
(1975) 05 PAT CK 0006
In the Patna High Court
Case No : A.F.O.O. No. 64 of 1972

Smt. Dil Kuer and Others

APPELLANT

Vs

Hari Chandar Prasad and Others

RESPONDENT

Date of Decision : 16-05-1975

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 16(2), 3
Constitution of India, 1950 — Article 254(2)
Registration Act, 1908 — Section 18
Succession Act, 1925 — Section 263

Citation : AIR 1976 Patna 193 : (1976) 9 PLJR 259

Hon'ble Judges : H.L. Agrawal, J

Bench : Single Bench

Advocate : Lakshman Sharan Sinha, for the Appellant; J.C. Sinha, R.C. Sinha
and Suresh Chandra Pd. Sinha, for the Respondent

Final Decision : Allowed

Judgement

H.L. Agrawal, J.—This miscellaneous appeal u/s 299 of the Indian Succession Act arises out of a proceeding at the instance of the appellants for revocation of a will. The relevant facts are these :

2. One Sukhdeo Mahto executed a will on 15-9-1964 (Exhibit D) in favour of respondents 1 and 2, his agnates he himself having no issue. On the death of the said testator on 15-1-1965, an application for grant of letters of administration was filed in the Court of the District Judge of Patna on 2-2-1965 by the aforesaid beneficiaries. Appellant No. 1, who happens to be a sister of the testator, was one of the persons mentioned in the application for grant of the letters of administration, and according to her case, on the death of Sukhdeo Mahto, she being his only heir, inherited the property and came in possession of the same. The other two appellants are the vendees of appellant No. 1, to whom she transferred the entire property by a registered deed of sale dated 9-6-1968. The application for grant of letters of administration was allowed ex parte on

6-11-1965. The appellants thereupon filed an application for revocation of the grant of the letters of administration u/s 263 of the Indian Succession Act, inter alia, on the grounds that the grant was obtained fraudulently without serving a valid notice on appellant No. 1 and the same could not be made in law as the will in question being unregistered, was inoperative and hit by the provisions of Section 16 (2) (iii) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Bihar Act 12 of 1962) (hereinafter referred to as the "Ceiling Act").

3. The learned Additional District Judge dismissed the application on recording a finding on both the questions against the appellants. He held that the notice of the probate proceeding was duly served upon the opposite parties and the provisions of the Ceiling Act were no bar to the grant of the letters of administration in view of the provisions of the Indian Registration Act which made the registration of a will optional.

4. In this Court Mr. Lakshman Sharan Sinha, appearing for the appellants, has seriously contended that in view of the clear provisions contained in the Ceiling Act, no letters of administration could be granted by the Court below of the will in question which was an unregistered document and related to agricultural lands.

5. In order to appreciate the contention, it is necessary to examine the scheme and the relevant provisions of the Ceiling Act. This Act received the assent of the President of India on the 19th of April, 1962, and one of the objects of the Act is to make provision for a fixation of a ceiling on the extent of agricultural lands. In other words, limiting the area of land to be held lawfully by any person and to acquire the surplus land by the State of Bihar and its disposal according to the different provisions of the Ceiling Act in the larger interest of the community. Chapter V of the Ceiling Act contains provisions for restriction on future acquisition of any land by transfer, etc. after the commencement of the Act and Section 16(1) provides :

"No person shall, after the commencement of this Act, either by himself or through any other person, acquire or possess by transfer, exchange, lease, mortgage, agreement or settlement any land which together with the land, if any, already held by him exceeds in the aggregate the ceiling area.

Explanation -- For the purposes of this Section "transfer" does not include Inheritance, bequest or gift."

Acquisition of any land by transfer, etc, by any person in excess of the land already held by him according to the ceiling area provided in the Ceiling Act has been restricted. Exception to acquire any further land is made only in three circumstances, namely, (i) inheritance, (ii) bequest, or (iii) gift. Clauses (i) and (ii) of Sub-section (2) of Section 16 also prohibits registration of any document incorporating any transaction for acquisition or possession of any land by way of transfer, exchange, lease, mortgage, agreement or settlement, unless a declaration in writing, duly verified, is made and filed by the transferee before

the Registering authority as to the total area of land held by him throughout the State.

6. Now comes the relevant clause, namely, Clause (iii) of Sub-section (2) of Section 16 which reads as follows :

"No land shall be transferred, exchanged, leased, mortgaged, bequeathed or gifted without a document registered in accordance with the provisions of the Indian Registration Act, 1908 (XVI of 1908),

Explanation -- Nothing in this subsection shall be deemed, to have any effect on the provisions of the tenancy law of the area relating to transfer, exchange, lease, mortgage, agreement or settlement"

On the basis of Clause (iii) just quoted above, it has been contended that restriction has now been imposed by the Ceiling Act on bequeathing any land without a registered document in accordance with the provisions of the Indian Registration Act. Some controversy was raised on the expression "bequeath". Whereas the contention of Mr. Lakshman Sharan Sinha was that this expression would include a testamentary disposition of a property. Mr. J. C. Sinha appearing for the respondents contended that inasmuch as the ultimate characteristic of a will being that it has to come into effect after the death of the testator and the disposition being revocable at the sweet-will of the testator, it could not be the intention of the legislature to put any restriction on testamentary dispositions without a registered document. Learned counsel for the respondents contended that according to the very definition of a "will" u/s 2(h) of the Indian Succession Act, the declaration of the intention of the testator with respect to his property is to be carried into effect only after his death and, therefore, the property which the testator disposes of by his will must remain his property at the time of his death, or must remain his property when the terms of the will are given effect to. Developing the argument further, learned counsel for the respondents contended that the primary object of the Ceiling Act being acquisition of surplus land by the State from the landholders, any disposition by a testamentary document, such as a will, could not be an impediment in the way of the State for acquiring, if necessary, those lands which formed part of the disposition by a will. He, accordingly, contended that the expression "bequeath" should not, therefore, be construed to include a will in its fold and must be held to be applicable to conditional gifts. The contention that there could not be any difficulty for the purposes of carrying out the scheme of the Ceiling Act on account of any purported disposition of any property by an unregistered will in determining the ceiling area of any land holder having some substance, no doubt, the further contention that on this account the expression ("bequeath") should not be given its ordinary meaning, cannot be accepted. The legislature in its wisdom thought it fit to impose this restriction possibly in order to obviate any complications and claims etc. on the basis of wills in future, inasmuch as, an unregistered document, not even requiring any stamp, could be created by an unscrupulous person at any time.

7. The expression "bequeath" even according to its ordinary dictionary meaning means "to leave personal property by will to another", "to transmit to posterity". The same is the meaning of this expression in the Law Lexicon, namely, "to leave by will to another". Both the expressions, namely, "gift" and "will" have well defined meanings in law as well. Whereas "gift" has been defined u/s 122 of the Transfer of Property Act, as already pointed out above, "will" has been defined u/s 2(h) of the Indian Succession Act. If, therefore, by the expression "bequeath", it was some kind of gift, such as a conditional gift, as contended by Mr. J. C. Sinha, would have been meant, there could be no necessity to express the intention by using the expression "bequeath" in Clause (iii) of Sub-section (2) of Section 16 of the Ceiling Act.

8. According to Section 3 of the Ceiling Act, the provisions of this Act have been made to prevail over other laws, notwithstanding anything to the contrary contained therein. According to Article 254(2) of the Constitution of India, the law made by the State Legislature making wills also compulsorily registrable, although the same are exempted under the Indian Registration Act, must prevail over the Central Act, inasmuch as the subject "Registration" falls under the concurrent list and the Ceiling Act has received the assent of the President of India. The learned Additional District Judge was, therefore, not right in taking a view that in view of the provisions of the Indian Registration Act, the provisions of the Ceiling Act were of no consequence. It is apparent that on the death of a testator, the provisions of the will amount to disposition of his estate in favour of the beneficiaries or legatees etc., a situation which is apparently intended to be restricted by the scheme of the Ceiling Act.

9. For the foregoing reasons, I would accept the contention of the learned counsel for the appellants and hold that under the provisions as contained in Section 16 (2) (iii) of the Ceiling Act, no probate or letters of administration can be granted by a Court on the basis of an unregistered will.

10. I would, accordingly, set aside the order of the Court below, allow this appeal and revoke the letters of administration granted by that Court of the will dated 15-9-1964 executed by Sukhdeo Mahton. In the circumstances, however, I shall make no order as to costs.