

(1982) 07 AHC CK 0054

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 3373 of 1977

Ram Kumar and Others

APPELLANT

Vs

The Board of Revenue and Others

RESPONDENT

Date of Decision : 07-07-1982

Acts Referred:

Uttar Pradesh Tenancy Act, 1939 — Section 180(1)

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 18, 229B

Citation : (1982) AWC 609

Hon'ble Judges : R.S. Singh, J

Bench : Single Bench

Advocate : N.B. Nigam, for the Appellant; G.P. Bhargava and A.N. Bhargava, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Singh, J.—This writ petition is directed against the order of the Board of Revenue dated 15-4-1977 dismissing the Second appeal.

2. The facts of the case in brief are that u/s 229-B Uttar Pradesh Zamindari Abolition and Land Reforms Act, two suits were filed by the father of the Petitioners-Bhagirath against Smt. Jurawan Dullaiya and others claiming to be sole bhumidhars in one suit and co-bhumidhars in the other suit. According to the case of the Plaintiff, Har Prasad died leaving two sons-Sunder Lal and Bhagirath and his widow Hazari Dullaiya. Sunder Lal died in 1930 leaving his widow Jorawan Dullaiya. He died as member of joint Hindu family. Therefore, by survivorship, the Plaintiff became owner of the entire zamindari property and was in possession. His name was mutated over half of the share of zamindari and on the other half, the name of Smt. Jurawan Dullaiya was recorded in the revenue papers. On 6-2-1937, the Plaintiff's mother as guardian and Smt. Hazari Dullaiya filed a suit No. 50 of 1937 in the court of Munsif against Defendant No. 1 regarding half of the share in zamindari. The suit was decreed in terms of the compromise dated 18-3-1937 wherein it was settled that Defendant No. 1 will

not alienate the property and she will remain chaste. If she becomes unchaste, the Plaintiff shall be entitled to take possession over the land and she will have life interest. It was further alleged that after sometime, the Plaintiff became unchaste and she began to live with one Bal Mukund, who had illicit connection with her. She had committed a breach of the compromise decree and lost her title in the land. She executed a fictitious registered sale deed on 8-9-1965 in favour of Haripat, Defendant No. 2, which is a void document. Hence the suit was filed for declaration of the Plaintiff's title in the land in dispute. Both the suits were contested by Defendants denying the title and possession of the Plaintiff. It was assented that Smt. Jurawan Dullaiya was absolute owner of the half share in the land in dispute as it was her sir and Khudkasht before the zamindari abolition and thereafter, she became bhumidhar and she had full right to transfer her share. It was further alleged that the said civil suit was not in respect of the sir and Khudkasht land. Moreover, Sundar Lal and Bhagirath were not members of joint Hindu family as they had separated during their life time. The Defendant No. 1 did not become unchaste and she was in possession throughout.

3. The trial court decreed the suit. The Defendant preferred an appeal against the decree and judgment of the trial court which was allowed by the Addl. Commissioner on the finding that the condition of life interest of Smt. Jurawan Dullaiya vanished after passing of Hindu Succession Act, 1956 when absolute rights of widows were recognized. It was further held that Smt. Jurawan Dullaiya became unchaste and she remarried with one Bal Mukund and the remarriage took place before the abolition of Zamindari. But no suit was filed to take possession within the period prescribed. The Plaintiff's title extinguished in respect of the land in possession by Smt. Jurawan Dullaiya. The order of the Addl. Commissioner was affirmed by the Board of Revenue in Second Appeal filed by the Petitioners. The Petitioners have challenged the order of the Board of Revenue as well as that of Addl. Commissioner in the present writ petition before this Court.

4. It has been contended by the learned Counsel for the Petitioners that by the compromise, Defendant No. 1 had only life interest. Therefore, she could not become bhumidhar after the enforcement of Uttar Pradesh Zamindari Abolition and Land Reforms Act (hereinafter referred to as Act). In support of this contention, he placed reliance on Balbhadra Vs. Board of Revenue and Others, . In this case, life estate was created by a Hindu before date of vesting in favour of his daughter by means of a will and the son was mentioned to be an absolute owner. It was held that on the death of testator, the property vested in son but its possession and enjoyment was deferred till the life of the testator's daughter. Therefore, she could not acquire bhumidhari right u/s 18 and it was further held that the life estate holder cannot acquire right by adverse possession. It was further contended by the learned Counsel for the Petitioners that the Defendant No. 1 was not competent to execute the sale deed in favour of Defendant No. 2 as in the compromise, it was specifically stated that she will have no right to alienation. The learned Counsel for the Petitioners relied upon Shivraj v. Ram

Ratan 1969 ALJ 83 wherein it was held that the compromise decree represented a family settlement between the parties. It was not a transfer of property in law. The courts could keep the parties to the bargain freely entered into by them. The Respondents have agreed not to alienate the properties. The deed of sale executed by him was incompetent. The learned Counsel also relied upon Ram Charan Das Vs. Girjanandini Devi and Others, wherein similar view was taken that the family settlement does not amount to transfer. It also does not create an interest.

5. The learned Counsel for the Respondents contended in reply, that the land in dispute was sir and Khudkasht of which Defendant No. 1 became bhumidhar after the enforcement of the Act. He placed reliance on Ramji Dixit v. Bhriju Nath 1968 AWR 748 SC wherein it was held that there is nothing in the Act which indicates that when a female who Inherits the right of bhumidhar residuary interest remains vested in any other person. Under the Act she is the owner of the property--the entire estate vested in her and she became entitled to bhumidhari rights after coming into force of the Act. The learned Counsel further contended that even if it is accepted to be correct that the Defendant No. 1 remarried, which took place long before the date of vesting of the Act then also, as no suit was filed for ejectment within the prescribed time, the Plaintiff's title extinguished. In support of this contention, he placed reliance on Devi died Sri Sia Ram Substituted v. Mohd. Hanif 1963 AWR 445 wherein it has been held as follows:

As soon as the widow remarried, she ceased to have any title to retain possession over the plots in question. Thereafter she will be deemed to have been retaining possession over the plots without the consent of the persons entitled to admit her to occupy such plots or otherwise than in accordance with the provisions of law for the time being in force within the meaning of Sub-section (1) of Section 180 of the U.P. Tenancy Act, 1939. A suit should have, therefore, been filed against her within the period of limitation prescribed under Serial No. 18 of group B of Schedule IV of the U.P. Tenancy Act, 1939. This period of limitation was three years by 1947 and thereafter reduced to two years where the widow remarried in 1945, the suit should have in any case, been filed by 1948. Thereafter, the Plaintiff's suit against the widow became barred by time and they did not acquire any fresh right to file the suit after her death.

6. No doubt, before the enforcement of the Act, a Hindu female under the provisions of Hindu law had only life interest in the sir and Khudkasht property left by her husband. There is no provision under the Act which takes away the right of a Hindu female in the land in which she had a limited interest. The limited ownership in its nature must be a bundle of rights constituting in their totality, not full ownership but something less. She holds the same for her enjoyment as long as she lives. No body is entitled to deprive her of it or to deal with the property in any manner to her detriment. She is in full occupation and control of the usufruct of it to the exclusion of all others. Therefore, in absence of

expressed provisions in the Act taking away the right to make disposition inter-vivos, she becomes, on enforcement of the Act, full fledged bhumidhar and is entitled to exercise all rights and benefits available to any other male bhumidhar.

7. Considering the case from the other aspect, on the finding of the lower appellate court, Smt. Jurawan Dullaiya remarried long before the date of vesting and continued in possession. Therefore, the cause of action accrued in favour of the Plaintiff to file a suit for her ejectment as soon as she remarried because her possession thereafter became adverse as she was not entitled to continue in possession on remarriage. Obviously, no suit was filed for her ejectment by the Plaintiff within the time prescribed. Therefore, Plaintiff's title extinguished in the land in occupation of Smt. Jurawan Dullaiya.

8. In view of the above discussions, I am of the view that the Board of Revenue has not committed any error in dismissing the Petitioner's Second Appeal. Therefore, the petition is devoid of any merit.

9. In the result, the petition fails and is accordingly dismissed without any order as to costs.