
(1972) 03 AHC CK 0009

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3089 of 1970

Jagdamba and Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 25-03-1972

Acts Referred:

Hindu Womens Right to Property Act, 1937 — Section 3(1)

Citation : (1972) 42 AWR 744

Hon'ble Judges : H.N. Seth, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H.N. Seth, J.—This is a petition Under Article 226 of the Constitution, at the instance of three sons of Bhagirath who was Defendant in a suit u/s 176 of the UP ZA and LR Act. Respondent No. 4 Smt. Dhandei filed the suit claiming partition of certain Bhumidhari holding in village Titari Buzurg and one Sirdari holding in village Mahadia, claiming half share in those properties. Plaintiffs' case was that the Defendant and her late husband namely Ramji were co-tenure holder of the two holdings. After the death of Ramji Das, she stepped into his shoes and became continuor holder with the Defendant. Thus, she had half share in the property and was entitled to get it partitioned. Bhagirath pleaded that the property of village Tetari Buzurg was Sir of Smt. Maharani, who in the year 1894 gifted it to her daughter Smt. Ingurdani alias Karamdani. Smt. Ingurdani had two sons viz. Bhagirath and Plaintiff husband Ramji. Ramji predeceased Smt. Ingurdani who died in the year 1951, before the date of vesting. The holding in village Tetari Buzurg was Ingurdani's Stridhan property and after her death it devolved upon her son Bhagirath. It was claimed that the Plaintiff who was the widow of a predeceased son did not acquire any interest in the Stridhan property of Smt. Ingurdani

2. As regards the property in village Mahadia, it was admitted that Ramji and Bhagirath were co-tenants. It was said that Ramji surrendered his interest in that

holding with the result Bhagirath became the sole tenure holder. Plaintiff who is the widow of Ramji did not have any interest in the property and could not claim its partition.

3. So far as property situated in village Mehdiya was concerned, the revenue court disbelieved the theory of surrender set up by the Defendant. It held that the Plaintiff was entitled to half share in that property and passed decree accordingly. The Defendant submitted to this part of the decree which has become final. So far as the property in village Tetari Buzurg is concerned the lower appellate court found that there was nothing on the record to substantiate the case of the Defendant that this was the same property which was covered by the gift executed by Smt. Maharani in favour of Ingurdani. However, the plot stood recorded in the name of Smt. Ingurdani and thereafter since 1362 fasli they stood recorded in the names of Plaintiff and Defendant. Plaintiff was therefore entitled to get her half share partitioned. The Board of Revenue after stating respective cases of the parties came to the conclusion that succession in this case was governed by Section 3(1) of the Hindu Women's Right to Property Act, 1937 and not by the principles of general Hindu Law. It therefore, held that the Plaintiff was entitled to succeed to half share in the property left by Smt. Ingurdani and that the suit had been properly decreed by the courts below.

4. Petitioners whose names were substituted in place of Bhagirath have come up in writ petition before this Court. They contended that the view taken by the Board of Revenue that succession to Smt. Ingurdani's interest in the property in dispute was governed by the provision of Section 3(1) of the Hindu Women's Right to Property Act 1937 is clearly erroneous. Smt. Ingurdani's interest in the property in dispute devolved upon her heirs according to the principles of Hindu Law. Applying these principles it will be found that on Smt. Ingurdani's death her interest in the property devolved on her surviving son and the widow of her predeceased son did not inherit any interest.

5. Hindu Women's Right to Property Act 1937 was enacted in order to give better rights to women in respect of property. The circumstances in which, the class of women to whom and the extent to which the benefit under the Act has been given have been specified therein. Section 3(1), so far as is relevant for our purposes, provides that when a Hindu governed by Mitakshara or customary Law dies intestate leaving separate property, his widow or if there is more than one widow all his widows together shall be subject to the provisions of Sub-section (3) be entitled in respect of the property in respect of which he dies intestate to the same share as a son. A proviso added to this section further lays down that the widow of a predeceased son shall inherit in like manners as a son if there is no son surviving of such predeceased son and shall inherit in like manners as a son if there is surviving a son and a son of such predeceased son. Women for whom better right of succession has been provided under this section are the widows of Hindus governed by Mitakshara Law dying intestate. It does not apply to a case where a female property holder died leaving a son. Any reliance on

Section 3(1) is therefore clearly misplaced. Stridhan property of Smt. Ingurdani will accordingly devolve upon her heirs according to principles of Hindu Law. These principles have been stated in paragraph 1946 147 HL Edition. According to these principles, on death of a female, her stridhan can devolve on her son. Widow of a predeceased son does not get any interest in such property. The judgment of the Board of Revenue, therefore, suffers from an apparent error of law and cannot be sustained.

6. Learned Counsel for the Respondent No. 4 then urged that the finding recorded by the Commissioner, in paragraph 7 of his judgment, that there was nothing on the record to show that the gift deed relied upon by the Defendant related to the property in dispute, is a finding which was final and binding on the second appellate court. So long as that finding stood, Plaintiff would be entitled to a division of the holding in dispute, as her name continued to be recorded as a co-Bhumidhar for last several years. The suit was, therefore, rightly decreed. Even though the reason given by the Board may not be a good reason, its ultimate conclusion is correct and therefore no interference is called for in a petition Under Article 226 of the Constitution.

7. It is true that the Board has not made any comment on the finding recorded by the Commissioner to the effect that there was nothing on the record to connect the property in dispute with the property gifted to Smt. Ingurdani. However, revenue entries made in village papers indicate that till the year 1362 the property was recorded in the name of Smt. Ingurdani and after her in the joint names of the parties. Prima facie, it appears that after Ingurdani, names of parties came to be recorded as her heirs. If the property belonged to Ingurdani, surely Plaintiff could succeed to it as her heir. It would, therefore, not be right to contend that irrespective of the error made by the Board, its conclusion is necessarily correct and therefore this Court should not quash its judgment. It will be for the Board to consider the effect of the finding of the Commissioner and to deal with the appeal according to law when the matter goes back to it. It is further made clear that the prima facie view expressed by me with regard to the effect of entries in revenue papers is not intended to fetter the jurisdiction of the Board in deciding the appeal in accordance with law.

8. The petition succeeds and the judgment of the Board of Revenue dated June 2, 1970 is quashed. The Board will readmit the second appeal to its original number and then proceed to dispose it of afresh in the light of the observations made above. In the circumstances of the case I direct the parties to bear their own costs. Petition allowed.