
(2015) 04 RAJ CK 0064

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 650 of 2000

Natti Bai and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:

Hindu Succession Act, 1956 — Section 4, 4(2)
Rajasthan Tenancy Act, 1955 — Section 30(i)(2)
Transfer of Property Act, 1882 — Section 14(6)

Citation : (2016) 1 RLW 575

Hon'ble Judges : Ajay Rastogi, J;J.K. Ranka, J

Bench : Division Bench

Advocate : J.P. Gopal, Senior Advocate assisted by Manisha Surana, Counsel, for the Appellant; Rajendra Prasad, Additional Advocate General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Instant intra-court appeal is directed against order of the Id.Single Judge dt. 23.02.2000 filed at the instance of the legal heirs of late Panchu Lal, who was the original khatedar-assessee against whom land ceiling proceedings were initiated under the Old Ceiling Law and it was found that he had 386 bighas and 19 biswas of land and the Board of Revenue in its order finally observed that 24.65 standard acres of land deserves to be resumed, which came to be confirmed by the Id.Single Judge under the order impugned.

2. In order to appreciate grievance of the appellants, it will be necessary to glance through the relevant background facts. Late Panchu Lal was the original khatedar assessee against whom proceedings were initiated under the Old Ceiling Law and it was found that he had 386 bighas and 19 biswas of land and after going through the defence and material which came on record, it was observed that the land measuring 111.76 standard acres was found to be in the hands of the assessee and 50 standard acres of land was allowed to be retained

and 61.76 standard acres of land was ordered to be resumed initially vide order dt. 19.01.1976 which was subject matter of challenge before the Revenue Appellate Authority by Panchu Lal and order of the assessing authority came to be modified by the Revenue Appellate Authority recognizing the transfer of 96 bighas and 18 biswas of land on 03.02.1958 by the assessee Panchu Lal in favour of his sons and reduced the total holding of the land to 290 bighas which after conversion comes to 80.43 standard acres. He was allowed to retain 30 standard acres of land and the reason assigned was that his family members were reduced to two only and remaining land was ordered to be resumed. The order of the Revenue Appellate Authority came to be challenged before the Board of Revenue by Panchu Lal and it was stated by him that he had transferred 13 bighas and 2 biswas of land in favour of Rambal Meena by a registered sale-deed dt. 06.03.1968, which must get recognized and taking note thereof, the Board of Revenue vide its order dt. 10.08.1977 remitted the matter back to the assessing authority for deciding as to whether the transfer made in favour of Rambal Meena fulfills the conditions mandated u/S. 30-DD of the Rajasthan Tenancy Act.

3. After the matter was remanded to the assessing authority i.e. SDO, Baran, the matter was decided afresh on 09.03.1981 and it was observed that the land measuring 13 bighas and 2 biswas (2.46 standard acres) was recognized in favour of Rambal Meena and it was deducted from the land declared surplus and thus 47.97 standard acres of land was ordered to be resumed instead of 50.43 standard acres of land. However, the assessee was still not satisfied and filed an appeal before the Revenue Appellate Authority against the order of the SDO, Baran dt. 09.03.1981 and pleaded that both of his sons i.e. Radha Vallabh and Jawahar Lal had their shares in the land and being major, they could not be said to be dependent on the assessee Panchu Lal. However, the Revenue Appellate Authority accepted the contention and found that the land was ancestral to the tune of 307 bighas and 6 biswas which on conversion came to 96.27 standard acres and after parting with the share of each of his sons of 30 standard acres of land, 90 standard acres were allowed to be retained by the assessee and his sons. Apart from 90 standard acres of land, 2.46 standard acres of land was allowed on the basis of recognition of the transfer made in favour of Rambal Meena and thus, out of total area of 111.76 standard acres of land, 92.46 standard acres were found to be within permissible limit and thus, reduced excess area from 47.97 standard acres to 19.3 standard acres.

4. Being aggrieved by order of the Revenue Appellate Authority, the State of Rajasthan as well as the successors of assessee late Panchu Lal preferred appeal before the Board of Revenue contending that the matter was remitted back to the SDO only for a limited purpose to examine the validity of transfer of 13 bighas and 2 biswas of land to Rambal Meena and in fact the Revenue Appellate Authority exceeded its jurisdiction to examine the matter afresh. However, the Board of Revenue vide its order dt. 06.12.1989 after going through the record and various orders observed that on perusal of judgment of the Board dt. 10.08.1977, it reveals that the contention of the assessee was that he was

entitled for three units and the Board negated his contention on the ground that since the transfers made in favour of the sons have been recognized by the Revenue Appellate Authority in judgment dt. 20.04.1976, therefore, the assessee cannot have both the advantages. The Board further observed in its earlier order dt. 10.08.1977 that if he had parted with land in favour of his adult sons by way of family settlement, they became independent khatedars in their own rights and no longer remain members of his family and further observed that in case the assessee is desirous to treat his major sons as members of his family, the lands standing in their names should be clubbed with the land standing in the name of the assessee-land holder and arrived to a conclusion that the land was ancestral in the hands of late Panchu Lal and his sons Radha Vallabh and Jawahar had notional shares in the land and their share is sufficient to maintain them. The Revenue Appellate Authority had again included the land that were transferred to his sons and the transfer of land by the assessee to his sons was excluded by the Revenue Appellate Authority vide judgment dt. 20.04.1976.

5. The Board of Revenue in its order observed that initially the assessee was having 111.76 standard acres of land from which 2.46 standard acres of land was transferred to Rambal Meena which was a recognized transfer and the remaining land came to 109.30 standard acres and the family of the assessee consisted of himself, his wife and two major sons and since each major son was entitled to notional share of 27.32 standard acres of land or 54.64 standard acres of land for both the sons and the assessee was entitled to retain 30 standard acres of land, thus, the excess land measuring 24.65 standard acres was liable to be resumed and accordingly the revision filed by the State was allowed to that extent and the revision filed by the wife was dismissed and the order of Board of Revenue was subject matter of challenge by filing of writ petition before the Id.Single Judge.

6. The contention of appellants advanced before the Id.Single Judge was that as per the Hindu Law, sons are equally entitled to inherit the share of the property left by grandfather even to the extent of the share of his father and accordingly there ought to have been three families and since each son is entitled to retain 30 standard acres of land, as such 90 standard acres of land ought to have been allowed to be retained by the assessee as his sons being coparceners in the property and 2.46 standard acres of land was recognized on account of transfer to Rambal Meena, therefore, 19.30 standard acres of land could have been found to be in excess or as surplus land. It was also pleaded that the piece of land was liable to be resumed only with a fragment which was required to be exempted u/ S. 30(i)(2) of the Rajasthan Tenancy Act and that has not been properly appreciated while calculating the standard acres, some gair mumkin land was also wrongly included which ought to have been excluded from resumption. It was also pleaded that R. 17(4) of the Old Ceiling Law has not been taken care of and the land being coparcenaries" ancestral land and two major sons and the assessee Panchu Lal constitute three families/units, were liable to retain 90 standard acres of land + 2.46 standard acres of land which was recognized on

account of transfer to Rambal Meena and as per the Government Circular of February, 1983, prescribing guidelines that the major sons in the ancestral land would be a separate family and, therefore, are entitled to hold their equal share with the khatedar.

7. However, each of the contention raised by the appellant was repelled by the Id. Single Judge under order impugned.

8. The very concept developed of joint Hindu family or ancestral property or coparcenary property for the purpose of Ceiling Law is foreign for the aims and objects to be achieved under the Ceiling Law. Right from the enforcement of the Act, the implementation of orders have not been made with the result that one after another litigation, numerous appeals, reviews and revisions, on remand, the case could not attain finality and apart from the major sons of the assessee have been treated as coparceners and even deemed partition has been allowed by the Board of Revenue, which is not permissible under the law, the assessee was aggrieved by the orders passed by the Board of Revenue.

9. In the case of V.N. Sarin Vs. Ajit Kumar Poplai, AIR 1966 SC 432 : (1966) 1 SCR 349 : (1976) 1 SLJ 455 , the Apex Court observed that partition of Hindu Joint Family could not be treated as transfer within the purview of S. 14(6) of the Transfer of Property Act. At the same time, in Smt. Roop Raj Laxmi v. State of Rajasthan and Others [D.B. Civil Special Appeal No. 26/1987] decided on 19.02.1998, after going through the scheme of the Act, the Division Bench of this court held ad infra:--

"(i) The concept of the term "Family" in Chapter III-B is not to be connected with the term "joint family" as known to be in Hindu Law.

(ii) Chapter-III-B governs all persons irrespective of their religion or community.

(iii) The lands may be held by Hindus or persons belonging to other religions and all of them are equally governed by the provisions of the Ceiling Law contained in Chapter III-B.

(iv) The concept of joint family is totally foreign to the personal laws of Muslims, Christians and other communities.

(v) Therefore, the expression "family" used in Part III cannot be equated to or connote an undivided family as known to the Hindu Law or that after partition had taken place in respect of a "Hindu Family".

(vi) The term "family" under Chapter-III does not treat the children or grand children, who are not dependent, as members of the "family" for purposes of ceiling law.

(vii) Therefore, the circumstances that a partition has taken place disrupting the joint family consisting the father and minor sons has not relevance for determining and calculating total holdings of the person.

(viii) The "family" for the purposes of ceiling law in Part-III is a separate unit consisting of the persons contained in the definition. In other words, the term "family" as defined in Part-III is for the purpose of determination of excess of ceiling area. Under definition of the "family" contained in section 30-B part-III of the old Ceiling law a person, his wife their children and grand children being dependent and widowed mother of the husband so dependent upon them would constitute "family".

10. The Division Bench of this court further observed that the provisions of Hindu Succession Act shall have no effect on the term "Family", as contained in Chapter-III of the Old Ceiling Law under the Tenancy Act in view of S. 4(2) of the Hindu Succession Act and as regards R. 17(2) and (4) of the Rules, 1963 framed under the Rajasthan Land Ceiling Act are concerned, they do not contain any provision which runs counter to the definition "Family", rather they supplement the definition so as to include the share of land of such member who is a constituent of the family and the concept of "Family", as defined u/S. 30-B may not be treated as "Hindu Undivided Family" and what is being defined by the term "Family" under the Act has to prevail and excess land has to be determined as per the said definition.

11. Indisputably, the case of the present assessee is to be dealt with in accordance with the Old Ceiling Law as was held by the Full Bench of this court in *Banshidhar and Others Vs. State*, AIR 1977 Raj 46 and taking note of Sec. 4 of the New Act, it was explicitly clear that the ceiling applicable to any person or family in accordance with Sec. 4, if exceeds to the ceiling area to such person or family in accordance with the provisions of law repealed, in that case ceiling applicable to such person or family will be the same as was under the provisions of the said repealed law and from scheme of the Act and Chapter-III of the Tenancy Act, in particular, and keeping in view the definition of "Family" as held by *Roopraj Laxmi's* case, there remains no doubt to consider it to be an ancestral property or joint Hindu property or even co-parcenary property and the partition is not at all a transfer as defined u/S. 30-DD and the land holding of the khatedar is to be seen as on the notified date and no benefit could be derived by the assessee of the provisions of R. 17(4) and at the same time the rights have been created in the Act itself i.e. in the light of the definition of "Family" and even as per Chapter III-B of the Tenancy Act, the ceiling of the land holder, prescribes the ceiling area for a family consisting of five or less than five members to 30 standard acres and in case the members of family exceed five in number, the ceiling area in relation thereto was to be increased for each additional member by five standard acres so that the total ceiling area applicable to such family does not exceed to 60 standard acres meaning thereby that an individual or a family upto five members are entitled to retain 30 standard acres of land and at the same time each member of the family over and above it became entitled to retain five standard acres of land subject to the total not exceeding 60 standard acres.

12. If we take note of the definition of "Family" u/S. 30-B that consists of a husband and wife and their children and grandchildren being dependent on them and the widowed mother of the husband is also shown to be a dependent. The primary object and intent of the legislature appears to be broader in aspect while taking into consideration and legislating a provision of five standard acres of land for each of the family member dependent upon such land holder to the maximum of 30 standard acres over and above the permissible area of the family, total being 60 standard acres and if any of the land holder declares that any of his sons or any person, as mentioned in the family, is not dependent upon him or is not dependent on the land held by him, he has to be excluded from the definition of "Family" but by no stretch of imagination, it can be said that any such non-dependent person was entitled to any extra share in the land holders or it can be treated to be a separate unit or that such non-dependent person can be deemed to have a separate share under the Ceiling Law or co-parcenary Law. S. 4(2) of the Hindu Succession Act certainly takes care of this aspect of the matter and it may not be significant to say that the land as entered on the notified date was either ancestral or non-ancestral but the land of the khatedar has to be determined for the purpose of surplus area irrespective of the fact that whether it is ancestral or not and in our considered opinion no artificial definition or meaning can be attributed to the definition of "Family", as provided under the Act for the purpose of defeating the very purpose of declaration of ceiling. Even in the case of Joint Hindu Family property, the same principle shall also remain applicable and this appears to be a reason that the Ceiling Law does not discriminate so far as the declaration of ceiling area is concerned between the property held by Joint Hindu Family or any other religion or community and the land ceilings are bound to be declared as permissible as provided u/S. 30-C, after taking into consideration the definition of "Family".

13. As regards the question raised in respect of the land to be resumed as a fragment which could be exempted u/S. 30(i)(2) of the Rajasthan Tenancy Act, the contention deserves outright rejection for the reason that 19.3 standard acres of land cannot be said to be a fragment and there appears no substance in what has been contended before us by the counsel for appellants.

14. After hearing counsel for the parties and perusing the order impugned of the Id.Single Judge, we do not find any substance in the submission made and any error being committed by the Id.Single Judge under order impugned which may require interference by this court.

15. Consequently, the instant intra-court appeal is devoid of merit, accordingly stands dismissed.