

(1999) 02 RAJ CK 0018
In the Rajasthan High Court
Case No : Civil Writ Petition No. 244 of 1999

The State of Raj.	Vs	APPELLANT
Smt. Shyamkaur and Others		RESPONDENT

Date of Decision : 01-02-1999

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1999) 1 RLW 701 : (1999) 3 WLC 240 : (1999) 1 WLN 162

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—In the instant case, initially proceedings were initiated under the Old Ceiling Act against one Sanyam Singh which was subsequently dropped after the trial on the ground that he had no excess land as per the order date 3.7.71. Under the New Ceiling Act also proceedings were initiated against him but they were also dropped. However, lateron, in exercise of powers u/s 15(2) of the New Ceiling Act the case was reopened under the Old Ceiling Act by an order dated 10.7.87. After a period of almost 7 years the Addl. Collector by his impugned order dated 18.4.95 (Annex. 1) held that Sanyam Singh had excess land of 16.3 bighas. That order was challenged by the L.Rs. of deceased Sanyam Singh, who died during the pendency of proceedings before the Addl. Collector, by way of appeal before the Board of Revenue, which was allowed on 27.3.98 (Annex.2). The same has been challenged in this petition by the petitioner-State of Rajasthan under Article 227 of the Constitution of India.

2. Learned Counsel Shri Tatia for the petitioner vehemently submitted that the Board of Revenue committed a grave error in allowing the appeal of the respondents. He submitted that the Addl. Collector has rightly considered the national share of the wife of the assessee in the ancestral property and divided the holding into four equal shares. However, the Board of Revenue committed an error in not considering the separate share of wife. Before appreciating the

arguments advanced by the learned Counsel for the petitioner few facts are required to be stated, which are as under-

There was an ancestral land of 124.6 bighas. The Collector divided the same into four equal shares of 31.11/2 bighas each for the two sons of assessee namely Randheer Singh and Ranjeet Singh and 62 bighas and 3 biswas of land was considered for assessee as according to him the share of his wife is also to be counted. In short, the Collector considered 62.3 bighas of land for original assessee and added 10 bighas of land making it 72.3 bighas. Under the law the assessee was entitled to hold 56 bighas of land, therefore, he held that the assessee had excess land of 16.3 bighas.

3. However, from the order of Board of Revenue it clearly appears that there was already a partition of holding dt. 12.5.1955 of an ancestral property. However, so far division of holding is prima facie acted upon but no mutation have effected, therefore, it cannot be regarded as a legal division of holding in accordance with law. But, so far as the factum of ancestral property is concerned it has been proved beyond doubt before the Collector and from the revenue records also shows that mutation dt. 18.11.1988 in which the land in question had been recorded in the name of Kala Singh father of original assessee Sanyam Singh. On the strength of aforesaid evidence the Collector accepted that 124.6 bighas was the ancestral property. However, as stated earlier, the Collector found that assessee and his two sons were entitled to have notional share. In my opinion, the Board of Revenue was fully justified in holding that under the Hindu Law female cannot be a member of HUF in the form of co-parcener. In that view of the matter, obviously, the Collector was in error in allowing four shares in the ancestral property because wife of the assessee being female cannot be allowed to take notional share in the ancestral property of HUF. If the share of wife, which was wrongly considered by the Collector as one unit with her husband-original assessee, is excluded then there will be three shares. That would come to 41.1 bighas of land respectively and even if rest of 10 bighas of land is included in the share of assessee then also it would come to 51.1 bighas of land which was less than 56 bighas of land. Thus, original assessee was entitled to hold 51 bighas of land.

4. In view of the above. I fully agree with the view taken by the Board of Revenue in coming to the conclusion that original assessee had no excess land.

5. Relying upon the Supreme Court Judgment in case of Gurupad Khandappa Magdum Vs. Hirabai Khandappa Magdum and Others, learned Counsel Mr. Tatia submitted that the Board of Revenue was in error in holding that under the Hindu Law, female cannot be a member of HUF as a co-parcener. In Gurupad's case (supra) the facts were totally different. In that case the Apex Court was not considering the provisions of Land Ceiling Act. It was a case of Hindu widow, who was asking for her share on the death of her husband. When the aforesaid case has no application to the facts of this case, I have refrained myself from having elaborate discussion.

6. Before parting, I must state that even if the Board of Revenue had committed error of law in the matter then also considering the facts and circumstances of the case and the fact that proceedings under the Old Ceiling Act as well as under the New Ceiling Act were initially dropped after the trial and the State Govt. exercised the powers in this case u/s 15(2) of the New Ceiling Act and re-open the proceedings under the Old Ceiling Act, I would not have exercised my powers under Article 227 of the Constitution of India and interfered with the order passed by the Board of Revenue. The law on this point is very well settled by the Supreme Court in case of Mohd. Yunus Vs. Mohd. Mustaqim and Others, . In Mohd. Yunu's case (supra) the Supreme Court has clearly observed that High Court cannot even correct an error on law in exercise of super visionary jurisdiction under Article 227 of the Constitution of India.

7. In view of the above discussion, this petition fails and is hereby dismissed.