permanent leases must be classed as non-occupancy tenants. Even if they were treated as thekadars they would still be non-occupancy tenants. There is no express provision in the lease, which authorizes a transfer. The rights of the lessees, therefore, were not transferable

unless the transfer was in compliance with the provision of Section 20, Agra Tenancy Act.

8. The first point urged before me is that the word "transferable" in Section 20 only means transferable inter vivos and that, therefore, there is no prohibition as regards a will, which is not a transfer inter vivos. That section mentions the words "not transferable" and "voluntary transfer." The word "transfer" implies that the interest of the tenant is being assigned to another. In its ordinary meaning it applies to transfer inter vivos. A bequest, strictly speaking, is not a transfer at all. The legatee is a successor, but not a transferee. I am, therefore, of opinion that the words "transferable" and "transfer" in the section refer to transfers inter vivos, and not to bequests. It follows, therefore, that so far as this section is concerned there is no express prohibition against a bequest.

9. Section 22, however, deals with succession to a tenancy when a tenant dies. It provides that, when he dies his interest in the holding shall devolve in the way prescribed. Section 22, therefore, overrides the personal law of the tenant and confines the order of succession to that laid down by it. It was clearly intended that no devolution other than that mentioned would come into effect. In my opinion this section excludes succession as a legatee. The learned Counsel for the parties have not been able to cite any case deciding one way or the other whether the interest in a tenancy can be bequeathed. I am nevertheless of opinion that all other forms of succession have been totally abolished, and the personal law or common law abrogated. In my judgment a tenancy, if it has not been transferred in the way laid down by Section 20(2), cannot be bequeathed.

10. No other point has been pressed before me I would, therefore, allow the appeal in part, and modifying the decree of the Court below, dismiss the plaintiffs' suit as regards the last six plots measuring 587 acres in the fifth list called L appended to the plaint, which has been designated as list E by the lower appellate Court. The decree dismissing the claim as regards list F will, of course, stand. The cross-objections are accordingly dismissed. The parties are to receive and pay costs in proportion to their success and failure throughout.