

(1977) 09 AHC CK 0002

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 218 of 1976

Ram Chandra Dubey and Another

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 30-09-1977

Acts Referred:

Hindu Succession Act, 1956 — Section 14

Succession Act, 1925 — Section 14

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 129, 130, 152, 156, 157

Citation : (1977) AWC 731 : (1978) RD 1

Hon'ble Judges : K.C. Agrawal, J

Bench : Single Bench

Advocate : R.S. Misra and R.P. Misra, for the Appellant; R.S. Singh, S.K. Singh and S.C., for the Respondent

Final Decision : Allowed

Judgement

K.C. Agrawal, J.—Ram Chandra Dubey and Shankar Dubey, the Petitioners and Bharadwaj Dubey, the Respondent No. 4, were the members of a joint Hindu family. Their inter se relationship would be reflected from the pedigree given below:

Niranjan | ----- | | |
| Ganga Raja Sarju Rajpati ----- Bharadwaj | | Ram Chandar
Shankar

2. The dispute in this writ petition is in respect of the land situated in three Khatas, being Khata No. 50, 95-A and 95-B. Khata No. 50 comprises of Bhumidhari plots whereas Khata Nos. 95-A and 95-B consist of sirdari plots. In the basic year, these Khatas were entered in the names of the Petitioners. Respondent No. 4 filed an objection claiming rights of co-bhumidhar and co-sirdar over the land of the aforesaid three Khatas. In brief the case of

Respondent No. 4 was that Khata Nos. 95-A and 95-B were the joint tenancy of the ancestors of the Petitioners and the Respondent No. 4 and that the name of Sarju, the father of the Petitioner's was recorded in the representative capacity. He claimed that at the time of the acquisition of the aforesaid plots both the parties were living jointly and, therefore, the same had to be treated as the joint property. With regard to Khata No. 50, the Respondent No. 4 asserted that it was purchased from the joint family funds and as the Petitioners and the Respondents were living jointly at the time of the acquisition of this property the Respondent No. 4 was entitled to half share in the land of this Khata as well.

3. The objection filed by the Respondent No. 4 was contested by the Petitioners. The Petitioners deny that there was a joint family of the Petitioners and the Respondent No. 4 at the time when the properties of the aforesaid three Khatas were acquired. They claimed that a partition had taken place in the family about 40 years back and since then the parties were living separately.

4. The Consolidation Officer allowed the objection of the Respondent No. 4 partly, with regard to the Bhumidhari Khata No. 50 but dismissed the same with respect to the sirdari Khatas. Aggrieved the Petitioner and Respondent No. 4 preferred appeals before the Settlement Officer Consolidation. The appeal of the Petitioners was dismissed but that of the Respondent No. 4 was allowed. The revision filed by the Petitioners before the Deputy Director of Consolidation u/s 48 of the U.P. Consolidation of Holdings Act was also dismissed. Aggrieved, the Petitioners filed the present writ petition.

5. Before proceeding to deal with the points urged on behalf of the Petitioners, the findings recorded by the Settlement Officer Consolidation and the Deputy Director of Consolidation may be noticed. As noted above, the dispute was in respect of the Bhumidhari and sirdari Khatas. The land of the Bhumidhari Khata was purchased from one Ram Bilash in 1961 in the names of the Petitioners on a consideration of Rs. 2,000/-. The Respondent No. 4 had stated that the said Khata was purchased partly out of the money which he had been sending to the Petitioners. The Respondent No. 4 was admittedly employed in the defence services of the Union of India. The Settlement Officer Consolidation found that the said Respondent had been sending money to the Petitioners, as the Petitioners and the Respondent No. 4 were the members of the joint family. The bhumidhari land was partly purchased by the Petitioners out of the fund sent by the Respondent No. 4. In this view of the matter the Settlement Officer (Cons.) held that as the Bhumidhari land was purchased out of the joint family fund of the Petitioners and the Respondent No. 4, the same must be treated as the joint family property. The finding of the Settlement Officer Consolidation was affirmed in revision. As regards the sirdari Khata the finding given by the Settlement Officer Consolidation and the Deputy Director of Consolidation was that as Sarju, the Petitioners father was the Karta of the joint Hindu family of which the Respondent No. 4 was also a member, therefore, the acquisition of the tenancy plots made by him, which were comprised in Khata Nos. 95-A and 95-B would be

deemed to be for the benefit of the joint family and Respondent No. 4 being the member of the joint family representing another branch would have equal share with the Petitioners in these Khatas as well.

6. The learned Counsel appearing for the Petitioners attacking the findings of the Settlement Officer Consolidation and the Deputy Director of Consolidation, contended that the aforesaid authorities committed an error in applying the principles of Hindu law to the rights created by the U.P. Zamindari Abolition and Land Reforms Act, 1951 (hereinafter referred to as the "U.P. Act No. 1 of 1951"), and in holding that the Respondent No. 4 was entitled to half share in the land in dispute due to the fact that he was a member of the joint family. Counsel further contended in the alternative that even if the principles of Hindu law apply, since the Respondent No. 4 failed to establish that the joint Hindu family was in possession of sufficient nucleus from which the plots pertaining to Khata No. 50 could be purchased, the findings recorded against the Petitioners were liable to be quashed. With regard to the sirdari Khata the contention raised on behalf of the Petitioners was that as Sarju was the sole tenant of the plots comprised in the aforesaid Khatas and as there was no proof that the Zamindar had given tenancy rights jointly to Sarju and Rajpati, the Petitioners' father and the father of Respondent No. 4 respectively, the Settlement Officer Consolidation as well as the Deputy Director of Consolidation erred in holding that these Khatas belonged jointly to the Petitioners and Respondent No. 4 simply on the basis of the existence of the joint Hindu family of which these persons were the members.

7. In order to appreciate the argument of the learned Counsel for the Petitioners It appears necessary to refer, briefly, to the principles of Hindu law as applicable to joint family property.

8. A joint Hindu family consists of male members descended lenially from a common male ancestor together with their mother, wives or widows and unmarried daughters bound together by the fundamental principles of family relationship. This body is a creature of law and cannot be created by act of the parties. Coparcenery is a smaller body than the joint family and consists of only male members of the family. All members of the Co-parcenary are undoubtedly members of the family but all members of the joint family are not necessarily coparceners. The property which belongs to the co-parcenary under the Hindu law can be divided into two heads (i) co-parcenary property (ii) separate property. Coparcenary property is again divisible into (i) ancestral property and (ii) joint family property which is not ancestral. This latter kind of property consists of property which is acquired with the aid or assistance of joint family property or without the aid or assistance of the joint family property provided if it is acquired jointly by two or more coparceners as a joint property. One of the main incidence of joint family property is that there is community of interest and unity of possession between all the members of the joint family - See: *Katama Natchiar v. Raja of Shivagunga* 1863 MIA 539 as a result thereof every member is entitled to joint possession and enjoyment of the property. The unity of possession,

which is one of the incidents of joint Hindu family property denotes that the possession of one co-parcener is possession of all coparceners. If one co-parcener is in possession then through him all coparceners are deemed to be in possession. Every co-parcener is entitled to possess and enjoy the property along with others. If anyone is excluded from joint possession, he may without suing for partition, recover joint possession - *Hiralal v. Pearelal* ILR 1939 All. 89. Although there is a presumption with regard to the jointness of a Hindu family but there is no presumption that a joint family possesses joint property. It is not necessary for a joint family to possess joint property. There can be a joint family without there being a property.

9. The discussion made above would make it clear that a joint Hindu family can possess property. It may, however, be clarified that the property belonging to Hindu undivided family is the ownership of the co-parceners of that family and that such a family is not a juridical entity distinct from the members who constitute it. Consequently, the coparceners who are the members of a Hindu undivided family are undoubtedly owners of the property; but a Hindu undivided family has no independent existence apart from the individuals who constitute the same. In *Chhotey Lal and Others Vs. Jhandey Lal and Another*, a Full Bench of our court dealing with a similar controversy held that Hindu law does not recognize a joint Hindu family or a coparcenery as a juristic personality capable of holding property. According to its view when it is said that a property is joint family property, the true position in law is that the members collectively own the property each having an interest.

10. The discussion made above would lead us to a conclusion that a joint Hindu family is capable of possessing joint property which would be for the benefit of the members constituting it. Now the question that arises for decision is whether this principle of Hindu law is applicable to the tenancy law. Previous to the enforcement of U.P. Act No. 1 of 1951, this controversy came up for decision in this Court on several occasions. This court consistently held that the ordinary rule of Hindu Law that the properties acquired by the family with the help of the ancestral or joint family property should be regarded as joint family property applies to a case where the property in question is tenancy land. Reference may be made to an authority reported in *Bhoop Singh v. Jairam* (1918) 46 IC 387 where the learned Judges of this Court recognized the fact that it is possible for a joint family to hold a tenancy although the same may be recorded in the name of a single member. In *Acharji Ahir Vs. Harai Ahir and Others*, a Division Bench while dealing with the provisions of the Agra Tenancy Act, 1926 took the same view when it held that the Act of 1926 also recognized the possibility of a joint family holding land as an occupancy tenant. Dealing with the similar controversy the Full Bench of our Court in *Chhotelal v. Jhandelal* (supra) was also of the opinion that tenancy land could be held by the joint family for the benefit of all the members of the joint Hindu family. It is, thus clear that the tenancy land was capable of being held by a Hindu family for the benefit of the members constituting it.

11. Counsel for the Petitioners, however, contended that after the abolition of Zamindari the position, that obtained before does not exist inasmuch as due to the drastic changes brought about in the land tenure system by the said Act, a joint Hindu family cannot be held to be entitled to hold the land for the benefit of the members constituting it. The learned Counsel emphasised that the main object of enacting the U.P. Act No. 1 of 1951 was to confer tenancy rights on the tillers of the soil and if the principles of Hindu law are applied to this Act as well, the result would be that even those who are not actually tilling the land or cultivating it would be entitled to become bhumidhars.

12. After hearing counsels for the parties, I am not inclined to accept the submission made by the learned Counsel for the Petitioners. Section 129 of U.P. Act No. 1 of 1951 provides that for the purposes of this Act there would be three classes of tenure-holders viz. (i) Bhumidhar (ii) Sirdar (iii) Asami. By Section 18 of the Act Bhumidhari rights were conferred on the persons enumerated therein. Rights of a sirdar or Adhivasi (which was a temporary phase) and that of Asami were conferred by Sections 19, 20 and 21 respectively. A Bhumidhar has a right to the exclusive possession of all his land subject of course to the provisions of this Act. He has a right to transfer his land. Section 130 of U.P. Act No. 1 of 1951, specifies the classes of the persons who can be called a Bhumidhar. These classes are (a) every person who as a consequence of the acquisition of estate becomes a Bhumidhar u/s 18; (b) every person who acquires the rights of a bhumidhar under or in accordance with the provisions of this Act. It would thus be clear that the rights of a Bhumidhar can be purchased by one person for himself and for others. A purchase made by a person in his name for the benefit of the members of joint Hindu family can at most be considered as a Benami purchase but since there is neither any express nor implied bar in the Act for making such a purchase, it cannot be accepted that such a purchase made cannot be for the advantage of the members of the joint family. In the absence of any prohibition in U.P. Act No. 1 of 1951 against the recognition of Benami rights or Benami holdings, I do not find any difficulty in not recognizing them and treating the Benamidars as trustees for the real owners. In fact, the position of a Karta of a joint family is also that of a trustee. Just as a Benamidar is a trustee for the real owner so a Karta can also be just as a Benamidar being the trustee of the real owner and can hold property in his name for the benefit of the members of the joint family.

13. Learned Counsel for the Petitioners could not bring any authority to my notice which supported his contention. Reference may be made to a decision of the Supreme Court report in Kailash Rai Vs. Jai Jai Ram and Others, where dealing with the interpretation of Section 18 of U.P. Act No. 1 of 1951 the Supreme Court held that the Bhumidhari rights could be acquired by all the members of a joint Hindu family although the land was recorded in only one name, it is true that the law laid down by the Supreme Court was on the interpretation of Section 18 but do not see any difficulty in applying the principles to the present case as well. The purchase of bhumidhari land made by

a Karta of the family if proved to be from the nucleus of the joint family or made by the members of the joint family for the benefit of all of them, can be considered to be Bhumidhari of all the persons constituting the joint family, and all the persons constituting the joint family would be entitled to the enjoyment and possession of the land. Possession of one person would be constructive on behalf of all. On the evidence the Settlement Officer Consolidation and the Deputy Director of Consolidation have rightly held that the land having been purchased from the funds contributed by the Respondent No. 4 and the Petitioners, could be held to be a joint family property.

14. The learned Counsel for the Petitioners thereafter referred to Section 156 of U.P. Act No. 1 of 1951 and urged that as this section denies the right to let and sub-let, except to the extent permitted by Section 157, the express mandate of the Legislature is that a bhumidhar must cultivate the land himself. I do not find any merit in this submission. A lease is a transfer of a right to enjoy property for a certain time in consideration of a price paid. Under such a transaction one party shall divest himself of possession and the other party shall come into for a determinate time for a fixed amount. But the position of a joint family is altogether different. In the case of members of a joint Hindu family even if a member has gone out for a considerable length of time and has not enjoyed the benefit of the property, his rights in the property are not lost. In such a case possession of one co-owner is possession of all. Mere non-enjoyment does not mean that a person who is in possession prescribes adverse title over the right of the non-participating owner. It would thus be seen that the requirement of the Act, that the cultivator should remain in possession himself, is not touched or even remotely affected. As a matter of fact, if a coparcener is deprived of enjoyment of the joint family property he has a right to sue for joint possession and reinstatement. Similarly, the submission of the learned Counsel that since the possession of the recorded coparcener would be in his personal right and that such a person would become a sirdar u/s 210 of the Act, also cannot be accepted. The possession of such a person being on behalf of himself and others coparceners, cannot be contrary to law.

15. Relying on a decision of this Court in Mahendra Singh v. Attar Singh 1967 AWR 73 the learned Counsel next contended as the notions of Hindu law or Mohammadan law were not to be imported into the interpretation of Act No. I of 1951, this Court must hold that the principles of the pure Hindu law have abrogated altogether and the rights of the parties have to be decided on the basis of the provisions of the Act. I am unable to subscribe to this view. I have already mentioned above that under U.P. Act I of 1951, the members of a joint Hindu family can together become bhumidhar of a holding. The coparcenary body as such and as an entity apart from the members may not own the property but the coparceners who are members of the family are undoubtedly the owners, even in this light, it will have to be found whether Sections 152, 171 and 175 have the effect of abrogating the Hindu Law altogether. It is indisputable that the rules of personal law are subject to modification by statutory

enactments, *Kallu v. Sital* 16 ALJ 225 . In other words, if there is any provision in U.P. Act I of 1952, in respect of any matter governed by Hindu Law previously, then the provision prevails and the previous Hindu law to the extent it related to that stands nullified. In *Ram Singh and Others Vs. Baldeo Prasad and Others* a Division Bench of this Court held that since an occupancy tenure is the creation of statute, and a special rule of succession has been laid down in the statute, it is the statute which regulates the inheritance and not the personal law of these tenants. While considering the overriding effect of Section 14 of the Indian Succession Act, the Supreme Court said in *Punithavalli Ammal Vs. Minor Ramalingam and Another*, that the rights conferred on the female Hindus by Section 14(1) of the Hindu Succession Act, make a clear departure from the previous law and such previous law cannot be used for circumventing those rights.

16. Judged in the light of what has been said above, it will be found that U.P. Act 1 of 1952 does not crystallise or declare the existing law upon the land tenure system but deliberately departs from the old law in respect of various matters. It supersedes prior law and lays down the whole of the law of succession, transfer, bequest etc. Therefore, in cases governed by the Act reference to the previous rule of Hindu law or Mohammadan law cannot be made as it is not permissible, but the Hindu law can certainly be resorted to in respect of matters for which no provision is made in U.P. Act No. I of 1952. Matters saved from the operation of the Act, of course, continue to be governed by the personal law to the extent the same is applicable. The Act does not touch or affect the law of joint family, hence the Hindu law continues to operate in this matter.

17. Reverting to *Mahendra Singh's* case (*supra*) which was relied upon by the Petitioners, it would be seen that in that case the right of the bhumidhar of his interest in the joint family property was questioned on the ground that he could not do so without legal necessity. The learned Judges, after discussing the various provisions of the Act, found that Section 152 conferred a right on a bhumidhar to transfer his interest, there was no reason to hold that *Jeet Singh*, the bhumidhar of that case, could not do so. The view taken in this case does not conflict with the decision of that case. Since there are clear provisions conferring upon a bhumidhar the right to transfer his interest, the principles of the Hindu law, could not possibly apply.

18. On the same ground, the decision of the Full Bench in *Ramji Dixit v. Bhrigunath* 1964 AWR 75 is also distinguishable. In these cases, the controversy was whether a female bhumidhar who either acquired rights by inheriting tenancy rights before the passing of U.P. Act I of 1951, or inherited the bhumidhari property after the passing of the Act, could transfer it. The Full Bench relying upon Section 152 held that the transfer was valid and effective not only for her life or until remarriage but valid beyond her life time as well. This decision was upheld by the Supreme Court in the appeal preferred against it.

19. It is apparent that Section 152 of the Act being applicable, the notions of the

Hindu Law could not be pressed into service. But here the Act is conspicuously silent on the point we are seized with.

20. Counsel for the Petitioners next contended that as the consolidation authorities did not find that the joint family possessed a nucleus from which the Bhumidhari plots were purchased, the finding recorded in favour of Respondent No. 4 was that he was owner to the extent of half share was incorrect. He contended that if the purchase was made by the Petitioners and the Respondent No. 4 by contributing fund for the same, the Consolidation authorities should have found that the Respondent No. 4 had 1/3rd share in the property and not 1/2. It is true that none of the Consolidation Authorities found that the joint family possessed nucleus from which the property in question had been purchased but, to my mind, the same does not make any distinction. As said in the very beginning, the property which is purchased even without the aid and assistance of the joint family property is also treated as the property belonging to the joint family and the same can be the property meant for the benefit of the joint family constituting it. It has been found as a fact by all the Consolidation authorities concurrently that the bhumidhari land was purchased out of the joint funds of the Petitioners and the Respondent No.4 that the property purchased was always treated as the joint family property of the Petitioners and the Respondent No. 4. On this basis the Respondent No. 4 would have 1/2 share in the bhumidhari land and not 1/3rd share as argued by the learned Counsel. It is settled that it is not always necessary that only when a property is purchased out of the nucleus of the joint family then alone the same could be joint family property of all the members. If members of the joint family, who are joint in status, earn and acquire property with their income, even without the aid of any ancestral nucleus, the presumption is that the property so acquired is the joint family property, vide Mayne's Hindu Law, 11th Edition, page 345; Mulla's Hindu Law, 12th Edition, pages 333 and 334. The view taken by me is also supported by an authority reported in *Gunnaj Krishnan v. G.K Rangachari* AIR 1965 Mad 340 . The same view was taken in another case by the Madras High Court in *K.S. Santhalingam Vs. Meenakshi Ammal and Another*, .

21. Accordingly, I find that the view taken by the Consolidation Authorities that the land belongs to the joint family and that the Respondent No. 4 had half share in Khata No. 50 is correct and does not call for interference. Hence the mere fact that the sale-deed was executed in favour of the Petitioners alone, that would not mean that the Respondent No.4 would not be entitled to get the right of Bhumidhar along with them.

22. So far as Khata Nos. 95-A and 95-B are concerned, the same were also entered in the name of Sarju as his Sirdari. It is also settled that that a member of the joint Hindu family, even if he is joint can possess separate property. Such property belongs exclusively to him and no member of the co-parcenary, not even his male heirs can acquire any interest in it. Accordingly even if it is correct that the Petitioners were the members of the joint family of which the

Respondent No. 4 was also a co-parcener, the same would not entitle Respondent No. 4 to get rights of a sirdar over the disputed land. The Settlement Officer and the Deputy Director of Consolidation held the Respondent No. 4 to be the sirdar of this Khata simply on the basis that he was a member of the joint family. None of the two authorities found any evidence on record to show that the property was either acquired by Respondent No. 4 along with the Petitioner or that the Petitioners threw it into the common hotch-potch. The claim of the Respondent No. 4, therefore, over these plots simply on the basis that as both the parties were living jointly, therefore, the property must be held to be the joint property of all cannot be accepted. The submission of the learned Counsel for the Respondent No. 4 that the name of Sarju was recorded in the representative capacity because he was the Karta of the family cannot also be accepted inasmuch as there is no evidence on record to prove that the land of these two Khatas was ever treated by the Petitioners or the Respondent No. 4 as that of the joint family. Accordingly, the claim of Respondent No. 4 with regard to Khata Nos. 95-A and 95-B cannot be upheld.

23. In the result, the writ petition succeeds in part and is accordingly allowed. The judgments of the Settlement Officer, Consolidation and that of the Deputy Director of Consolidation with regard to Khata No. 50 is upheld but that of sirdari Khata Nos. 95-A and 95-B are quashed. Consequently, the judgment of the Consolidation Officer is restored.

24. In the circumstances of the case the parties shall bear their own costs.