
(2012) 05 AHC CK 0012
In the Allahabad High Court
Case No : C.M.W.P. No. 11842 of 1982

Vijay Vir Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-05-2012

Acts Referred:

Citation : (2013) 1 AWC 217

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Girdhar Nath, Krishna Raj Singh, R.P.S. Chauhan, Ravi Kant, V.D. Chauhan and Avadhesh Kumar, for the Appellant; K.C. Dwivedi, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri Ravi Kant, Sr. Advocate assisted by Sri Vikram D. Chauhan for the petitioners and learned standing counsel for the respondents. The writ petition is directed against the order dated 3.8.1982 passed by IVth Addl. District Judge, Moradabad deciding Civil Appeals No. 351 of 1976 and 350 of 1976 by a common judgment pursuant to the direction of this Court vide judgment dated 23.4.1980 in Writ Petitions No. 4901 of 1978 and 4902 of 1978.

2. The ceiling proceedings were initiated u/s 10(2) of Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as "Act 1960") against Sri Man Vir Singh, father of the petitioners. Besides Sri Man Vir Singh, petitioner's father, objections were also filed by petitioners stating that there are five children, therefore, every member is entitled, for exemption of two hectares of land and that for certain land sale deeds were executed prior to 24.1.1971 hence that could not have been included with the holding of noticee so as to determine surplus land and that there is a valid gift of certain land before 24.1.1971 hence it is also liable to be excluded.

3. Prescribed Authority passed final order on 28.7.1976 determining 10.71 acres

of irrigated land as surplus rejecting all their objections.

4. Two appeals were preferred by the petitioners and petitioner's father which were decided by appellate authority vide judgment dated 31.3.1978 and both the appeals were dismissed. The petitioners brought the case to this Court in Writ Petition Nos. 4901 of 1978, Manvir Singh v. State of U.P. and others, and 4102 of 1978. Vijay Vir Singh and others v. State of U.P. and others. Both the writ petitions were decided vide judgment dated 23.4.1980 and on two aspect the matter was remanded to appellate authority. The Court said as under:

The learned counsel for parties next contended that the appellate court was wrong in thinking that Explanation II to Section 5(1) was applicable to the gift deed dated 19th January, 1970. The learned counsel has drawn my attention to the mutation order dated 18.5.1970, a true copy whereof is Annexure-3 to the Rejoinder Affidavit in Civil Misc. Writ Petition No. 4901 of 1978 and the said order clearly shows that the mutation was done prior to 24th January, 1971; therefore, it is obvious that Explanation II could not apply to the said document the appellate court was wrong in thinking that the said Explanation was attracted to the said document.

However, so far as the sale deed is concerned, the appellate court was right in holding that Explanation II of Section 5(1) was attracted to the facts of the case. In such findings, no interference can be made in this petition. The learned counsel next contended that so far as the sale deed dated 2nd July, 1969 was concerned whereby some land was purchased by Vijay Vir Singh, The adult son of the tenure-holder from one Shiv Ram, no discussion was made in the lower appellate court's judgment. This document was executed prior to 24th January, 1971 and even mutation is stated to have taken place before the said date.

Accordingly, I allow both the petitions and quash the judgment of the appellate court dated 31.3.1978. So far as the aforesaid two deeds are concerned, namely the sale deed dated 2nd July, 1969 whereby Vijay Bir Singh purchased some land from Sri Ram and the gift deed dated 19th January, 1970 whereby the tenure-holder gifted some land in favour of his three sons, the appellate court shall reconsider the controversy about the lands covered by the said two deeds in the light of the law laid down by the Division Bench in Yadunath Vs. State, , and thereafter it shall be decided whether the lands covered by the said two deeds should or should not be included in the holding of Manvir Singh, the tenure-holder. The ceiling area and surplus lands shall be determined thereafter. It is made clear that no other controversy shall be allowed to be raised before the appellate court hereafter. In the circumstances, there will be no order as to costs.

5. On remand, appellate authority passed the impugned order dated 3.8.1982 again dismissing appeals. Both the issues on which the matter was remanded have been decided against petitioners.

6. The first issue relates to the effect of sale deed dated 2.7.1969 whereby petitioner No. 1 Vijay Singh purchased some land from Sri Ram and the second

issue relates to the effect of gift deed dated 19.1.1970 whereby tenure holder Manvir Singh said to have gifted one-third share of 66 acres of land to his three sons, i.e., the petitioners in the present writ petition including Sri Vijay Vir Singh, the eldest son claimed to be major at that time.

7. Sri Ravi Kant, learned Senior Advocate appearing for petitioners contended that once it is admitted that sale deed was executed before 24.1.1971, question whether sale deed was executed for valid consideration and bona fide, cannot be looked into by the ceiling authorities. They are bound to exclude the land transferred by such a sale deed executed before 24.1.1971. He drew support placing reliance on Apex Court's decision in *Ramadhar Singh v. Prescribed Authority and Ors.* .

8. So far as exposition of law with reference to effect of Section 5(6) of Act 1960 is concerned, I do not admit any doubt on the proposition aforesaid, advanced by the learned senior counsel. The law laid down by Apex Court in *Ramadhar* (supra) is also very clear. Once it is not in dispute that a sale deed was executed before 24.1.1971, i.e., prior to the appointed day, enquiry regarding genuinity, bona fide consideration etc. in execution of sale deed, under subsection (6) of Section 5 is impermissible. The Apex Court said:

The existence of the sale deed being not disputed and it having taken place, as said before, on February 24, 1969, prior to the appointed day that is January 24, 1971, the inquiry regarding the validity of the sale deed under sub-section (6) of Section 5 was totally misplaced. Thereunder, as it appears to us, the appropriate authority had no jurisdiction to be put the validity of the sale deed to test since his jurisdiction arose only when the deed of transfer had been effected on or after the appointed day.

9. However, this is not the real issue in the case in hand for the reason that the tenure holder of the entire land admittedly was Sri Manvir Singh. His tenure holding was not found ancestral so as to result in share of his sons since their birth. It was the absolute tenure holding of Sri Manvir Singh. It is in this context while determining surplus land, Prescribed Authority could have given the maximum benefit of Section 5(3)(b) to tenure holder having family of more than five members by permitting each of the members exceeding five and for each of his adult sons who are not themselves tenure-holders or who hold less than two hectares of irrigated land, by giving two additional hectares of irrigated land or such additional land which together with the land held by such adult son aggregates to two hectares, subject to a maximum of six hectares of such additional land. The Prescribed Authority since treated Sri Vijay Vir Singh, the petitioner No. 1, a landless adult son and, therefore, allotted two hectares of additional land u/s 5 (3) (b) of the Act 1960. But if the land acquired by Sri Vijay Vir Singh vide sale deed dated 2.7.1969 is to be given due credit whereby he got, 1.38 acres of land that would mean that instead of 2 hectares of additional land, he could have been allowed only 0.68 acres of land more so as not to permit more than 2 hectare of surplus land for him as per the ceiling prescribed

in Section 5 (3) (b) of the Act 1960. This aspect has been considered by learned appellate authority in para 3 of the judgment, impugned in this writ petition, Sri Ravi Kant, learned counsel for the petitioner could not show any patent illegality therein warranting interference. In fact Section 5 (6) of Act, 1960 has no application in the case in hand but here even if the land transferred to Sri Vijay Vir Singh vide sale deed dated 2.7.1969 is taken care of, actual determination of land in any manner would make no difference.

10. Now coming to the second aspect about gift deed said to have been executed on 19.1.1970, this Court finds that appellate authority has also considered this issue very rightly and aptly. It has found that on the date of execution of said gift deed, two sons were minor being six and two years of age. Regarding one son claim to be major, the Court found that no evidence whatsoever was adduced to support it. This finding has not been challenged and even before this Court no material has been placed to show any infirmity therein. The Court below has found that throughout, the land said to have been gifted, remained in possession of Sri Man Vir Singh, who himself was cultivating the field since his children were either minor or otherwise not performing any cultivation. The gift deed was nothing but has been found to be a sham transaction.

11. This Court in *Yadunath Vs. State*, , has held, if Prescribed Authority finds that gift in question is really a sham transaction, and, that, actual title in the gift property did not pass to the donee, i.e., the tenure-holder continued to remain in physical possession of the gifted property, it would be justified in ignoring such a gift deed but not otherwise.

12. In the present case the appellate authority has discussed this aspect and has recorded a finding that cultivation and possession of land continued with the tenure holder and the gift deed was never acted upon. There is nothing on record in the present writ petition as also the pleadings to show that the aforesaid findings are perverse or contrary to record.

13. In the circumstances, I do not find any error apparent on the face of record in the impugned orders warranting interference.

14. The writ petition is devoid of merit. Dismissed. No costs.