

(1994) 11 SC CK 0047

In the Supreme Court Of India

Case No : Civil Appeal No. 1180 of 1984.

Smt. Sooraj and others

APPELLANT

Vs

S.D.O., Rchli and others

RESPONDENT

Date of Decision : 22-11-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 80
Hindu Succession Act, 1956 — Section 4(2), 8
Madhya Pradesh Land Revenue Code, 1959 — Section 164

Citation : AIR 1995 SC 872 : (1995) 1 DMC 75 : (1994) 5 SCALE 151 : (1995) 2 SCC 45 : (1994) 5 SCR 686 Supp

Hon'ble Judges : K.S. Paripoornan, J;K. Ramaswamy, J

Bench : Division Bench

Advocate : Ranjit Kumar, for the Appellant; S.S. Khanduja, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal by special leave arises from the judgment and decree of the High Court of Madhya Pradesh at Jabalpur in Second Appeal No. 354/79 dated 3.9.1981. The appellants are the plaintiffs. They are the major daughters of one Ratan Singh who was the Bhoomidar of the lands in Khasra Nos. 36, 54, 146, 151, 165, 258 and the respective Rack was mentioned therein of a total of 41.49 acres. Ratan Singh died in 1960. The Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 had come into force which provides for fixation of ceiling on the holding of the agricultural lands. The first defendant, Sub-Divisional Officer, Rahli, Tehsil Rahli, determined that the widow of Ratan Singh was entitled to only 10.38 acres of land and the rest of the land was declared to be 'surplus' vide his proceedings dated 1.3.1976. The appellants challenged the validity of that order in Civil Suit No. 34A/76. The declaration sought therein was that "the plaintiffs pray that the suit of the plaintiff for declaration be decree and be declared mat in the lands mentioned in paragraph 1, plaintiffs have 3/4th share and defendant No. 1 (the mother) has 1/4 share and the order dated 1.3.1976 passed by the S.D.O., defendant No. 1, is unlawful and illegal." The trial court dismissed the

suit but, on appeal, the Second Additional District Judge, Sagar, allowed and decreed the suit. In the second appeal, the High Court reversed the decree and confirmed that of the trial court.

2. The High Court had followed the judgment of the Full Bench of the High Court in Nahar Hira Singh and Others Vs. Mst. Dukalhin and Others, .

3. Sri Ranjit Kumar, learned Counsel for the appellant contends that the Bhoomiswami right is inheritable and its devolution is governed by Section 164 of the Madhya Pradesh Land Revenue Code, but it should be subject to the operation of the provisions of the Hindu Succession Act, 1956. By operation of Sub-section (2) of Section 4 of the Act, only the tenancy rights have been excluded from the operation and Bhoomiswami rights are not tenancy rights but the one devolved by succession of ownership of the lands and, as such, Section 4(2) has become inapplicable. Thereby the appellants are entitled to succeed to the estate of their father by operation of Section 8 of the Hindu Succession Act. He places reliance on the decision of this Court in Bajaya Vs. Gopikabai and Another, and Anant Kibe and Ors. v. Purushottam Rao and Ors. [1984] Su SCC 175.

4. In the view we take, it is not necessary to consider the effect of the above two decisions of this Court. Sub-section (2) of Section 4 of the Hindu Succession Act reads thus:

(2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings.

(emphasis supplied)

The appellant squarely comes within 3rd Clause of Sub-section (2) of Section 4, namely, when the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 seeks to determine the holding of the agricultural lands by operation of Sub-section (2) of Section 4. The applicability of the Act shall stand excluded and should have no effect on the operation of the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960. The question then is whether the suit as such is maintainable. It is seen that under the provisions of the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960, the surplus land shall stand vested in the State. The State has not been impleaded eo nomine as a party-defendant to the suit nor notice u/s 80 of C.P.C. was issued to the State. The first defendant is only a statutory authority under the Ceiling Act. Therefore, without impleading the State Government or the Collector and without issuing the notice to the Government as enjoined u/s 80, the suit itself is not maintainable and is liable to be dismissed on this ground. Even otherwise also, Section 2(gg) of the Act defines "family" means "husband, wife and their minor children, if any". Admittedly, the appellants are major daughter and that, therefore, the only

person who satisfies the definition of "family" is the widow of Ratan Singh. Accordingly, that determination of the holding as prescribed under the Act has been made by a Competent Authority, namely, the first defendant. Thereby, the appellants cannot get any right de hors the provisions under the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 by operation of Sub-section (2) of Section 4 of the Hindu Succession Act.

5. Section 46 of the Madhya Pradesh Ceiling on Agricultural Holdings Act creates a bar to maintain any civil suit which reads thus:

Save as expressly provided in this Act, no civil court shall have any jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, 3 decided or dealt with by the competent authority.

6. Thereby, the legislative intention is that the proceedings initiated under the provisions of Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 shall be pursued only in the manner provided thereunder, namely, right of appeal and right of revision, and the jurisdiction of Civil Court has been barred to impugn any question settled or decision made or matter dealt with by the Competent Authority under the Act. Thereby the civil suit also has been barred by operation of Section 46. Though none of these questions have been raised nor dealt with by the courts below since they are pure questions of law untrammelled by any questions of facts we have adverted to and found that the suit is not maintainable for these reasons.

7. The appeal is accordingly dismissed but, in the circumstances, without costs.