
(1998) 07 PAT CK 0001
In the Patna High Court
Case No : C.W.J.C. No. 5296 of 1996

Krishna Prasad Sharma and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 21-07-1998

Acts Referred:

Hindu Succession Act, 1956 — Section 15, 16

Citation : (1999) 1 BLJR 155 : (1998) 3 PLJR 179

Hon'ble Judges : Sachchidanand Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sachchidanand Jha, J.—This writ petition arising from decision of the Additional Member, Board of Revenue, in Case No. 168 of 1993 raises an interesting question of law as to whether, while determining the ceiling area of a landholder, the land of a female member of the family governed by Mitakshara School of Hindu Law, as a landholder in her own right, is to be treated as part of her husband's estate and be clubbed with his land even though she dies intestate and issueless before such determination takes place or the same is to revert to the common hotchpot of her deceased father, brothers etc.

2. The proceeding giving rise to the writ petition has a chequered history. Shortly stated, Ceiling Case No. 13/8 of 1973-74/74-75 was initiated by the Collector, Aurangabad. .in respect of the joint family lands of petitioner No. 1, Krishna Prasad Sharma (K.P. Sharma, in short) for determination of the ceiling area and acquisition of surplus lands under the provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (the Ceiling Act", in short). A draft publication was made in 1975 under which 4 units were granted in favour of (i) Deorup Kuer widow of Late Thakur Dayal Singh (brother of the grandfather of K.P. Sharma), (ii) Bachchi Devi widow of Late Bindeshwari Pd. Singh and mother of K.P. Sharma, (iii) K.P. Sharma himself and (iv) Ranvijay Sharma, brother of K.P. Sharma. The petitioners filed objection claiming, inter

alia, separate units for Smt. Krishnamani Devi, sister of late Bindeshwari Pd. Singh and K.P. Sharma's aunt (phua) and Ashok Kumar Sharma brother of K.P. Sharma, and fractional units for the additional children of K.P. Sharma. The claim was rejected by the Collector as well as the Divisional Commissioner. The Board of Revenue in Case No. 19 of 1976 also rejected the claim for additional units. It, however, directed that the number of minor children of K.P. Sharma as on 9.9.70 should be verified and then the claim for fractional units in respect of additional minor children of K.P. Sharma be decided. Both the landholder i.e. K.P. Sharma and Smt. Krishnamani Devi filed writ petitions before this Court, vide CWJC Nos. 301 of 1978 and 303 of 1978. From the judgment of this Court, marked Annexure-1, it appears that two contentions were raised in the said writ petitions regarding separate unit for Krishnamani Devi and re-classification of the lands. This Court accepted both the contentions and remanded the case to the Collector. As regards the claim of separate unit for Smt. Krishnamani Devi, it was held that being the daughter of Jamuna Pd. Singh, who died in 1968, she was land-holder" having interest in the lands held by Jamuna Pd. Singh. This Court, however, also clarified that in case Krishnamani Devi is found by the authorities to hold land in excess of the ceiling area it would be open to them to star another proceeding against her.

3. While the matter was pending consideration by the Collector, the proceeding stood abated in terms of Section 32-B of the Act. The case was thereafter transferred to the file of the Deputy Collector, Land Reforms (DCLR), Aurangabad, on 28.5.81 for de novo adjudication. A fresh draft statement was published on 30.4.82 as per which 4 full units, as before, and 1 fractional unit (for additional minor child of K.P. Sharma) were allowed. Ashok Kumar Sharma was again denied unit on the ground that he was minor on the appointed day i.e. 9.9.70. Smt. Krishnamani Devi was also denied unit on the ground that she had died in the meantime. The landholder petitioners and others filed objection. While disposing of the objection, the DCLR instead of allowing more unit, withdrew the unit earlier allowed to Most. Deorup Kuer on the ground that she had also died in the meantime in 1981. The DCLR thus finally granted only 31/5 units to the land-holders" family. Appeal preferred against the said order was rejected by the District Collector on the ground of limitation. The petitioners again approached this Court. By order dated 23.5.86 this Court directed the Collector to hear the appeal on merit. The Collector, this time, allowed separate unit to Ashok Kumar Sharma. The landholder approached the Board of Revenue in Case No. 98 of 1988 seeking restoration of units to Smt. Deorup Kuer and Krishnamani Devi. The Board remanded the case to the DCLR with direction, inter alia, to ascertain the legal heirs of Smt. Deorup Kuer and Krishnamani Devi and to see as to whether the units which were admissible to them on 9.9.70 had become surplus in the hands of their legal heirs or not in terms of Section 18 of the Act.

4. A fresh draft statement, for the third time, was accordingly published on 27.8.91. The DCLR, amongst other things, purporting to ascertain the legal heirs

of Smt. Deorup Kuer and Krishnamani Devi, pursuant to the aforesaid directions of the Board of Revenue, held eight male members of the joint family to be the legal heirs and after distributing 30 acres (equivalent to two units admissible to two deceased widows) amongst those eight members, found 14.50 acres land to be surplus lands. The landholder unsuccessfully challenged the said order before the Collector and finally approached the Board of Revenue again in Case No. 168 of 1993.

5. The Board of Revenue by its order dated 15.6.96. giving rise to the present writ petition, has held that the DCLR committed error in treating eight male members of the joint family to be the legal heirs of Smt. Krishnamani Devi and Deorup Kuer and distributing 30 acres of land, admissible to them, amongst those eight members. The Board, instead, restored the unit earlier allotted to Deorup Kuer holding that although on her death the branch (of her husband Thakur Dayal Singh) became extinct, her estate would devolve not only on her grand nephews, namely, KP. Sharma and his brothers, but also on their sons. And if he is major on the date of such acquisition, he would be entitled to claim separate unit for self. The Board found that one of the sons of KP. Sharma, namely, Sharad Kumar was major on the date of death of Deorup Kuer and thus entitled to separate unit.

6. The Board has, however, rejected the claim of separate unit for Smt. Krishnamani Devi on the ground that being an aunt (phua) of K.P. Sharma, admittedly married to one Munni Singh of village Amain in the district of Jehanabad, she cannot be treated to be the member of the joint family of the landholder-petitioners. The Board noticed the definition of the "family" u/s 2(ee) of the Act. as "a person, his or her spouse and minor children" and held that Smt. Krishnamani Devi after her marriage became member of the statutory family of her husband Munni Singh and, therefore, her case could not be considered separately from her husband even though he had married second wife and had children from her, nor the petitioner-landholders were entitled to keep any such land which might devolve on the death of Smt. Krishnamani Devi. Referring to the order/direction of this Court in C.W.J.C. Nos. 301 of 1978 and 303 of 1978 that if Krishnamani Devi is found to hold land in excess of ceiling area it would be open to the authorities to start proceeding against her, the Board has directed the Collector, Aurangabad, to send a copy of its order to the Collector, Jehanabad, requesting him to start proceeding against Munni Singh and Krishnamani Devi, if not already done. And if any such proceeding has already been concluded, to re-open the same u/s 45B of the Act and decide it afresh. The Board has also directed the Collector, in this connection, to decide as to whether any land has become surplus in the hands of legal heirs of Krishnamani Devi as on the date of her death, in view of the provisions of Section 18 of the Act. The Board repelled the contention advanced on behalf of the petitioners on the basis of a will said to have been executed by Krishnamani Devi, observing that being an unregistered document, in view of the provisions of Section 16(2)(iii) of the Act, the will has no legal sanction and, secondly, that

unless a will is properly probated by a competent Court, even a registered will can be of no avail to the claimants.

7. The Board also rejected the claim for fractional unit on the ground that although K.P. Sharma had five children, on the appointed day his two daughters, namely, Meena Kumari and Manju Kumari were married and cannot be treated to be the members of the family of their father because after marriage they became members of the statutory family of their respective husbands.

8. In this writ petition, the controversy centres around the question as to whether the lands allowable to Smt. Krishnamani Devi as unit-holder as on 9.9.70 are to be treated as part of and be clubbed with the lands of her husband Munni Singh or can be allowed to be retained by the landholders' family as her legal heirs. It is an admitted position that Smt. Krishnamani Devi died intestate and issueless. Her husband, who predeceased her, had married second wife from whom children were born.

9. In *State of Bihar v. K.M. Zuberi* 1986 PLJR 67, Justice L.M. Sharma, as he then was, after referring to the provisions of the Act, observed that before fixing the ceiling area with respect to agricultural land and acquisition of surplus land by the State under the Act, it would be necessary to find out who the owner of the land is so that necessary steps as required under the Act are taken against him. And where the person whose surplus land is sought to be acquired died intestate before the Act came into force, it would be necessary to find out who his heirs in law are. I may usefully refer to the following passage from his judgment (at pages 82-83 of the report):

The Act provides for the fixation of ceiling area on agricultural land and acquisition of surplus land by the State, It is axiomatic that there should be an owner of the land, and before any step is taken under the Act, his identity is known. Section 6 of the Act requires the Collector to submit returns by the landholders owning land in excess of the ceiling area, and if such a person fails to submit the returns, Section 7 authorises the Collector to collect necessary information and to call upon a defaulting landholder to submit the return within the prescribed period. A landholder neglecting such a notice is rendered liable to pay fine. He is given certain benefits including his right to receive compensation money for the excess area and to select the area which he desires to retain etc. He is also subjected to many restrictions including restriction on future acquisition by inheritance, bequest, gift, and on the right to sublet, and is made liable to pay fine for contravention of several provisions of the Act. He has been given a right of appeal u/s 30. It is, therefore, not possible to apply the provisions of the Act to any piece of land without reference to its owner. A question immediately arises as to how to determine the title to the land. In cases where there is no dispute, a problem on this count may not arise. But what about a case where the landholder died before the relevant provisions of the Act became effectively operative On whom the Collector could serve the notice u/s 7 or take steps under several provisions ? If the admitted landholder died

intestate, it is necessary to find out his heirs at law.

10. It may be mentioned here that the judgment of Justice Sharma was a minority judgment. The Supreme Court, however, approved his minority judgment "as wholly correct" in the appeal which the State of Bihar preferred against the judgment. The majority view was not approved. The judgment of the Supreme Court is reported in State of Bihar Vs. Shri K.M. Zuberi and others, . I shall refer to the judgments of this Court and the Supreme Court in the aforesaid case later again in this judgment.

11. There is no dispute that Smt. Krishnamani Devi was entitled to an independent unit as a landholder being the daughter of predeceased father Jamuna Prasad Singh, who had died in the year 1968 i.e. prior to the appointed day. This Court had held so in CWJC Nos. 301 and 303 of 1978. Jamuna Prasad Singh, as noted above, was the grand father of the landholder Krishna Prasad Sharma, petitioner No. 1 herein, against whom the proceeding was initiated. She has, however, been denied unit on account of her death during the intervening period. It is obvious that if she had been alive till the date of the order, she would have been allowed an independent unit. Whether the unit allowable to a person on the appointed day can be disallowed merely because he or she is found to have died later; and if not, what will happen to the land which the unit holder was entitled to hold ? It is an undisputed position that ceiling area is to be determined with reference to the appointed day i.e. 9.9.70 and, in my opinion, it would hardly make any difference if the person dies later. But this really does not answer the question which arises for consideration in this case. The Additional Member has held that in view of the definition of the term "family" u/s 2(ee) of the Act the land held by the wife is to be clubbed with that of her husband as constituting one family". The Collector, Aurangabad, within whose jurisdiction the lands of her husband Munni Singh are situate, has been directed to ensure that a proceeding for determination of the ceiling area of Smt. Krishnamani Devi clubbing her lands with the lands of her husband Munni Singh is initiated, it is reopened u/s 45B of the Act and decided afresh. It is precisely this part of the order with which the petitioners are really aggrieved.

12. According to the petitioners, as the lands in question had been inherited by Smt. Krishnamani Devi from her father, after her death, in the absence of any children, they are to revert to the father's family i.e. the landholders of the present case as her heirs in accordance with the provisions of Section 15 of the Hindu Succession Act, 1956.

13. The contention of the Counsel for the State in this regard was that the personal law of the landholder cannot be taken into consideration for determining his or her rights under the Ceiling Act. He pointed out that Section 3 of the Act gives over-riding effect to the provisions of the Ceiling Act over any other law, custom, usage or agreement for the time being in force or any decree, or order of any Court, except the provisions of the Bihar Bhoodan Yagna Act, 1954. He submitted that in K.M. Zuberi's case the Supreme Court upheld the minority

view of Justice L.M. Sharma that the personal law of the landholder has no application in determining the ceiling area under the Act.

14. At this stage, it would be appropriate to notice the relevant provisions of the Ceiling Act at one place as hereunder:

2(ee) "Family" means and includes a person, his or her spouse and minor children:

Explanation L-X X X

Explanation II-The personal law shall not be relevant or be taken into consideration in determining the composition of the family for the "purposes of the Act"

2(9) "Land-holder" means a family as defined in Clause (ee) holding land as raiyat or as under-raiyat or a mortgagee of land in possession or holding land permanently settled by Government or lessee of land not resumable by Government.

2(k) "Raiyat" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself or by members of his family or by hired servants or with aid of partners, and includes also the successors-in-interest or persons who have acquired such a right and includes, in the district of Santhal Parganas, village headman in respect of his private land, if any, but does not include in the areas to which the Chotanagpur Tenancy Act, 1908 (Ben. Act VI of 1908), applies, a Mundari Khuntkattidar or Bhuihar.

3. Provisions of the Act to prevail over other laws.- The provisions of this Act shall have effect, notwithstanding anything to the contrary contained in any other law, custom, usage or agreement, for the time being in force or in any decree or order of any Court:

Provided that nothing contained in this Act shall be deemed to have any effect on the provisions of the Bihar Bhoodan Yagna Act, 1954 (Bihar Act XXII of 1954).

4. Fixation of ceiling area of land.-On the appointed day the following shall be the ceiling area of land for one family consisting of not more than five members for the purposes of this Act.

5. No person to hold land in excess of the ceiling area.-(1) (i) It shall not be lawful for any family to hold except otherwise provided under this Act, "land in excess of the ceiling area."

Explanation I.-All lands owned or held individually by the members of a family or jointly by some or all of the members of such family shall be deemed to be owned or held by the family.

Explanation II.-XXX

15. In K.M. Zuberi's case, this Court framed three questions for consideration:

1. Whether the personal law applicable to the family has to be taken into consideration for the determination of its holding under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, despite the insertion of Clause (ee) and Explanation II thereto in Section 2 of the said Act?

2. If the Major sons of a family governed by the Mitakshara School of Hindu Law are entitled to a separate unit under the said Act, then would a major sons of a family governed by Mohammedan Law be debarred therefrom ?

3. Whether the Full Bench in *Imamul Hasan Choudhary v. State of Bihar and Ors.* 1982 BBCJ 208 : 1982 PLJR 321, lays down the law correctly on the aforesaid points?

The first question was answered unanimously by all the learned Judges in the negative. However, they differed vertically on the second question. While the majority held that the major son of a family governed by Mitakshara School of Hindu Law is entitled to independent unit the minority held otherwise although for different reasons. Justice Hari Lal Agrawal took the view that unlike a Hindu governed by Mitakshara School of Hindu Law, a Mohammedan son has no interest in the property of his father during his lifetime and, therefore, he cannot be deemed to be a landholder within the meaning of the Act and entitled to an independent unit. Justice Sharma held that a major son of a Hindu governed by Mitakshara School of Law does not get independent unit as son of his father whose ceiling area is being determined on the ground that he has a right in the property by virtue of birth, he gets the unit by reason of his independent title. The learned Judge gave different illustrations of Hindu Mitakshara son not having any interest in the property of his father during his lifetime. As noted above, the Supreme Court affirmed the view of Justice Sharma "as wholly correct" as distinct from the view of Justice Agrawal although both the learned Judges had reached the same conclusion.

16. The decision of the Supreme Court in *K.M. Zuberi's* case does not throw much light on the subject. Their Lordships, after referring to the relevant provisions of the Act and noting the views and conclusions of the Judges affirmed the view of Justice Sharma. We have, therefore, to see what Justice Sharma has said with respect to the applicability of the personal law for the purpose of determination of the ceiling area of the landholder under the Ceiling Act. As stated above, this was the main thrust of objection of the "Counsel for the State.

17. In paragraphs 37 and 38 of his judgment at pages 84-85 of the report (1986 PLJR 67) Justice Sharma noted that the amended provisions were included in the Act (in the year 1973) with the sole purpose of lumping together the areas held by the landholder, his or her spouse and the minor children. The object of the amendment was not to bestow any additional advantage on or for an adult person not owning any land, the purpose was to enable the State to acquire larger area. The learned Judge further noted that as per the original provisions of the Act even minor coparceners of a Mitakshara family were entitled to separate

units in their own independent right. So with a view to acquired larger areas the amendments were introduced, the concept of "family" defined in Section 2(ee) as the landholder was brought in by the new Section 2(ee) and further, the definition of the landholder u/s 2(g) was also suitably amended. The expression "family" was limited to include the spouse and minor children. The major children were left out to form separate family with their own minor children. Proceeding, thus, the learned Judge observed that "the exclusion of personal law" by Explanation II is limited to the determination of the composition of the family¹ and its effect on the acquisition". Earlier in paragraph 34 of the judgment at page 83 of the report the learned Judge observed:

The Act does not deal with the law relating to devolution of title. It does not in any way modify the law of succession applicable to the landholder. The question of inheritance, therefore, has to be answered by the law applicable to the deceased landholder. It is, therefore, not possible to exclude the personal law altogether. The amended provisions in the Act excluding the personal law are limited in their application....

Earlier in the same paragraph, at page 82 of the report, the learned Judge pointed out, quoted above in this judgment, that for fixing ceiling area of agricultural land and acquisition of surplus land by the State it is necessary to find out the owner of the lands and where the person had died before the Act came into force, to find out who his heirs are. As succinctly put by the learned Judge, "It is axiomatic that there should be an owner of the land, and before any steps is taken under the Act, his identity is known."

18. Adverting to the present case, it has been held that Smt. Krishnamani Devi was entitled to an independent unit on the appointed day i.e. 9.9.70. The real controversy between the parties is as to whether the lands which have been allotted to her as unit-holder would be clubbed with the lands of her husband's family or be treated as part of the lands of her father's family and be dealt with as such for the purpose of fixation of ceiling area and acquisition of surplus land under the Act. It is, no doubt, true that in view of the explanation appended to Section 5(1) of the Act all lands owned or held individually by the members of a family or jointly by some or all of the members of such family shall be deemed to be owned or held by the family. And "family" u/s 2(ee) means and includes a person, his or her spouse and minor children. If Kishnamani Devi would have been alive till date, she would not have only been allowed a unit but also allotted lands as independent unit-holder. And in that case the lands so held and owned by her would have been clubbed with that of her husband for the purposes of determination of the ceiling area and acquisition of surplus land, if any. The difficulty has arisen on account of her death. If she had left behind a child, again, there would not have been any difficulty. Her child would have inherited the lands of the mother and the same would have been clubbed with that of his father-constituting one family. What would be the legal position in the case of a Hindu female dying issueless and intestate ? This precisely is the question for

consideration in this case.

19. Section 15 of the Hindu Succession Act, which contains the general rules of succession in the case of female Hindu, lays down that the property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16.

- (a) firstly upon the sons and the daughters (including the children of any predeceased son or daughter) and the husband;
- (b) secondly, upon the heirs of the husband;
- (c) thirdly, upon the mother and father;
- (d) fourthly, upon the heirs of the father; and
- (e) lastly, upon the heirs of the mother.

Sub-section (2) of Section 15, which over-rides the provisions of Sub-section (1), however, lays down-

Notwithstanding anything contained in Sub-section (1)-

(a) Any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in Sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) Any property inherited by female Hindu from her husband and from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in Sub-section (1) in the order specified therein but upon the heirs of the husband.

20. If it is necessary to find out who the owner of the land is, or in case of the death of the owner, who his or her heirs are, as held by Justice Sharma, before taking steps for fixing the ceiling area and acquiring the surplus lands, if any, there cannot be any doubt that the heirs have to be found out and ascertained according to personal law regarding succession of the person concerned. Explanation II appended to the definition of the term "family" u/s 2(ee), excluding the application of personal law, cannot be stretched to exclude the applicability of personal law for all purposes. As Justice Sharma has held, exclusion of personal law is limited in its application-in the matter of determination of the composition of the family and its effect on the acquisition.

21. There cannot be any doubt that in view of the provisions of Section 15 of the Hindu Succession Act, the lands in question which Smt. Krishnamani Devi was admittedly entitled to hold and possess as independent unit-holder on 9.9.70 would revert to the heirs of her father upon her death. The heirs of her husband from his second wife (it may be noted that the husband had predeceased Smt. Krishnamani Devi), therefore, cannot claim the land by inheritance. If they

cannot claim to be heirs for the purpose of succession, they cannot be deemed to be landholder within the meaning of Act. The direction of the Additional Member, Board of Revenue, to initiate a proceeding clubbing the lands in question with those of Munni Singh (husband of Smt. Krishnamani Devi), and if the proceeding has already been concluded, to reopen the same u/s 45B of the Act, therefore, cannot be said to be in accordance with law.

22. I must hasten to observe that these findings of mine are to be construed as limited to the proceeding under the Ceiling Act alone and not determination of the right, title and interest of the heirs of Munni Singh (from the second wife) vis-a-vis the rights, title and interest of the landholders of the present ceiling case and their family members. It should be kept in mind that the Ceiling Act deals with fixation of ceiling area and acquisition of surplus land, if any, of the landholder. It does not deal with the question of inheritance. Any attempt to deal with such questions, may amount to usurpation of jurisdiction of civil Court. It would, thus, follow that the conclusions arrived at by this Court will not bind the parties in any suit which either side may bring in the civil Court for determination of their inter se rights and interest, in the lands in question in accordance with law.

23. Since the matter has to be reconsidered afresh by the concerned authorities in the light of this judgment and observations made hereinabove, it would be only apt to direct the same authority to consider the claim of the petitioners for fractional unit as well.

24. In the result, for the reasons stated above, this writ petition is allowed, the impugned order of the Additional Member, Board of Revenue, dated 15.2.96 in Case No. 168 of 1993 (Annexure-5 to the writ petition) is quashed. The matter is remitted back to the Collector of the district with a direction to proceed afresh in the light of this judgment in accordance with law. I will make no order as to cost.