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(2022) 05 CAL CK 0010

In the Calcutta High Court

Case No : F.M.A. No. 290 Of 1984, A. No. C.A.N. 3 Of 2008, 5 Of 2020 (Old No: C.A.N. 9798 Of 2008)

Tara Prosad Lodha & Ors. APPELLANT

Vs

Revenue Officer, Para & Ors. RESPONDENT

Date of Decision : 05-05-2022

Acts Referred:

West Bengal Estates Acquisition Act, 1953 — Section 2(i), 4(1), 6, 6(1), 52, 60, 61
Bihar and West Bengal (Transfer Of Territories) Act, 1956 — Section 3
Hindu Succession Act, 1956 — Section 4, 6, 8, 19
West Bengal Land Reforms Act, 1955 — Section 50, 51A(9)

Citation : (2022) 05 CAL CK 0010

Hon'ble Judges : Arijit Banerjee, J;Kausik Chanda, J

Bench : Division Bench

Advocate : Debayan Bera, Chanchal Kr. Dutta, Krishna Mullick, Piyush Chaturbedi, Syed Shamsher Ali, Rajesh Upadhayay, Lalit Mohan Mahata, Sanjib Das

Final Decision : Disposed Of

Judgement

Arijit Banerjee, J

1. This appeal is directed against the judgment and order dated February 18, 1982, passed in a review application being C.R. No. 7181(W) of 1980. By filing the said application, the writ petitioners had sought review of the judgment and order dated March 12, 1980, passed by the same learned Judge in Civil Rule No. 7803(W) of 1976.

2. The brief facts of the case are, one Gajadhar Lodha was the owner of substantial lands situate in the District of Purulia. Prior to becoming a part of West Bengal, the territory which is now known as Purulia was part of the State of Bihar. On February 12, 1954, the West Bengal Estates Acquisition Act, 1953, came into force. With effect from April 15, 1955, all estates and rights of intermediaries (defined in Section 2 (i) of the 1953 Act as a proprietor, tenure–

holder, under–tenure–holder or any other intermediary above a raiyat or a non-agricultural tenant and includes a service tenure-holder and, in relation to mines and minerals, includes a lessee and a sub-lessee) vested in the State (except for the District of Purulia since Purulia was then not a part of West Bengal). With effect from April 14, 1956, all estates and rights of raiyats and under-raiyats vested in the State, except for Purulia district. On June 17, 1956, the Hindu Succession Act, 1956 came into force. On September 1, 1956, Bihar and West Bengal (Transfer of Territories) Act, 1956, came into force. On November 1, 1956, major part of Purulia was transferred to and became a part of the State of West Bengal by virtue of Section 3 of the Bihar and West Bengal (Transfer of Territories) Act, 1956. On September 24, 1958, the West Bengal Transfer of Territories (Assimilation of Laws) Act, 1958, came into force.

3. On April 2, 1962, Gajadhar died leaving behind as his legal heirs, his widow, two sons, two sons of two pre-deceased sons and four daughters.

4. In 1963, the West Bengal Estates Acquisition (Second Amendment) Act, 1963, was promulgated whereby Chapter VIII, captioned 'Application of the Act to Transferred Territories', was incorporated in the Estates Acquisitions Act, 1953. Chapter VIII contains two Sections which are as follows:-

"60. When this Chapter is to come into force.- The provisions of this Chapter shall come into force on such date and in such area of the transferred territories as the State Government may, by notification in the Official Gazette, appoint, and for this purpose different dates may be appointed for different areas.

Explanation.- In this Chapter 'transferred territories' means the territories transferred from the State of Bihar to the State of West Bengal by Section 3 of the Bihar and West Bengal (Transfer of Territories) Act, 1956 (40 of 1956).

61. Application of the Act to transferred territories. – On the issue of a notification under Section 60, in the area in respect of which such notification is issued,-

(1) The Bihar Land Reforms Act, 1950 (Bihar Act 30 of 1950), shall stand repealed and the provisions of the foregoing Chapters of this Act shall mutatis mutandis apply:

Provided that any reference in the foregoing Chapters of this Act to the Bengal Tenancy Act, 1885 (VIII of 1885), or any provision thereof shall, as the case may be, be construed as a reference,-

(i) in the case of application of such Chapters to the area comprised in the district of Purulia, - to the Chota Nagpur Tenancy Act, 1908 (Ben. Act VI of 1908), or the corresponding provision thereof, and

(ii) In the case of application of such Chapters to any other area of the transferred territories,- to the Bihar Tenancy Act, 1885 (VIII of 1885), or the corresponding provisions thereof;

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(2) estates or interests vested in the State Government under the provisions of the Bihar Land Reforms Act, 1950 (Bihar Act 30 of 1950), prior to the date of issue of the notification shall be deemed to have vested in the State Government under the provisions of this Act:

Provided that –

(i) no intermediary shall be allowed to retain any land other than, or in excess of, what is permitted under the provisions of Section 6 or any other provision of this Act;

(ii) any land or interest which has vested in the State Government under the provisions of the Bihar Land Reforms Act, 1950, but which the ex-intermediary shall be entitled to retain under the provisions of this Act shall, if possible, be restored to him and no compensation shall be payable for any land or interest so restored;

(iii) assessment of compensation already made or in progress on or before the date of issue of the notification shall be reopened and assessment of compensation for all lands and interests vested or deemed to have been vested in the State Government under this Act shall be made afresh under the provisions of this Act;

(iv) if an intermediary had possessed any land other than, or in excess of, what is permitted under the provisions of Section 6 or any other provisions of this Act, he shall be liable to pay to the State Government for the period for which he has continued in possession of such land after his estate or interest vested in the State Government, such damages for use and occupation of such land as shall be calculated at the rate of Rs. 10 per acre per annum;

(v) any sum payable by an intermediary as damages under Clause (iv) shall be recoverable as a public demand."

5. By issuing notification dated February 17, 1964, under Section 60 of the 1953 Act, the West Bengal Government appointed March 1, 1964 to be the date on which the provisions of Chapter VIII would come into force and accordingly Chapter VIII came into force on such date.

6. On March 10, 1964 two notifications were published by the State under Sections 4(1)/60 and Sections 52/61 of the 1953 Act, by reasons whereof with effect from 1st Baisakh, 1371, corresponding to April 14, 1964, all estates and rights of every intermediary as also land held by raiyat and under-raiyat together with their rights therein in the District of Purulia, vested in the State. Accordingly, the land which was owned by Gajadhar also vested in the State with effect from April 14, 1964.

7. On November 10, 1970, Big Raiyat Case No. 29 was initiated against Gajadhar (who had died on April 2, 1962) under Section 6 of the 1953 Act.

8. By an order passed by the concerned Revenue Officer on December 24, 1970,

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the entire land of Gajadhar was vested in the State, on the ground that no right of retention had been exercised by him.

9. The said order of the Revenue Officer was challenged by the legal heirs of Gajadhar in C.R. No. 7803(W) of 1976. The writ petition was disposed of by a learned Single Judge by a judgment and order dated March 20, 1980, by setting aside the order of vesting. The operative portion of the said order reads as follows:-

"Let a Writ of certiorari issue quashing the order passed in the B.R. Case no. 29, Annexure 'B' to the petition. Let a Writ of Mandamus issue commanding the respondents not to give effect to the said orders. The respondents are further commanded to rehear the said B.R. Case and to give an opportunity to the petitioners to submit return in Form 'B" in the manner indicated hereinafter. The petitioners have waived service of notices of the B.R. Case No. 29, within four months from this date they will submit as one unit on behalf of the deceased Gajadhar Lodha return in form "B" and statement in Form I. In case such return in Form "B" and statements are filed within time, after giving an opportunity to the petitioners the Revenue Officer will again dispose of the B.R. Case In accordance with law. There will be status quo, at the first instance, for a period of four months from date. Thereafter the status quo will continue in respect of the lands included in the "B" form, if submitted by the petitioners within time, till the disposal of the B.R. Case."

10. The writ petitioners were aggrieved by the portion of the said order directing that "they will file return in Form 'B' and statement in Form 'i' as one unit on behalf of the deceased Gajadhar Lodha". Their contention was that each of the legal heirs of Gajadhar would be entitled to retain the permissible quantity of land as independent units, since, Gajadhar having passed away in April 1962, his entire land devolved on and vested in his legal heirs.

11. Accordingly, the writ petitioners moved an application before the same learned Single Judge for reconsideration and/or modification of the order dated March 20, 1980, which was marked as C.R. No. 7181(W) of 1980. In such application, an injunction application was also filed.

12. By a judgment and order dated February 18, 1982, both the applications were dismissed. However, the time for filing 'B' Form by the writ petitioners as a Single Unit was extended by 3 months from the date of the order.

13. The said order dated February 18, 1982, is under challenge in the present appeal. Appearing in support of the appeal, Mr. Debayan Bera, learned Senior Counsel, submitted that no doubt, the family of Gajadhar was governed by the Mitakshara Law. However, as on the date of death of Gajadhar i.e. April 2, 1962, as per Section 6 of the Hindu Succession Act, 1956, as it stood then, upon the death of a male Hindu, if he left behind a female relative specified in Class I to the Schedule, any interest of the deceased in a Mitakshara coparcenary property would devolve by testamentary or intestate succession, as the case may be,

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under the said Act and not by survivorship. In the present case, Gajadhar left behind five female relatives specified in Class I of the Scheduled to the Hindu Succession Act, and accordingly his interest in the coparcenary Property devolved by way of intestate succession equally in 1/9th share on all the legal heirs, entitling each of them to be treated as an independent unit and not as one unit taken all together.

14. In this connection learned Counsel relied on the decision of the Hon'ble Supreme Court in the case of Uttam v. Saubhag Singh &Ors.; (2016) 4 SCC 68 wherein, at paragraph 18 of the reported judgment, it has been held as follows:-

"Some other judgments were cited before us for the proposition that joint family property continues as such even with a sole surviving coparcener, and if a son is born to such coparcener thereafter, the joint family property continues as such, there being no hiatus merely by virtue of the fact there is a sole surviving coparcener. Dharma Shamrao Agalawe v. Pandurang Miragu Agalawe, Sheela Devi v. Lal Chand and Rohit Chauhan v. Surinder Singh were cited for this purpose. None of these judgments would take the appellant any further in view of the fact that in none of them is there any consideration of the effect of Sections 4, 8 and 19 of the Hindu Succession Act. The law, therefore, insofar as it applies to joint family property governed by the Mitakshara School, prior to the amendment of 2005, could therefore be summarised as follows:-

(i) When a male Hindu dies after the commencement of the Hindu Succession Act, 1956, having at the time of his death an interest in Mitakshara Coparcenary property, his interest in the property will devolve by survivorship upon the surviving members of the coparcenary (vide Section 6).

(ii) To proposition (i), an exception is contained in Section 30 Explanation of the Act, making it clear that notwithstanding anything contained in the Act, the interest of a male Hindu in Mitakshara coparcenary property is property that can be disposed of by him by will or other testamentary disposition.

(iii) A second exception engrafted on proposition (i) is contained in the proviso to Section 6, which states that if such a male Hindu had died leaving behind a female relative specified in Class I of the Schedule or a male relative specified in that class who claims through such female relative surviving him, then the interest of the deceased in the coparcenary property would devolve by testamentary or intestate succession, and not by survivorship.

(iv) In order to determine the share of the Hindu male coparcener who is governed by Section 6 proviso, a partition is effected by operation of law immediately before his death. In this partition, all the coparceners and the male Hindu's widow get a share in the joint family property.

(v) On the application of Section 8 of the Act, either by reason of the death of a male Hindu leaving self-acquired property or by the application of Section 6 proviso, such property would devolve only by intestacy and not survivorship.

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(vi) On a conjoint reading of Sections 4, 8 and 19 of the Act, after joint family property has been distributed in accordance with Section 8 on principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons who have succeeded to it as they hold the property as tenants-in-common and not as joint tenants."

15. Learned Counsel also relied on the decision of the Hon'ble Supreme Court in the case of W.B. Govt. Employees (Food & Supplies) Coop. Housing Society Ltd. & Ors. v. Sulekha Pal (Dey) (Smt) & Ors.: (2003) 9 SCC 253 in support of the proposition that even if no right to retain is exercised under Section 6(1) of the Estate Acquisition Act by an intermediary during the prescribed period, the Revenue Officer is still obliged to give the intermediary an opportunity of being heard and if he so wants, to allow him to retain so much of the land as does not exceed the prescribed limit.

16. Appearing for the State, Mr. Mahata, learned Advocate, in his usual fairness submitted that in the facts of the present case, since Gajadhar passed away prior to vesting of the concerned land in the State, it cannot be disputed that the writ petitioners being legal heirs of Gajadhar would be entitled to file return in the Form 'B' as independent units, provided however, that they were in Khas Possession of the land as on the date of vesting. He submitted that after Gajadhar's demised in 1962, his legal heirs did not get their names mutated in the land records. They never paid any rent. In the Record of Rights, Gajadhar's name stands as the owner of the land. There is nothing to show that as on the date of vesting of the land, Gajadhar's legal heirs were in Khas possession thereof.

17. Mr Mahata relied on a decision of the Hon'ble Supreme Court in the case of West Bengal Housing Board & Ors. v. Brijendra Prasad Gupta & Ors. 1997(2) CHN (SC) 33 in support of the proposition that Record of Rights is a statutory document maintained by the prescribed authority under Section 50 of the West Bengal Land Reforms Act, 1955 and it is a notice to the public at large as to who are the owners of the land in the records of the authorities. Under Section 51(A) (9) of the Land Reforms Act, every entry in the Record of the Rights shall be presumed to be correct, until it is proved that the same is incorrect. Mr. Mahata submitted that the vesting proceedings were initiated in 1970 in Gajadhar's name since his name was still in the Record of Rights as the owner of the concerned land.

18. As regards Khas Possession, Mr. Mahata relied on a decision of a learned Judge of this Court in the case of Jagannath Prasad and Ors. v. Goti Unai Reported at 85 CWN 317. In Paragraph 9 of the said Judgment it was observed that on a plain reading of Section 6 of the West Bengal Estates Acquisition Act, "it appears that unless the non-agricultural land or the agricultural land remains in the khas possession of the intermediary within the ceiling limit, he cannot retain the same."

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19. In reply, learned Advocate for the appellants submitted that the presumption of correctness of an entry in the Record of Rights is a rebuttable one and stands rebutted by the admitted fact that Gajadar died in 1962.

20. I have considered the rival contentions of the parties.

21. It is not in dispute that Gajadhar died on April 2, 1962 much prior to vesting of the concerned land in the State. Vesting took place on April 14, 1964.

22. Section 6 of the Hindu Succession Act, 1956, as it stood as on the date of death of Gajadhar, was, in so far as relevant for the present purpose, to the following effect:-

"6. Devolution of interest in coparcenary property.- When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship".

23. It is also not in dispute that Gajadhar died intestate living his widow, two sons, two children of two predeceased sons and 4 daughters who are all Class I heirs as per the Schedule to the Hindu Succession Act, 1956. By virtue of the proviso to Section 6 of the Hindu Succession Act as it stood when Gajadhar died, Gajadhar's interest in the Mitakshara coparcenary property would devolve by way of intestate succession under the 1956 Act and not by survivorship. This means, Gajadhar's interest in the coparcenary property would devolve according to the general rule of succession laid down in Section 8 of the Hindu Succession Act, which reads as follows:-

"8. General rules of succession in the case of males.- The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter –

(A) Firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) Secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) Thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) Lastly, if there is no agnate, then upon the cognates of the deceased".

24. Since all the legal heirs left behind by Gajadhar belong to class I of the Schedule to the Hindu Succession Act, all 9 of them would take equally. In other words, each of the 9 legal heirs would inherent 1/9th of Gajadhar's interest in

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the Mitakshara coparcenary property. Thus, each of them became owner of 1/9th undivided share in the interest of Gajadhar in the coparcenary property immediately upon the death of Gajadhar since vesting had not yet taken place. Consequently, each of the legal heirs of Gajadhar became an 'intermediary' within the meaning of Section 6 of the West Bengal Estates Acquisition Act, 1953 read with Section 2(i) thereof, entitling each of them as an independent unit to retain land up to the permissible limit after vesting took place in 1964. In all fairness to the learned Counsel for the State, he also did not dispute this position.

25. In view of the aforesaid, the portion of the order impugned, directing or granting liberty to the appellants to file 'B' Form as a single unit, is set aside.

26. The contention of the State regarding the appellants not being in 'khas possession' of the land in question as on the date of vesting is not acceptable. When B.R. Case No. 29 was initiated against Gajadhar in 1970, he was no more in this world although his name appeared in the Record of Rights. The proceedings were a nullity having been initiated against a dead person. The presumption of correctness of an entry in the Record of Rights is a rebuttable one and stands rebutted by the admitted fact of Gajadhar's demise in 1962. It is not the case of the State that Gajadhar was ever dispossessed of khas possession. Upon Gajadhar's death, his legal heirs would be deemed to be in khas possession. Nothing has been shown by the State to indicate that the legal heirs of Gajadhar were not in khas possession of the land in question as on the date of the vesting.

27. Further, the learned Single Judge by permitting the appellants to file 'B' Form, albeit as a unit, implicitly recognised that the appellants were in khas possession. It amounted to a finding by the learned Single Judge to that effect. Such finding or permission granted to the appellants to file 'B' Form on the basis of such finding has not been challenged by the State by way of appeal or otherwise. Hence, the State cannot today argue that the appellants were not in khas possession as on the date of vesting of the concerned land.

28. In view of the aforesaid, the order of the learned Single Judge stands modified to the extent that the writ petitioners/appellants will be entitled to submit return in Form 'B' and statement in Form 'I' as independent units within 4 months from date. In case the same is done within time, the concerned revenue officer will rehear the B.R. case and dispose it of in accordance with law after giving an opportunity of hearing to the appellants. Status quo shall be maintained at the first instance, for a period of 4 months from date. Thereafter, status quo will continue in respect of the lands included in the 'B' Form, if submitted by the appellants within the time period indicated above, till the disposal of the B.R. Case no. 29.

29. The appeal and the connected applications are accordingly disposed of.

30. There will be no order as to costs.

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31. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

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