
(1964) 10 MP CK 0001
In the Madhya Pradesh High Court
Case No : M.P. No. 437 of 1963 (J)

Shanti Bai

APPELLANT

Vs

Biharilal

RESPONDENT

Date of Decision : 08-10-1964

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 164

Citation : (1964) JLJ 663

Hon'ble Judges : P.V. Dixit, C.J.; Shivdayal, J

Bench : Division Bench

Advocate : R.S. Dabir, for the Appellant; A.P. Sen, R.K. Pandey and K.K. Adhikari, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Dixit, C.J.—This application under article 226 of the Constitution for the issue of a writ of certiorari for quashing a decision of the Board of Revenue has been made in the following circumstances.

2. One Draupadibai was the last older of certain Khasra numbers in Bhumiswami rights. She died in June 1961. On her death the Tahsilder, Gadarwara, ordered mutation of the lands in favour of the respondent No. 1 Biharilal. The petitioners then preferred an appeal before the Sub-Divisional Officer, Gadarwara, which was rejected, A second appeal preferred by them before the Commissioner, Jabalpur Division, met the same fate. Thereafter, they filed a revision petition before the Board of Revenue which was dismissed.

3. Draupadibai had a sister Chironjibai who predeceased her and the petitioners Shanti Bai and Sushila Bai are the daughter, of Chionjibai. The third petitioner is a daughter of Draupadibai's predeceased son Badriprasad. The respondent No. 1 Biharilal is a cession of Draupadibai's father Ganesh Datta being the son of Genesh Datta's uncle Goreylal. The mutation was done by the Tahsildar in accordance with section 164 of the Madhya Pradesh Land Revenue Code, 1959

(hereinafter referred to as the Code), as it stood at the time of the death of Draupadibai when the succession to the lands opened. After the death of Draupadibai and even after the Tahsildar passed the order of mutation on 29th November 1961, section 164 of the Code was amended by the Madhya Pradesh Land Revenue Code (Second Amendment) Act 1961 (hereinafter called the Amending Act). Section 2 of the Amending Act substituted the following provision in place of the order of succession given in section 164 of the Code: "164. Devolution.-Subject to his personal law the interest of a Bhumiswami shall, on his death, pass by inheritance, survivorship or bequest, as the case may be." The petitioners contended before the Commissioner as well as the Board of Revenue that the succession to the Bhumiswami lands left by Draupadibai should be in accordance with the new section 164 of the Code. This contention was rejected by the Commissioner as well as by the Board of Revenue. They now seek a writ of certiorari for quashing the order of the Tahsildar as upheld by the Sub-Divisional Officer, the Commissioner and the Board of Revenue.

4. The sole question that arises for determination in this case is whether the new section 164 of the Code is retrospective in its operation. The general principle about retrospective operation of statutes is well settled. It is that a retrospective operation is not to be given to a statute or a section of it so as to impair an existing right or obligation unless the statute so provides either expressly or by necessary intendment or unless that effect cannot be avoided without doing violence to the language of the enactment. Now, it cannot be denied that the new section 164 substitutes for the order of succession, given in the old section 164 the rule that the interest of a Bhumiswami shall, on his death, pass by inheritance, survivorship or bequest, as the case may be. Thus, the new rule, if given a retrospective operation would affect the right and interest of those persons in whose favour succession opened out by the death of a Bhumiswami before the new section 164 came into force on 8th December 1961. There are no express words either in the Amending Act or in the new section 164 giving that provision a retrospective effect. It is noteworthy that the Amending Act gives retrospective effect to the amendments made by it in section 251 of the Code by expressly providing in section 6 of the Amending Act that the amendments made in section 25 shall be deemed to have come into force on 2nd October 1959. No such provision giving a retrospective operation to the new section 164 was inserted in the Amending Act.

5. Shri Dabir, learned counsel appearing for the petitioner, however, urged that though there were no express words in the Amending Act or section 164 making the new section 164 retrospective, still the necessary intendment of the amendment substituting a new section 164 was that it should have a retrospective effect. It was said that the amendment in section 164 was made in a reformatory spirit and for the removal of injustice which had been done to women by the order of succession embodied in the old section 164; and that there was no reason whatsoever why, this injustice should not be removed from

2nd October 1959 itself when the Code came into force so as to continue the operation of section 151 of the Madhya Pradesh Land Revenue Code, 1954 which also provided that subject to his personal law the interest of a tenure holder shall on his death pass by inheritance, survivorship or bequest, as the case may be. We are unable to accede to this contention. The "necessary intendment" justifying retrospective application of a statute must be gathered or collected from the language employed in the statute or provision concerned and not from the "spirit" of the statute or the provision. In *Keshavan Madhava Menon Vs. The State of Bombay*, , the Supreme Court while dealing with the question whether article 13 (1) of the Constitution has retrospective or only prospective operation observed that "an argument founded on what is claimed to be the spirit of the Constitution is always attractive for it has a powerful appeal to sentiment and emotion; but a Court of law has to gather the spirit of the Constitution from the language of the Constitution". So also in *Rananjaya Singh Vs. Baijnath Singh and Others*, , the Supreme Court said that the spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the sections of the Act and the rules made thereunder; that the statutory provisions have to be construed according to the ordinary, grammatical and natural meaning of their language; and that on such a construction if any injustice is done to a class of people, then the appeal must be to the Legislature and not the Court. Therefore, however desirable it might have been to give the amended section 164 of the Code retrospective operation for bunging the rule of succession in regard to Bhumiswami lands in conformity with the present day feelings and sentiments about the position of women in society, if the Legislature did not choose to do so by using language expressing its intention to that effect, this Court cannot attribute any supposed intention to the Legislature of making the amendment retrospective merely by the fact that the amendment was a piece of reform. In our opinion, there is nothing in the language of the amended section 164 or the Amending Act to show that the amendment has a retrospective operation.

6. There is a faint suggestion in the petitioner's application that the old section 164 was enacted by the Legislature excess "in of its legislative competence" and was also discriminatory. There is no substance in these suggestions. The legislative competence for the order of succession embodied in the old section 164 is to be found in Entry No. 5 of the Concurrent List which gives to the State Legislature the power to make laws, inter alia with respect to intestacy and succession". This entry does not exclude the power to make laws with regard to succession to agricultural lands as Entry No. 7 of the Concurrent List of the Government of India Act, 1935. did by using the words "save as regards agricultural lands". The old section 164 was operative throughout the State. It cannot, therefore, be urged that in regard to the succession to Bhumiswami lands different laws prevailed in different regions of the State. Again as pointed out by the Supreme Court in *Kangshari Halder and Another Vs. The State of West Bengal*, , the question whether a law offends article 14 does not depend upon

whether it is prospective or retrospective it is possible both for the prospective and retrospective; statutes to offend article 14. The question whether any statute violates article 14 has to be determined on the considerations whether the statute makes any classification whether the classification is regional based on intelligible differentia and whether the basis of differentiation has any rational nexus with its avowed policy and object. The old section 164 did not at all make any classification in regard to its applicability and effect.

7. For all these reasons, our conclusion is that the Board of Revenue was right in holding that the new section 164 has no retrospective operation. If section 164 is not retrospective in its effect, then the mutation made in favour of the non-applicant no. 1 cannot be challenged; and indeed, before the Board of Revenue it was not challenged except on the ground that the new section 164 was retrospective.

8. The result is that this petition fails and is dismissed with costs. Counsel's fee is fixed at Rs. 75/-. The outstanding amount of the security deposit after deduction of costs shall be refunded to the petitioners.