
(2000) 12 RAJ CK 0014

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5096 of 1990

Raja Ram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 15-12-2000

Acts Referred:

Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 — Section 15(1), 4(1)

Citation : (2007) 3 WLN 496

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajesh Balia, J.—Heard learned Counsel for the parties.

2. The petitioners are three sons of Bhoma Ram whose ceiling proceedings have led to filing of this petition. In the first instance, the proceedings were initiated against Bhoma Ram under the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973, which were dropped on 21st June, 1975 on finding that he does not hold any surplus land. By the orders of the State of Rajasthan u/s 15(1) of the Act of 1973, the ceiling case was reopened on 15.11,1982.

3. On 1st August, 1986, the Addl. Collector found that the said Bhoma Ram had no surplus land in accordance with the provisions of the Act of 1973. However, since according to second proviso to Section 4(1), a person is entitled to hold land only upto the limit which he could held under Chapter III-B of the Rajasthan Tenancy Act, 1955 or under the Act of 1973, whichever is less, therefore, computation of the holdings of Bhoma Ram were also made under Chapter III-B of the Rajasthan Tenancy Act, accordingly to which the Addl. Collector found that the family of Bhoma Ram consists of himself and his three sons, who are petitioners in this case, and the lands which were standing in the names of Sohanlal and Rajaram were also liable to be included in the holdings of Bhoma Ram. It has been found by the Addl. Collector that under the Rajasthan Tenancy

Act Bhoma Ram could hold 92 Bighas 16 Biswas of land and on that basis he was holding 18 Bighas and 7 Biswas of surplus land. He also found that total holdings standing in the name of Rajaram, both irrigated and unirrigated lands taken together on conversion are equivalent to 21 Bighas of irrigated land and Sohanlal held combined lands equivalent to 16 bighas 5 biswas irrigated land. It is not in dispute that if these lands were not to be included in the total holdings of Bhoma. Ram. The said Bhoma Ram did not hold excess land under Chapter III-B also.

4. The order of the Addl. Collector dated 1.9.1986 was challenged before the Board of Revenue. The Board of Revenue by its order dated 24.8.1990 dismissed the appeal filed by the petitioners. The review against the said order was also dismissed by the Board on 30.10.1990.

5. It was contended by the learned Counsel for the petitioners that the petitioner has been allotted land as an evacuee in satisfaction of his claim in respect of ancestral land which he left behind in Pakistan by the Custodian under the Administration of Evacuee Properties Act, 1951. alternatively, it was also contended by the learned Counsel for the petitioners that even if the land is held not to be ancestral in which all the sons of Bhoma Ram had a share in the property by birth as coparcener, and is individual yet there was no jurisdiction for including the land held by Rajaram and Sohanlal independently without there being any finding that they were minors or dependent on Bhoma Ram so as to make them members of the family for the purpose of clubbing the lands held by all the members of the family. Document has also been placed on record which has formed the basis of computation of the holdings of the land of said Bhoma Ram since deceased and the inclusion of the names of Rajaram and Sohanlal for the purpose of clubbing the lands held by them independently in the lands held by Bhoma Ram. That report is of Patwari Annx. 1. In this report, Sohanlal has been shown to be 43 years of age on 1.4.1966 and 50 years of age on 1st Jan., 1973, the relevant date for determining the total holdings under the respective Act of 1955 and Act of 1973. Therefore, in cases of both the sons who were admittedly almost in their middle age on the relevant date under the Rajasthan Tenancy Act (Chapter III-B) and were holding the lands in their own names, there could be no presumption of their being dependent on Bhoma Ram nor any such finding has been recorded.

6. Learned Counsel for the respondents has urged that no such plea appears to have been raised and so far as question of the land being ancestral land, it is a finding of fact recorded by the Board of Revenue affirming the finding recorded by the Addl. Collector, in the absence of any evidence led to that effect by the petitioners, is not liable to be interfered with in these proceedings.

7. It is true that so far as finding that the petitioners have failed to prove the nature of land to be ancestral, cannot be interfered in these proceedings by this Court. There is no presumption under the Hindu Law that a Joint Family exists or if the joint exists it owns a joint property. It is for the persons who claim the

property to be of Hindu Undivided Family in which the coparceners have interest by birth to prove that assertion as a matter of fact like any other fact. Since both the Courts have found that no evidence was led to prove the nature of the property in the hands of Bhoma Ram except the assertions made by him and have not accepted that assertion, this finding of fact is not liable to be interfered with.

8. However, the determination of land for the purposes of finding the maximum limit of land upto which the holder of the land can retain, the same cannot be abstract doctrine of proof. It is statutory obligation of the functionaries under the respective Ceiling Act to correctly determine the lands held by a person against whom the proceedings under the Act is being taken on the relevant date by taking into consideration all the relevant facts necessary for such determination. Section 4 of the Act of 1973 envisages that even under proceedings under the Act of 1973 a person is not entitled to hold more land than what he was entitled to hold under Chapter III-B of the Rajasthan Tenancy Act (repealed by Section 40 of the Act of 1973). Therefore, determination of the eligible ceiling area which the person concerned could hold both the Acts was a statutory duty of the authorities exercising jurisdiction under the Act of 1973. The necessary ingredient for determining the ceiling under Chapter III-B of the Rajasthan Tenancy Act is that ceiling area is to be held with reference to holdings of a family. The family has been defined u/s 30-B of the Chapter III-B to mean a family consisting of a husband and wife, their children being dependent on them and the widowed mother of the husband so dependent. It is to be noticed that the definition does not pre-fixes the term "Children with expression "minor" or "adult". What is required is that the children in order to be member of the family of husband and wife they must be dependent on them. Therefore, without recording a finding that the children whose name is sought to be included in the family and the property held by such children independently is to be included into the holdings of the family, a finding has to be reached by the authority under the Act that such child is dependent on the family of husband and wife so as to constitute the member of his/her family. There is no presumption that a son or daughter; minor or major, is presumed to be dependent unless contrary is proved. Therefore, it is primarily the duty of the ceiling authority to find as a fact before including the lands held by son or grand son or for that matter daughter or grand daughter of the person of whose ceiling area is to be determined that he or she is dependent on parent or grant parents. Without recording a finding of the dependency, no land standing in the name of an individual personally cannot be included in the holdings of others, whether he be father or mother. Minority of a person is only one of the relevant consideration to find whether he can be considered dependent on his father or mother as the case may be. In the absence of other evidence of independent source of income, a minor may be presumed to be dependent on his parents. But that does not carry further than that. The property held by such minor is independently sufficient to maintain him or her and in that event he or she may not be dependent on her parents

whatever may be the age. The relevancy, becomes of less importance in the case of adult children and it require more substantial and substantive material to hold such adult children dependent on the family. Even absence of any agriculture holding in the name of such person may not be sufficient to hold an adult child of the person as dependent on his parents. It is apparent from the orders under challenge that the ceiling authorities have not at all applied their mind to discharge their obligation to find the land in excess in the hands of Bhoma Ram as a family while including the lands admittedly held by his children who were reported to be more than 35 years of age at the relevant date i.e. 1.4.1966. The Board of Revenue, while considering the review application, was not correct in holding that since this point had not been raised it could not go into the matter at all. While determining the holdings in the hands of the family, the determination of this fact, which is foundation for including the lands standing in the name of the relatives it is necessary concomitant that such person must be a dependent and without recording such finding, the lands held by the children cannot automatically be included in the belongings or holdings of the family. Age is not the criterion for including the child in the family of person whose ceiling case is being determined. "Children" in the definition of Section 30B is not used in the sense opposite to adult or major in age, but has been used in the sense of a descendent. Like a son or daughter vis a vis or her parent is always a child of his or her parent irrespective of age. Moreover in the present case the only material available shows the age of son is to claim 11 years.

9. I am, therefore, of the opinion that the orders passed by the ceiling authorities suffer from error apparent on the face of record and are contrary to the report on the basis of which computation of the holdings of Bhoma Ram has been made.

10. The petition, therefore, succeeds. The impugned orders are set aside. There shall be no orders as to costs.