(1970) 07 AHC CK 0036

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3074 of 1964

Jasram APPELLANT

Vs

Board of Revenue UP at Allahabad and Others RESPONDENT

Date of Decision : 07-07-1970

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176

Citation : (1970) 40 AWR 617

Hon'ble Judges : R.S. Pathak, J

Bench : Single Bench

Advocate : V.K.S. Chaudhary, for the Appellant; M.P. Singh and S.C. for Opp. Parties, for the Respondent

Final Decision : Allowed

Judgement

R.S. Pathak, J.—The second Respondent, Smt. Jhando, filed a suit u/s 176 of the UP ZA and LR Act claiming a one-fourth share in the holding as the legal heir of Jugdi. The suit was contested by the Petitioner on the ground that the property had been bequeathed to him under a will executed by Jugdi. The suit was dismissed by the Asstt. Collector, Meerut and an appeal was dismissed by the Addl. Commissioner, Meerut. A second appeal was filed before the Board of Revenue and the Board by its (order dated 4-9-1963/19-9-1963 has allowed the appeal and remanded the case to the trial court. The Board has proceeded on the view that on the date when the will was executed Jugdi had no transferable rights in the property and therefore, the will conferred no rights on the Petitioner. The Petitioner now prays for certiorari,

2. It seems to me that the petition must succeed. The will was executed by Jugdi on 15-7-1948. Admittedly, on that date Jugdi did not possess the right to transfer his interest in the land. Subsequently, he obtained a Praman Patra on 16-6-1950 which, the Board has found, had the effect of conferring bhumidhari rights on the date when the estate vested under the UP ZA and LR Act. According to the Board, Jugdi became a bhumidhar of the land on 1-7-1952. He continued

as bhumidhar until 1958 when he died.

3. Now, the principle is well settled that a will takes effect upon the death of the testator and before that event it has no legal operation. It passes no interest or title to the legatee during the life time of the testator. In that sense, it is distinguishable from a gift. On the death of the testator, the property which passes under the will must be ascertained with reference to the date of the testator''s death. Section 90, Indian Succession Act, which applies to Hindus, specifically provides that the, description contained in a will of property shall, unless a contrary intention appears from the will, be deemed to refer to and comprise the property answering that description at the death of the testator. A will must be construed with reference to the property of the deceased comprised in it to speak and take effect as if it had been executed immediately before the death of the testator and as if the conditions of things to which it refers are those existing immediately before the death of the testator--Bodi v. Venkata Swamy ILR 38 Mad. 369. It was laid down by the Chancery Division in Re Russel (LR 19 Ch. D. 432) that where a thing bequeathed may increase, diminish or otherwise change during the testator''s life so that the description may from time to time apply to different amounts of property of like nature or to different subjects, then the effect is that the property answering the description at the death of the testator passes under the gift.

4. It appears from this that whether the testator had disposing power in respect of the subject of the will must be judged with reference to the date of the testator''s death and not with reference to the date on which the will was drawn up. In this view of the matter, the basis upon which the Board has proceeded is contrary to law. In the circumstances, the order of the Board is liable to be quashed.

5. The petition is allowed. The order, of the Board of Revenue is quashed. There is no order as to costs.