
(2005) 12 RAJ CK 0067

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4071 of 1989

Sobhag Kanwar (Smt.)

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-12-2005

Acts Referred:

Citation : (2005) 12 RAJ CK 0067

Hon'ble Judges : S.N. Jha, C.J.;Krishan Kumar Acharya, J.

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.N. Jha, C.J.—The petitioner along with her sister Roop Bai filed revenue suit for declaration of their rights and possession over the lands of Khasra Nos. 29, 72, 75/1 and 75/2 measuring 27 bighas and 14 biswas situated in village chapras, Tehsil Bundi, By order dated 10th April, 1978 the Assistant Collector-11, Bundi dismissed the suit. The petitioner preferred appeal before the Revenue Appellate Authority which was dismissed on 24th April, 1981. She then filed second appeal before the Board of Revenue which too was dismissed on 10th October, 1988. She seeks quashing of the said orders. She also seeks quashing of the order of Collector, Bundi dated 03rd November, 1955 holding that the lands escheated to the Darbar/State in terms of Sub- section 32 of the Bundi Tenancy Act, 1942 on the death of Kishan Dan. She also seeks quashing of mutation No. 29 dated 02nd February, 1958 mentioning the name of respondent No. 6 Modu with respect to the lands. The petitioner further seeks declaration that the provisions of Section 32(a) and (b) of the Bundi Tenancy Act, 1942 are unconstitutional. It is mainly because of the provisions of Section 32 of the said Act, that the petitioner's claim was rejected by the authorities.

2. The case of the petitioner briefly is that her father Kishan Dan was the Khatedar tenant of Khasra Nos. 29, 72, 75/1 and 75/2 measuring 27 bighas and 14 biswas situated in village Chapras, Tehsil Bundi. He died in Samvat 2006 (corresponding to 1949 A.D.) leaving behind widow Smt. Lad Kanwar, two

daughters namely, Roop Bai and the petitioner herein. On the death of Kishan Dan the lands were mutated in the name of Smt. Lad Kanwar. She used to get the lands cultivated through respondent No. 6 Modu and receive half of the produce. Lad Kanwar died in Samvat 2009 (corresponding to 1952 A.D.). After her death the petitioner along with Roop Bai started receiving half share of the produce from respondent No. 6 as before. Respondent No. 6 continued to cultivate the lands up to Samvat 2014 (Corresponding to 1957 A.D.). On 02nd February, 1958 he got his name mutated in respect of the lands by bringing the concerned officials in his collusion vide mutation No. 29 dated 02.02.1958. The petitioner along with Roop Bai filed suit seeking declaration of their Khatedari rights in the lands but the same was rejected on the ground that under Section 32 of the Bundi State Tenancy Act, married daughters are not entitled to inherit property of the father. Appeal to the Revenue Appellate Authority and the second appeal to the Board of Revenue also were dismissed. She has now come to this Court in this writ petition seeking reliefs as mentioned above. It would not be out of place to mention here that during pendency of the proceedings before the authorities below, Roop Bai died and the matter was prosecuted by the petitioner alone.

3. The case of respondent No. 6 briefly is that his ancestors were cultivating the land in their own rights as tenant prior to death of Kishan Dan. On the death of Smt. Lad Kanwar escheat proceedings were initiated in respect of the lands in view of the provisions of Section 32 of the Bundi Tenancy Act, in absence of any legal heir. The proceedings was contested by the collaterals of the petitioner including Roop Bai. By order dated 03rd November, 1955 the Collector, Bundi held, that the land stood escheated to the State. The order was confirmed by the Commissioner, Kota Division on 25th April, 1956. Case of the respondent is that he was tenant in actual cultivatory possession of the land and his name was accordingly recorded as Khatedar tenant. Inasmuch as the land had escheated to the State in the year 1955, the suit seeking declaration of rights and possession filed in the year 1969 was wholly misconceived and untenable.

4. We find force in the objection of the respondents that in view of the order dated 03rd November, 1955 the claim of the petitioner in respect of the same very land could not be allowed. It is true that the petitioner seeks quashing of the said order dated 03rd November, 1955 too and in course of hearing our attention was drawn to the order of a Single Judge of this Court dated 09th September, 1997 in S.B. Civil Writ Petition No. 559/1985 quashing the said order dated 03rd November, 1955. However, as respondent No. 6 was not party to the case, the order is not binding on him. The order dated 03rd November, 1955 was quashed on the premise that it had been passed without notice but from documents enclosed with the reply of the respondent it appears that objections had been filed by the collaterals of the petitioner and also Roop Bai. These facts were apparently withheld from the Court. In any view, we do not think having regard to the fact that the order had been passed way back in 1955, the petitioner could legitimately challenge the same after over three decades.

5. Be that as it may, crux of the matter is whether the petitioner can claim any right as a daughter of Kishan Dan in view of Section 32 of the Bundi Tenancy Act.

6. Section 32 of the Bundi Tenancy Act reads as under:--

Section 32 (a) On the death of a male Succession. Khatedar, his rights in the holding shall pass by inheritance in the following order:--

I. Son.

II. Grand-son.

III. Great grant-son.

IV. Widow, if not re-married.

V. Father.

VI. Mother, not re-married.

VII. Step-mother, not re-married.

VIII. Father's father.

IX. Father's mother, not re-married.

X. Son's widow, not re-married.

XI. Grandson's widow, not re-married.

XII. Great grand-son's widow, not re-married.

XIII. Unmarried daughter.

XIV. Brother, the son of the same father as the deceased.

XV. Brother's son, the brother having been a son of the same father as deceased.

XVI. Father's brother.

XVII. Father's brother's son.

(b) On the death of a female Khatedar other than that mentioned in Sub-section (a) her rights in the holding shall pass by inheritance in the following order:--

I. Son.

II. Grand-son.

III. Great grand-son.

IV. Husband.

V. Unmarried daughter.

VI. Daughter's son,

VII. Brother.

VIII. Brother's son.

(c) When a female who has, either before, or after, the passing of this Act, succeeded a Khatedar as a widow, a son's widow, grand-son's widow, or a great grand-son's widow, as a mother, as a step-mother, as a father's mother, or as a daughter, dies or marries, her rights in the holding shall devolve in accordance with the order of succession laid down in Sub-section (a) or (b) above on the heir of the last Khatedar.

(d) Where there is no successor to a Khatedar in accordance with the order of succession laid down in the foregoing sub-sections, his rights in his holding shall escheat to the Darbar.

7. On a plain reading it would appear that the married daughter does not figure as an heir either of the father under Clause-(a) or of the mother under Clause-(b), Realizing the weakness of the case, therefore, the petitioner has challenged the constitutional validity of Section 32 of the Act and it was submitted that the provisions of Section 32 excluding the married daughters from the line of succession is violative of the mandate of Article 15 read with Article 13 of the Constitution of India. Article 15, it was pointed out, prohibits discrimination on the ground only of sex, among other things, and the Bundi Tenancy Act being an enactment in force in the territory of India immediately before the commencement of the Constitution of India in so far as it is inconsistent with the provisions of part III of the Constitution shall to the extent of such inconsistency be void.

8. Shri Manish Shishodia appearing for respondent No. 6, in reply, submitted that Section 32 of the Bundi Tenancy Act does not cause any discrimination between the son and daughter on the ground of sex. Referring to the various entries of Section 32, counsel submitted that it only makes distinction between married daughters and unmarried daughters and as married daughters form a distinct class such a distinction cannot be treated as hostile discrimination so as to attract the provision of part III of the Constitution of India. The submission of the counsel is in accord with the recitals of heirs in Section 32 of the Act.

9. On a bare reading, it is apparent that among other heirs, widow, mother, step-mother, father's mother, son's widow, grandson's widow besides unmarried daughters have been mentioned as heirs entitled to succeed to the rights of the male khatedar in the holding. Similarly on the death of the female khatedar, the unmarried daughter has been shown as heir. Like unmarried daughter, widow mother, stepmother etc. cease to be heirs on their remarriage.

10. In re In Re: The Special Courts Bill, 1978, a decision rendered by Seven Judges of the Supreme Court, the scope and ambit of Article 14 of the Constitution was set out in the form of propositions. For the purpose of this case, the following propositions may be extracted:--

The classification must not be arbitrary but must be rational, that is to say, it

must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act.

The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in a relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense above mentioned.

11. In *Motor General Traders and Another Vs. State of Andhra Pradesh and Others*, it was observed, referring to Article 14 :--

The equality clause contained in that Article requires that all persons subjected to any legislation should be treated alike under like circumstances and conditions. Equals have to be treated equally and un-equals ought not to be treated equally. While that Article forbids class legislation, it does not forbid classification for purposes of implementing the right of equality guaranteed by it. In order, however, to pass the test of permissible classification two conditions must be intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and, (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. While the classification may be founded on different bases what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. 12. Whether Section 32 of the *Bundi Tenancy Act*, particularly the exclusion of married daughters from the list of heirs therein, passes the test laid down by the Supreme Court in the aforementioned cases? While considering the challenge of discrimination on the ground of only sex, it is to be kept in mind that while unmarried daughter is included in the list of heirs, the married daughter is not. There is no doubt that the married daughters form a distinct case by themselves. The apparent reason being that on marriage, the daughter becomes member of the family of the husband/in-laws and as such is entitled to succeed on the death of her husband till her re-marriage, if any, under Section 32 as well, apart from the general law of inheritance. On such re-marriage she again becomes member of yet another family and therefore cease to be heir. We are of the view that the classification between the married daughters and unmarried daughters is founded on an intelligible differentia and has a rational nexus with the object sought to be

achieved. The object obviously is to lay down line of succession amongst the heirs and if a person ceases to be member of the family, there is justification to exclude him or her from the line of successions. We are thus satisfied that the provisions of Section 32 of the Act are not ultra vires Article 15 read with Article 13 of the Constitution of India.

13. Coming to the facts of the case, apart from everything else, by virtue of the order of mutation in his favour dated 2nd February, 1958 amounting to recognition of his tenancy right, respondent No. 6 became Khatedar in his own right by virtue of provisions of Section 15 of the Rajasthan Tenancy Act, 1955. Section 15 of the Act provides, so far as relevant, as under:--

15. Khatedar tenants-[(1)] Subject to the provisions of section 16 [and Clause (d) of Sub-section (1) of Section 180] every person who, at the commencement of this Act, is a tenant of land otherwise than as a sub-tenant or a tenant of khudkasht or who is, after the commencement of this Act, admitted as a tenant or tenant or khudkasht or an allottee of land under, and in accordance with, rules made under Section 101 of the Rajasthan Land Revenue Act, 1956 (Rajasthan Act 15 of 1956) or who acquires Khatedari right in accordance with provisions of this Act or of the Rajasthan Land Revenue and Resumption of Jagir Act, 1952 (Rajasthan Act VI of 1952), or of any other law for the time being in force shall be Khatedar tenant and shall, subject to the provision of this Act be entitled to all the rights conferred; and be subject to all the liabilities imposed on Khatedar tenants by this Act.

... 14. In any view of the matter, the lands having escheated in 1955, apart from the grant of tenancy rights in favour of respondent No. 6 by virtue of his cultivating possession of the land, the authorities below did not commit any error in upholding the claim of the respondent and rejecting that of the petitioner.

15. Thus, we do not find any merit in the writ petition and the same is accordingly dismissed without any order as to costs.