
(2009) 05 RAJ CK 0014
In the Rajasthan High Court

State of Rajasthan

APPELLANT

Vs

Hans Raj Singh and Another

RESPONDENT

Date of Decision : 26-05-2009

Acts Referred:

Constitution of India, 1950 — Article 227

Hindu Adoptions and Maintenance Act, 1956 — Section 12

Citation : (2009) 3 WLN 83

Hon'ble Judges : Sangeet Raj Lodha, J;Arvind Mohanlal Kapadia, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sangeet Lodha, J.—This special appeal is directed against order dt. 22.04.1997 whereby the writ petition preferred by the writ petitioner-respondent No. 1 (hereinafter referred as "the respondent") herein against the order dt. 04.06.1990 passed by the Board of Revenue affirming the order dt. 08.07.1985 of Collector, Jalore directing resumption of 19.06 acre of surplus land vested in the Government and order dt. 24.07.1990 dismissing the review application preferred by the respondent for review of order dt. 04.06.1990, has been allowed and accordingly, aforesaid orders dt. 08.07.1985, 04.06.1990 and 24.07.1990 have been quashed and set aside.

2. The relevant facts in nutshell are that the ceiling proceedings were initiated against the respondent under the Rajasthan Imposition of Ceiling on Agriculture Holdings Act, 1973 (in short "the Act of 1973" hereinafter) but the same were dropped vide order dt. 19.08.1975 of Sub Divisional Officer (in short "SDM"), Jalore. However, the ceiling proceedings were reopened by the State Government u/s 15(1) of the Act of 1973 and the matter was referred to the Collector, Jalore for decision afresh in accordance with law.

3. After due consideration, the Collector found that on 01.01.1973 the respondent had 170 bighas 8 biswas of land. The transfer of 70 bighas 14 biswas land made by the respondent No. 1 in favour of one Shri Khuman Singh vide

registered sale deed dt. 21.03.1972 was not found to be bona fide transfer, accordingly, while refusing to recognise the transfer, the same was taken into consideration by the Collector in determining the ceiling area applicable to the respondent. After assessment of the land held by the respondent as aforesaid, there being less than five members in the family, he was permitted to retain 48 acres of irrigated land and remaining 19.06 acres land was ordered to be resumed.

4. Aggrieved by the said order dt. 18.07.1985, the respondent preferred an appeal u/s 23(2A) of the Act of 1973 before the Board of Revenue, Rajasthan. It was contended on behalf of the respondent that the Collector has erred in holding that the transfer of 70 bighas 14 biswas land made by the respondent in favour of Shri Khuman Singh by way of registered sale deed dt. 21.07.1972 is not recognizable. That apart, it was submitted that the land in question belonged to father of the respondent, Shri Chandan Singh and it was entered in the name of respondent vide mutation No. 51 dt. 14.04.1978. Accordingly, it was contended that since Shri Chandan Singh left behind his minor son, the respondent herein and widow Smt. Habat Kanwar, after death of Shri Chandan Singh, his widow and the son inherited the land in equal shares, therefore, the respondent Hans Raj and widow of Smt. Habat Kanwar should have been treated as separate assesseees and each of them were entitled to retain 46 acre of irrigated land.

5. On the basis of the revenue record, the Board of Revenue found that after the death of Shri Chandan Singh, the whole land was entered in the name of his widow Smt. Habat Kanwar. The Board of Revenue further found that the respondent was adopted by Smt. Habat Kanwar sometime in the year 1968 and immediately after his adoption, Smt. Habat Kanwar transferred the whole land to the respondent vide mutation No. 51 dt. 14.04.1968. As per the revenue record, the said mutation was attested on the basis of the deed dt. 12.02.1968 executed by Smt. Habat Kanwar in favour of the respondent Shri Hans Raj Singh. The Board of Revenue found that the transfers were made to defeat the provisions of Ceiling Law and were rightly not recognized by the Collector. Regarding the contention that Smt. Habat Kanwar and the respondent should have been treated as separate assesseees, the Board of Revenue observed that such objection was never raised by the respondent before the Collector, the contention raised before the Board of Revenue has no factual basis and should not have been pressed. Accordingly, the appeal preferred by the respondent was dismissed vide order impugned dt. 04.06.1990.

6. The respondent preferred a review application u/s 229 of the Rajasthan Tenancy Act, 1955 before the Board of Revenue for review of order dt. 04.06.1990. It was reiterated on behalf of the respondent in the review petition that after the death of Shri Chandan Singh, the land devolved on his widow Habat Kanwar and Hans Raj Singh, the respondent herein, therefore, both of them should have been treated as separate assesseees. After due consideration,

the Board of Revenue reiterated the finding that after the death of Shri Chandan Singh, the whole land was mutated in favour of Smt. Habat Kanwar because Shri Hans Raj Singh was not adopted by then. Relying upon the provisions of proviso (c) to Section 12 of Hindu Adoption and Maintenance Act, the Board of Revenue held that the adoption does not divest anyone from the property which is already vested, therefore, on adoption Smt. Habat Kanwar remained the absolute owner of the land till she voluntarily transferred it to her adopted son Shri Hans Raj Singh, the respondent herein. The Board of Revenue further observed that Habat Kanwar has died in 1985, therefore, Shri Hans Raj Singh has again become the sole owner of the land and in terms of Section 17 of the Ceiling Act, any person who acquires any land after 01.01.1973 is also liable to surrender such land. Accordingly, the review petition was rejected by the Board of Revenue vide order impugned dt. 24.07.1990.

7. The writ petition preferred by the petitioner has been allowed by the learned Single Judge in light of a Bench decision of this Court dt. 13.11.1996 rendered in the matter of Smt. Durga Devi and Ors. v. Board of Revenue and Ors. D.B. Civil Writ Petition No. 1492/95 relied upon by the learned Counsel appearing for the respondent herein, wherein it has been held that the land acquired after 01.01.1973 cannot be included in determining the ceiling area applicable to the land holder.

8. It is contended by the learned Government Counsel for the appellant that the learned Single Judge has seriously erred in allowing the writ petition being covered by a Bench decision of this Court in Durga Devi's case (supra). The learned Counsel submitted that the land acquired after 01.01.1973 cannot be included in determining the ceiling area applicable to the land holder, was not the question involved in the present matter and no such ground was raised by the respondent in the writ petition. The learned Counsel submitted that after the death of Shri Chandan Singh, all the lands were entered in the name of his widow Smt. Habat Kanwar. It is submitted that the respondent was adopted by Smt. Habat Kanwar after the death of Shri Chandan Singh in the year 1968 and thereafter, she transferred whole land devolved on her by inheritance, by way of a deed dt. 12.02.1968 and accordingly, the land was entered in the revenue record in the name of the respondent vide mutation No. 58 dt. 14.04.1968, therefore, by no stretch of imagination it can be said to be a case of transfer of land after 01.01.1973. Accordingly, the Government Counsel urged that the learned Single Judge has committed an error apparent on the face of record in deciding the writ petition in light of Durga Devi's case (supra). The learned Government Counsel submitted that the finding arrived at by the Board of Revenue after due consideration of all the relevant aspects cannot be faulted with and the learned Single Judge has seriously erred in setting aside the orders impugned without appreciating the actual controversy involved in the matter.

9. Per contra, the learned Counsel appearing on behalf of the respondent submitted that admittedly, the land originally belonged to Shri Chand Singh

which has been inherited by his widow and the respondent came in adoption, therefore, by operation of law, the respondent and his mother being co-sharer were entitled to share the land equally. The learned Counsel submitted that the finding recorded by the Board of Revenue that initially, the mother of respondent inherited the whole land and thereafter, the respondent became the sole owner of the land, is against the provision of Hindu Succession Act and Hindu Adoption and Maintenance Act, 1956. The learned Counsel submitted that the Board of Revenue has seriously erred in treating the adoption deed executed on a stamp of Rs. 3/- as transfer of the land by the widow in favour of respondent. The learned Counsel submitted that the deed was neither registered as a gift deed nor it was acted upon as gift deed nor any gift was made therefore, on the basis of the said document which is essentially an adoption deed, it cannot be said that the right of the widow in the land stands extinguished and the respondent has become the sole owner of the entire land. The learned Counsel submitted that the Board of Revenue has erred in observing that after the death of Smt. Habat Kanwar, the respondent has again become sole owner of the land and therefore, in terms of provisions of Section 17 of the Act of 1973 also, the respondent is liable to surrender the the land in excess of the ceiling limit.

10. We have considered the rival submissions and perused the material on record.

11. In the first instance, it will be appropriate to consider as to whether the learned Single Judge has rightly allowed the writ petition holding that the controversy involved in the matter stands covered by a Bench decision of this Court in Durga Devi's case.

12. As a matter of fact, in Durga Devi's case (supra), a Bench of this Court while dealing with the ceiling proceedings reopened in terms of Section 15(2) of the Act of 1973 observed that while determining the ceiling area in the hands of land holder the relevant date is 01.04.1966, therefore, any land acquired after 01.04.1966 cannot be taken into consideration for determination of the ceiling area as on the appointed date. In the said case, while determining the ceiling area applicable to the land holder, the authorised officer had taken into consideration the land acquired by the land holder in the year 1968-69 which was held to be illegal by this Court observing that if any land has been acquired by any person or the family after 01.04.1966 then the proceedings can be taken u/s 33E of the Rajasthan Tenancy Act, 1955, but the land acquired after 01.04.1966 cannot be included for determination of the ceiling area. Admittedly, in the present case, Shri Chandan Singh had died before the adoption of the respondent in the year 1968 and, therefore, devolution of interest in favour of the respondent, if any, was effective before 01.01.1973 and the question of the respondent acquiring the land in question after 01.01.1973 simply does not arise. Thus, in our considered opinion, the ratio of the said decision is not at all applicable to the controversy involved in the present case and the learned Single Judge has apparently erred in allowing the writ petition applying the ratio of decision in Smt. Durga Devi's case (supra) relied upon on behalf of the

respondent.

13. This takes us to consideration of the contentions raised by the learned Counsel for the parties before us regarding the correctness of the orders passed by the Board of Revenue which were impugned in the writ petition.

14. Admittedly, the respondent was adopted by Smt. Habat Kanwar after the death of Shri Chandan Singh, therefore, being the sole legal heir, the whole land devolved on Smt. Habat Kanwar and was accordingly, mutated in her name in the revenue record. It is also not in dispute that the respondent was adopted by Smt. Habat Kanwar after the death of Shri Chandan Singh, some time in the year 1968 and an adoption deed was executed and got registered with the Sub-Registrar, Aahore on 12.02.1968. A perusal of the said deed dt. 12.02.1968 reveals that while giving the description of the land in question, it has been specifically mentioned therein by Smt. Habat Kanwar that she has transferred the whole land to the respondent. Admittedly, on the basis of the said document, the mutation of the whole land was made in favour of the respondent and was attested by the competent authority. Therefore, as on 01.01.1973, the whole land stood transferred in the name of the respondent. It is pertinent to note that in the ceiling proceedings initiated against the respondent earlier, the return was filed by him claiming himself to be the sole owner of the whole land. That apart, even according to the respondent, he had transferred 70 bighas 14 biswas land in favour of Shri Khuman Singh obviously, as an owner of the land vested in him on the strength of the transfer made by Smt. Habat Kanwar and the mutation effected in his name on the basis of the aforesaid deed dt. 12.02.1968 therefore, the respondent cannot be permitted to contend that the document in question is only an adoption deed and no transfer was effected in his favour by Smt. Habat Kanwar under the said document.

15. As detailed supra, after the death of Shri Chandan Singh, being sole surviving heir, the whole land devolved on Smt. Habat Kanwar and ownership rights of land in question had vested absolutely in her in terms of the provisions of Hindu Succession Act, 1956. Admittedly, the land in question belonged to Shri Chandan Singh and it was not a coparcenary or joint family property therefore, after the death of Shri Chandan Singh, the ownership rights of the property having vested in his widow Smt. Habat Kanwar, the respondent would not have any right to claim share in the property as co-sharer by legal fiction as deemed son of deceased Shri Chandan Singh.

16. It is to be noticed that after coming into force of Hindu Adoption and Maintenance Act, 1956, by virtue of provisions of Section 6, a female Hindu herself is entitled to take a son or daughter in adoption and she need not have an authority from her husband. Section 12 of the Hindu Adoption and Maintenance Act deals with effects of adoption and as per proviso (c) to Section 12, the adopted child shall not divest any person of any estate which vested in him or her before the adoption. Thus, after the death of Shri Chandan Singh, adoption of the respondent by Smt. Habat Kanwar in no manner can divest her

from the land already vested in her by inheritance. Therefore, the contention raised on behalf of the learned Counsel for the respondent that after the death of Shri Chandan Singh, the land devolved on his widow Smt. Habat Kanwar and the respondent Hans Raj Singh by operation of law and, therefore, both of them should be treated as separate assesseees under the Act of 1973 is absolutely devoid of any merit.

17. Assuming for the sake of argument that the land in question cannot be said to have been transferred by Smt. Habat Kanwar in favour of the respondent vide deed dt. 12.02.1968 and the mutation entry dt. 14.04.1968 then, obviously, after the death of Smt. Habat Kanwar in the year 1985, the entire land devolves on respondent as an adopted son of Smt. Habat Kanwar. In that situation also, as per the provisions of Section 17 of the Act of 1973, the respondent cannot retain the land acquired by devolution in excess of the ceiling area, therefore, the Board of Revenue has committed no error in observing that even otherwise, the respondent is liable to surrender the land acquired in excess of ceiling limit after 01.01.1973.

18. In view of the discussion above, in considered opinion of this Court, the orders impugned passed by the Board of Revenue do not suffer from any infirmity or illegality warranting interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

19. In the result, the special appeal succeeds, it is hereby allowed. The order under appeal dt. 22.04.1997 passed by the learned Single Judge is set aside. The writ petition preferred by the respondent is dismissed. Consequently, the order dt. 08.07.1985 of the Collector, Jalore and orders dt. 04.06.1990 and 24.07.1990 of the Board of Revenue shall stand restored. No order as to costs.