
(1982) 09 MP CK 0004

In the Madhya Pradesh High Court

Case No : Second Appeal No. 296 of 1972

Khushi Lal

APPELLANT

Vs

Gajri Bai and others

RESPONDENT

Date of Decision : 23-09-1982

Acts Referred:

Hindu Succession Act, 1956 — Section 14, 4(2), 5(2)

Citation : (1983) JLJ 167 : (1983) MPLJ 326

Hon'ble Judges : U.N. Bhachawat, J

Bench : Single Bench

Advocate : Arun Mishra, for the Appellant; K.N. Gupta, for the Respondent

Judgement

U.N. Bhachawat, J.

This is an appeal by the plaintiff against the judgment and decree dated 29th of April, 1972 of the Court of the Additional District judge, Vidisha, in Civil Appeal No. 99-A of 1971, whereby it has reversed the judgment and decree dated 10th of October, 1969 in Civil Suit No. 24-A of 1968 of the Court of the Civil Judge Class II, Basoda.

The short facts leading to the present appeal are these : *'2-A. The admitted facts are;

(a) that the defendant Sarvashri Baldeo Singh, Hazarilal, Mail Singh, and late Dhan Singh are the brothers. They owned ancestral agricultural lands. These agricultural lands were partitioned amongst them. After this partition, the plaintiff and Dhan Singh continued in joint possession of the land that had fallen to their respective shares as equal owners thereof. Dhan Singh died twenty years prior to the date of the filing of suit, that is, in the year 1948 and in his place, the name of his widow Gajri Bai, defendant No. 1 was mutated and, thus, the name of the plaintiff and Gajri Bai, defendant No. 1, continued to be recorded as joint owners in equal shares in the revenue record over the suit lands. The suit lands are situated in village Danmadhi, Tahsil Basoda, District Vidisha, bearing

survey Nos. 70/1, 102/1,103/2,10, 139/1 and 158 admeasuring 36 Bighas and 17 Biswas. Gajri Bai, defendant No. 1, remarried after the death of Dhan Singh and at the time of her remarriage she was a recorded Pakka tenant of the suit lands along with the plaintiff Khushilal, each of them having half share in the suit lands.

(b) Defendant Gajri Bai, sold her half share in the suit lands on 1-2-1968 by a registered sale-deed to defendants No. 5 and 6, namely Jagannath and Ratiram.

2-B. The plaintiff filed the present suit for a declaration that he be declared to be the sole owner of the suit lands in the status of a Bhumi-swami and in the alternative, it was prayed that if the plaintiff is not entitled to be declared as the sole Bhumiswami of the suit land, he be declared to be the exclusive Bhumiswami of half of the suit lands and of 1 /4th of the remaining half share, which was recorded in the name of Gajri Bai, defendant No. 1 and a permanent injunction be issued against defendant Nos. 1, 2, 5 and 6 namely, Gajri Bai, Man Singh, Jagannath and Ratiram respectively, restraining them from interfering in the possession of the plaintiff over the suit lands.

2 C. The plaintiff had based his claim on the ground that Gajri Bai, having remarried in the year 1952 with one Imrat Singh, she has divested herself of her right, title and interest which was to the extent of half share, in the suit lands as she had inherited that interest from her deceased husband Dhan Singh and she had no right, title and interest which she could alienate in favour of Jagannath and Ratiram, defendants Nos. 5 and 6 respectively,

2 D. Defendants No. 3 and 4, namely, Baldeo Singh and Hazarilal did not dispute the claim of the plaintiff, whereas the other defendants resisted the claim of the plaintiff. The contesting defendants, while controverting the plaint allegations, inter alia, contended that Gajri Bai had acquired an absolute interest in the suit land to the extent of her half share by virtue of the provisions contained in section 14 of the Hindu Succession Act, 1956 (for short, hereinafter referred to as the "Succession Act") and, therefore, she could not be divested of that right after her remarriage. The fact and the date of remarriage was also disputed.

2 E. The trial Court had found that Gajribai remarried in the year 1958. The lower appellate Court also confirmed this finding. The trial Court had found that on remarrige, Gajribai had divested herself of her half share in the suit lands and it devolved in equal shares on the heirs of her late husband Dhansingh-on the plaintiff and his other three brothers, namely Mansingh (defendant No. 2), Baldeosingh (defendant No. 3) and Hazarilal (defendant No. 4). The trial Court, thus, decreed the suit of the plaintiff to the extent of 1 /4th share in the half share that was being held by Gajri Bai, defendant No. 1. To put it in other words, the trial Court decreed the suit of the plaintiff for declaration of title to the extent of 5 /8th share in whole of the suit lands. The claim for permanent injuction was refused.

Being aggrieved by the aforesaid judgment and decree of the trial Court, the

contesting defendants preferred an appeal before the lower appellate Court. . The plaintiff did not prefer any appeal regarding the dismissal of his claim for injunction.

The lower appellate Court reversed the judgment of the trial Court to the extent of the plaintiff's claim in the half share of Gajribai, holding that by virtue of section 14 of the Succession Act, which came into force from 17-6-56, her interest became absolute and, therefore on remarriage, she was not divested of that interest and sale made by her was a valid sale. It may be stated that the question of remarriage of Gajribai was not disputed before the lower appellate Court; of course, the date of her remarriage was disputed and the lower appellate Court agreed with the finding on this point of the trial Court and held that she remarried in the year 1958. The plaintiff has thus, filed the present appeal.

The only question for decision in this appeal is whether: Gajribai has been divested of her half share in the suit lands on her having remarried Imratsingh; her interest devolved on her remarriage to the heirs of her late husband Dhansingh, that is, surviving four brothers of late Dhansingh in equal shares; and the sale dated 1-2-1968 by Gajribai in favour of the defendants No. 5 and 6 was invalid. The learned counsel for the parties confined their arguments only to this question. On the point of clarification, it may be mentioned that in this connection, the learned counsel for the defendants respondent had disputed the date of remarriage of Gajribai.

Before proceeding further, I would like to dwell upon the controversy about the date of remarriage of Gajribai with Imratsingh. I have already said hereinabove while giving a resume of the facts of the case that the two Courts below have given a concurrent finding that Gajribai remarried in the year 1958. That finding is based on the appreciation of the evidence on record and as such, it cannot be interfered with in second appeal. The learned counsel for the defendants, however, contends that the lower appellate Court has, in fact, not given a finding that Gajribai remarried in the year 1958. It has given a general finding that Gajribai remarried after the year 1956. The contention of the learned counsel for the defendant-respondents is devoid of substance and is based on an incorrect reading of the impugned judgment. The lower appellate Court has, in para 7 of its judgment, after discussing the whole evidence on this point, held that in view of Gajribai's own admission in Ex. P/2, it has to be held that she remarried in the year 1958. This finding of the lower appellate Court is a positive finding, based on the appreciation of the evidence. I am, therefore, of the view that it cannot be interfered with.

It is in the back-drop of my confirming the finding that Gajribai remarried in the year 1958, the question at hand has to be decided. To comprehend the point involved for decision, it is advisable to have a discussion of the Revenue law prevalent at the material time. It is an admitted position that in year 1958, the Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007 (Act No. 66 of

1950) (for short, hereinafter referred to as the Tenancy Act) was in force till 2-10-1958 when the Madhya Pradesh Land Revenue Code, 1959 came into force.

Now, the first point that is to be considered is whether the Succession Act would apply to the present case. Section 4(2) of the Succession Act reads as under : -

(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." On a plain reading of the above section, it can be held without any hesitation that the Succession Act will not have an overriding effect over the law relating to the devolution of tenancy right in respect of agricultural holdings. It is undisputed that the dispute between the parties is about the devolution of the tenancy rights in respect of agricultural land.

The contention of the learned counsel for the plaintiff is that the question at hand has to be decided with reference to section 83 of the Tenancy Act. He argues that on a plain reading of this section, it is clear that on remarriage, Gajribai is divested of her right in the suit lands which she had, admittedly, inherited as a heir of her deceased husband Dhansinah. He further argues that the Succession Act would not apply in the instant case as the matter of devolution was governed at the relevant time, that is, at the time of the remarriage of Gajribai, by the Tenancy Act.

The learned counsel for the contesting defendants-respondents Nos. 1, 2, 5 and 6 herein, namely, Gajribai, Mansingh, Jagannath and Ratiram respectively, in his argument in counter, contended that section 83 of the Tenancy Act cannot be attracted. It can only be attracted if the devolution of half the interest in the suit land on Gajribai as heir of her husband was u/s 82 of the Tenancy Act. He submitted that Dhansingh admittedly having died in the year 1958, the devolution of his interest on Gajribai as his heir was not u/s 82 of the Tenancy Act and, therefore, section 83 of the Tenancy Act cannot be brought into play.

10 A The learned counsel also contends that section 5(2) of the Succession Act saves the operation of the Succession Act only in respect of devolution of tenancy right, whereas, in the instant case, the question is of divesting of the right of Gajribai on her remarriage and, therefore, section 4(2) of the Succession Act cannot be brought into play.

For the reasons to follow, I am of the view that the contention raised by the learned counsel for the appellant deserves to be accepted; that of the counsel for the respondents deserves to be negated and the appeal deserves to be accepted.

11-A. Section 83 of the Tenancy Act reads as under :- "83. Succession in the case of a woman holding an interest inherited as a widow, mother, daughter etc.-

(1) When a Pakka tenant who has inherited an interest in any holding as a

widow, mother, step-mother, father's mother, unmarried daughter or unmarried sister or father's father's mother dies or marries, her rights in the holding shall devolve upon the nearest surviving heir (such heir being ascertained in accordance with the provisions of section 82) of the last male Pakka tenant.

(2) Nothing in sub-section (1) shall apply to a person succeeding to an interest in any holding under the provisions of section 84.

On the dichotomy of section 83 (1) of the Tenancy Act, the essential ingredients to attract the applicability of this section are these : (i) a person, the devolution of whose interests is in question, must be a Pakka tenant at the time the question of devolution and divestment arises, and (ii) she must have inherited her right as a widow, mother, step-mother, father's mother, unmarried daughter or unmarried sister, or father's father's mother.

Now, whether section 83 (1) of the Tenancy Act can be brought into play or not has to be judged in the back-drop of the admitted and proved facts, namely, (i) that at the time of her remarriage, Gajribai defendant No. 1 was recorded as a Pakka tenant. In other words, she was a Pakka tenant in the year 1958; (ii) that Gajribai had acquired this right of Pakka tenant to the extent of half share in the suit lands on account of the tenancy right she had inherited as an heir of her deceased husband Dhansingh and (iii) she has remarried in the year 1958. I would like to emphasize here that section 83 (1) of the Tenancy Act does not say that the person, the devolution of whose rights is in question must have inherited the rights as a Pakka tenant. It only requires that at the time of her death or remarriage, she should be a Pakka tenant and this status she has either inherited, as such, or had been conferred on her on the coming into force of the Tenancy Act, under that Act, by virtue of the tenancy right she has inherited and was holding at the time of coming into operation of the Tenancy Act. The argument of the learned counsel that section 83 of the Tenancy Act would apply only if the devolution was u/s 82 of the Tenancy Act is also devoid of substance inasmuch as it does not talk of the devolution of the rights of that Pakka tenant enumerated in this section who had inherited the rights of a Pakka tenant u/s 82 of the Tenancy Act. It only says "that a Pakka tenant who has inherited any interest". To accept the argument of the learned counsel for the respondents would mean adding something to section 83 of the Tenancy Act which is not there. In other words, according to the learned counsel for the contesting defendants, the section has to be read like this : when a Pakka tenant who has inherited an interest in any holding u/s 82, and such a course, in view of the settled position with regard to the canons of interpreting the law, cannot be adopted. This conclusion of mine is reinforced on a reading of sub-section (2) of section 83 of the Tenancy Act inasmuch as what is saved from the operation of sub-section (1) of section 83 of the Tenancy Act, according to the clear terminology used in this section, is the succession u/s 84 of the Tenancy Act only. Had it been the intention of the legislature not to apply section 83 (1) of the Tenancy Act to the devolution/succession which took place prior to coming into

operation of the Tenancy Act or that it was meant to apply only to the devolution/succession that took place u/s 82 of the Tenancy Act, it would have provided so clearly.

It cannot be gainsaid that at the relevant time, that is, in the year 1958, as already stated hereinabove, the Tenancy Act was in force and it contained the provision regarding devolution of right on the death of a male Pakka tenant as contained in section 82 of the Tenancy Act and also for succession in the case of divestation of interest of a woman holding an interest inherited as a widow, mother or daughter etc. as contained in section 83 of the Tenancy Act. Thus, if the question at hand is a question about the devolution of the tenancy right, the Tenancy Act being in force at the relevant time, it shall hold the field and section 4(2) of the Succession Act would positively save the instant case from the operation of the Succession Act.

13-A. On a plain reading of the section 83 of the Tenancy Act, extracted hereinabove in paragraph 11-A of this judgment, it is clear that the question at hand is a question of devolution inasmuch as the plaintiff claimed that on the remarriage of Gajri Bai, she has been divested of her interest in the suit lands and it has devolved upon the heirs of her deceased husband Dhan Singh. Section 83 of the Tenancy Act comprises within its ken two matters: one that the persons enumerated therein shall be divested of their respective interest on the happening of the event mentioned therein and two, on whom that interest would devolve. The distinction, made by the learned counsel for the defendants No. 1, 2, 5 and 6 that the instant case, is not a case of devolution and it is a case of divestation and, therefore, it does not fall within the scope of the Tenancy Act, though ingenious, is devoid of substance. The dictionary meaning of the word "devolution" is :

Transference or delegation of authority (as by Parliament to its committees); passage from one person to another; descent by inheritance; descent in natural succession; (Bio-1) degeneration of species; lapse of a right, privilege, or authority through desuetude.

In view of this meaning, the question of devolution of interest of a person arises when the interest of that person ceases. Section 83 of the Tenancy Act, as already discussed, provided for both. Further, the ultimate question that has to be decided in this case is the question of devolution of the property of deceased Dhan Singh which was inherited by his widow Gajri Bai on her remarriage.

The upshot of the above discussion is that in view of section 4(2) of the Succession Act, the Succession Act will not govern the instant case and it would be governed by section 83 of the Tenancy Act.

In the light of the foregoing discussion, it has to be held that on the remarriage of Gajri Bai in the year 1958, she has been divested of her half interest in suit lands and that interest is devolved in equal shares on the brothers of her deceased husband Dhan Singh; namely, Khushilal, the plaintiff, Man Singh

(defendant No. 2), Baldeo Singh (defendant No. 3) and Hazariial (defendant No. 4).

In the result, the appeal is accepted. The impugned judgment and decree of the lower appellate Court are set aside and those of the trial Court are restored. No order as to costs.