

(2000) 09 RAJ CK 0067

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1416 of 1976

Smt. Roop Raj Laxmi

APPELLANT

Vs

The Sub-Divisional Officer and Others

RESPONDENT

Date of Decision : 13-09-2000

Acts Referred:

Hindu Succession Act, 1956 — Section 4

Citation : (2000) 4 RLW 181 : (2001) 4 WLC 533 : (2007) 3 WLN 469

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.C. Verma, J.—Maharwal Sangram Singhji was the former Jagirdar of Samod. He died on 15.2.1963 leaving behind him his son Rajeshwar Singh and widow Roop Raj Laxmi.

2. Chapter III-B was introduced in the Rajasthan Tenancy Act, 1955 vide Act No. IV of 1960 published in Rajasthan Gazette dated 21.3.1960 which had come into force w.e.f. 15.12.1963 vide notification dated 26.11.1963. It was a socio-economic legislation. It was decided to acquire the surplus land from the person in whose hands the land was concentrated for fair distribution to the land less agriculturists and other deserving persons with a view to remove the disparity in the holding of agricultural land and to increase the agricultural production. Section 30-E provided that the land would be surrendered from the date notified by the State Government and ultimately the date so notified was notified as 1.4.1966 for the purpose of declaring the land to be surplus in the hand of Khatedar so entered in the Revenue Board on the date of notification.

3. Earlier this very writ petition (by the Hon'ble Single Judge) had been dismissed on 4.9.1986 holding therein that Rules 17(2) and 17(4) of the rules, and the rights given thereunder the rules, could not survive in view of the definition of the family as defined u/s 30-B of the Rajasthan Tenancy Act. Rules

were held to be ultravires so far they include Hindu Undivided Family and no notional partition could be considered in the light of the definition given in Section 30-B itself. The judgment dated 4.9.1986 given by the learned Single Judge was challenged before the Division Bench in Special Appeal (Writ) No. 26/87 which had come up for hearing before Justice M.P. Singh Acting Chief Justice and Justice N.L. Tibrewal on 19.2.1998 (as their Lordship were). The Division Bench was of the view that Rules 17(2) and 17(4) of the Rules of 1963 do not contain any provision which runs counter to the definition of "family", rather they supplement the definition so as to includes the share of land of such member who is a constituent of the family. Because of the reason that the learned Single Judge Justice D.L. Mehta had not decided the case on merits and after giving due considerations and interpretation of the rules, the Division Bench had desired that the writ petition be decided on merits and that is why the writ petition has been put up for hearing before me.

4. It was held by the Division Bench that the concept of the term "family" in Chapter III-B is not to be connected with the term "joint family" as known to be in the Hindu Law and that Chapter III-B governs all persons irrespective of their religion, creed or community and that the lands may be held by Hindus or persons belonging to other religions and all of them are equally governed by the provisions of the Ceiling Law. The concept of joint family is totally foreign to the personal laws of Muslims, Christians and other communities and, therefore, the expression "family" used in Part III cannot be equated to or connote an undivided family as known to the Hindu Law or that after partition had take place in respect of a "Hindu Family, there cannot be a "family" consisting of the husband, wife, their children and grand children being dependent on them and widowed mother of the husband so dependent on them and that the children and grand children, who are not dependent are not the members of the family for the purpose of ceiling law and thus it was, therefore, held that the circumstances that a partition taking place disrupting the joint family consisting the father and minor sons has no relevance for determining and calculating total holdings of the person. It was held that the provisions in Hindu Succession Act shall have no effect on the term "family" contained in Chapter III-B of the Old Ceiling law under the Tenancy Act in view of Sub-section (2) of Section 4 of the Hindu Succession Act.

5. It is necessary to understand the controversy raised in the present writ petition and the facts which are as under:

6. The original Khatedar was Maharwal Sangram Singh who died on 15th February, 1963 leaving behind Rao Rajeshwar Singh of Samod and his wife the petitioner Smt. Roop Raj Laxmi as legal heir. The SDO, Amer determined excess land from the permissible ceiling area of the land holder of Rao Rajeshwar Singh of Samod under the provisions of Chapter III-B of the Tenancy Act and after allowing certain transfers but rejecting the family partition in 1970 he had calculated the total holding as 129.33 standard acres being the holding in the

hands of the family. 30 standard acres were allowed to be retained vide order dated 30.10.1971 and balance 99.33 standard acres of land was declared to be surplus being in excess to be acquired under the provisions of the Act. The order was passed on 6.3.1974 to take the possession as per the earlier order dated 30.10.1971. Number of appeals were filed against such orders totaling 8 before the Revenue Appellate Authority, Jaipur. Two appeals were filed by Rao Rajeshwar Singh the son of Sangram Singhji and two appeals each by Roop Raj Laxmi and Raghuveendra Singh and Yaduvendra Singh. The RAA confirmed the order dated 30.10.1971 and 5.3.1974 and had rejected the appeals. Certain cross-objections were accepted vide the judgment dated 30.6.1975 which is also being impugned in this writ petition. Against the said order dated 30.6.1975 a revision petition was filed before the Board of Revenue which has also dismissed on 6.8.1976.

7. The contention of the petitioner is that her late husband Maharawal Sangram Singhji was possessing the land as Khudkasht situated in villages under Tehsil Jaipur, Amer and Jamwaramgarh. It is submitted that the petitioner was entitled to the share in the property left by her husband in her individual capacity irrespective of the fact whether the land is partitioned or not. The petitioner wants to submit that before the notified date and also even before the coming into force of the Act, she and her son Rajeshwar Singh had become Khatedars in equal share because of death of original Khatedar and, therefore, she had got her shares separated by way of family agreement registered on 1.6.1970 and partition was affected in 1970's. As a matter of fact since 1963, she was deemed to be considered as a co-owner along with her son in equal share on the death of her husband in accordance with Hindu Succession Act and even if no partition actually had taken place between her and her son after the death of her husband by leaps and bounds, but on coming into force of the notified date, in that situation, she was notionally entitled to her own share and was to be treated as Khatedar in her own right in individual capacity and was entitled to one unit separately. She further submits that she was never depending on her son as she owned her own property and in view of the above narration of facts, the petitioner was entitled to be treated as separate unit even if the old law is applied prior to the Amendment Act of 1973.

8. For the above-said contention, the petitioner relies on a judgment reported in V.N. Sarin Vs. Ajit Kumar Poplai, wherein it was held that the partition of a property does not amount to transfer of the property by way of fresh acquisition, rather it amounts to acquisition of property of specific defined portion instead of undefined portion.

9. In alternatively, it is submitted that even if the above contention is not accepted, in that situation and in view of the Supreme Court judgment reported in Financial Commissioner, Haryana State and Others Vs. Kela Devi and Another, if the surplus land has not been utilised, in that situation, mutation opens on the event of the death of the landlord Khatedar and legal heirs of such Khatedar is

entitled to be treated as separate unit.

10. However, this authority does not assist the counsel for the petitioner for the reason that in Punjab law there is a provision in the Act itself that if after the declaration of the land ceiling and before utilisation, the land holder dies, in that situation, the inheritance opens in favour of legal heirs.

11. In rebuttal, the counsel for the respondents states that even if that the Khatedar had died before coming into force of the Act and also much before the notified date and the enforcement of the Act, but the land was the inherited only by Rajeshwar Singh as per the revenue record. Under the Rajasthan Ceiling Act and the rules, the determination of the ceilings are to be made as per the revenue record at the relevant time. For the reason that Rajeshwar Singh was the Khatedar who was possessing the land in his name at the time of declaration, it cannot be said that there was some deemed inheritance in favour of partition. He further submits that to hold otherwise would be playing fraud with the Act itself. If the petitioner was aggrieved by the total holding of the land in the hands of her son Rajeshwar Singh, she could have challenged the same in separate proceedings claiming her share, which admittedly had not been done, partition in the present case only means that the co-sharers are co-shares of the land jointly which was not so in the present circumstances and thus prays that the orders of the authorities below cannot be interfered with.

12. No other point has been argued.

13. From the above-said situation, the following facts and points are raised and involved;

(1) that the original Khatedar Maharawal Sangram Singhji had died in February 1963 before the notified date of determination of ceiling of the land and also before the Act was made applicable w.e.f. 15.12.1963.

(2) there were two heirs of the deceased Khatedar namely the petitioner Roop Raj Laxmi and her son Rajeshwar Singh;

(3) the notified date for determination of the ceiling is 1.4.1966;

(4) the property was not partitioned but as per Hindu Succession Act after the death of the holder of the land the property in question was being held notionally by both the heirs in equal shares at the time when the Act came into force as co-owners;

(5) the actual partition was done in the year 1970; and

(6) whether on the death of the holder of the land before the notified date of the succession opens immediately and legal heir is entitled to be considered as separate unit;

14. From the narration of the facts as mentioned above, it is clear that before coming into force of the Act, the landlord Khatedar had died. Immediately on the

death of said Khateder every legal heir becomes entitled to his notional share and he becomes co-owner share holder in the property left by the Khatedar. It makes no difference whether the property is actually partitioned there and then or at some later stage by leaps and bounds but such legal heir holds his entitled undefined share in the property and the property is deemed to be held by all the co-owners. In the present case after the death of Sangram Singh even before coming into force of the Act, the property is deemed to have devolved on his wife and also his son Rajeshwar Singh in v equal shares. The mutation of all the property in the name of Rajeshwar Singh was of no consequence until and unless it is established that the property was transferred by other co-sharers under the Transfer of Property Act which is not the situation in the present case. On the date when the Act had come into force on 15.12.1963 or on the notified date to be 1.4.1966, the property in the hand of deceased Sangram Singh is deemed to be held jointly by his wife and his son in equal shares and, therefore, the petitioner Roop Raj Laxmi and his son Rameshwar Singh were to be treated as two separate family/units for the purpose of determination of ceiling under the Act of the total land which was owned by the deceased Sangram Singh at the time of coming into force of the Act.

15. Viewing from another angle that immediately after the death of the land owner in February 1963, had the land been actually partitioned and mutated in the name of two successors i.e. the petitioner Roop Raj Laxmi and his son Rajeshwar Rao, the legal heirs of the deceased land owner before coming into effect of the Act, in that situation, the land holders would have been the successors in the revenue record and each land owner was duty bound to file his return as per his holding. However, the situation would have been different if the land owner would have died after coming into force of the Act and before the notified date which is not the situation in the facts of the present case. If the land owner had died even before coming into force of the Act, the inheritance opens and each inheritor is a land owner in its own right for the un-defined share which could be defined on partition. It would not make any difference whether the actual partition takes place there and then or lateron.

16. The petitioner and his son Rajeshwar Singh has partitioned the land in the year 1970 and relies on that partition so far the family of Rajeshwar Singh is concerned i.e. his sons and his wife, that has no relevancy or is of no consequence for the purpose of declaration of surplus as Rajeshwar is to be treated as respondent family with his sons and his wife at the time of declaration of surplus land. Similarly, Smt. Roop Raj Laxmi, the petitioner, is to be treated as separate family holding half share of the total holdings of the late Sangram Singh. The property of Sangram Singh is deemed to be inherited by Smt. Roop Raj Laxmi and family of Rajeshwar Singh in equal shares immediately on the death of the holder, i.e. they shall be entitled to one unit each as per law.

17. For the above-said reasons and discussion, the impugned orders cannot be upheld. The orders of the courts below are to be set aside with the direction for

re-determination of the ceiling of the land which is deemed to have been held by Roop Raj Laxmi and his son Rajeshwar Singh in equal share on the death of Sangram Singh. Each share holder shall be entitled to one unit each. The parties shall be given the option to select their land as per law and any land which has been illegally transferred by the said parties to any person shall be deemed to have been included in their selection. The courts below have already given a finding as regard to the transfers made and the finding on such transfers shall be deemed to be final for the purpose of determination of surplus land in the hands of petitioner and his son Rajeshwar Rao.

18. The writ petition is allowed. The impugned orders are set aside with the above-said observations and directions. The land in question shall be taken to be the jointly owned by the petitioner Roop Raj Laxmi and her son Rajeshwar Singh at the death of Maharawal Sangram Singhji who had died before coming into force of the Act and also much before the notified detain equal shares and each of the said person shall be entitled to 30 acres of land as per law as separate one unit. They would be entitled to give their option. The transfers made by the parties contrary to law shall stand ignored as already held by the courts below.

19. With the above-said directions, the writ petition is allowed and the impugned orders are quashed so far they are against the above said directions. No order as to costs.