SUPREME COURT OF INDIA

Kamlabai

Vs.

Sheo Shankar Dayal

C.A.No.114 of 1954

(B. P. Sinha, S. J. Imam and K. Subba Rao, JJ.)

31.03.1958

JUDGEMENT

S. J. IMAM, J.:

1. This is an appeal against the decision of the Nagpur High Court partly reversing the decision of the Extra Subordinate Judge, First Class, Bilaspur. The decree of the trial court concerning houses Nos. 2 and 3 was affirmed by the High Court.

2. One Mst. Jotkunwar executed a document in 1906 in favour of her daughter Jira Bai and the sons of Jira Bai, Brindaban, Mathura Prasad and Nankaiya, transferring to them the properties mentioned in the document. Thus Jira Bai and her three sons had four annas share each in the said properties. Mst. Jotkunwar, however, reserved to herself cultivating rights in sir lands consisting of 91.5 acres. Nankaiya died in 1909 and on his death his share was recorded in the names of Jira Bai and her two sons Brindaban and Mathura Prasad. In the month of November, 1918 both Brindaban and Mathura Prasad died. Mathura Prasad was unmarried and Brindaban left a widow, Mst. Ramdulari. The interest of Mathura Prasad was mutated in favour of Padumnath, husband of Jira Bai, and that of Brindaban in favour of his widow, Ramdulari. The property thus came to be divided into three shares - 1/3 each to Jira Bai, Padumnath and Ramdulari. Jira Bai died on 26-7-1927. There had been some litigation in 1923. After the decision of the Court, mutation took place and 3/4 share in the property was recorded in the name of Padumnath and 1/4 in the name of Ramdulari. On 9-2-1938, Padumnath made a gift of his 1/4 share in favour of his daughter Kamalabati alias Kamalabai. Padumnath died on 10-4-1938.

3. Mst. Jotkunwar's husband, Raghurai, had a brother Ramprasad who died in 1902 leaving two sons Sheoshankar Dayal, the plaintiff in the present suit, and Ramdayal who died in 1918. Sheoshankar Dayal filed the present suit on 25-1-1943. His case was that the document of 1906 was a deed of gift and not a deed of surrender in favour of the next reversioner. On the death of Jotkunwar he was entitled to the suit property as the gift could not operate after her death. The trial court held that the document of 1906 was not a deed of gift. Mst. Jotkunwar had completely divested herself of the entire estate and there had been a valid surrender of the whole estate by her in favour of Jira Bai and by Jira Bai in favour of her sons. The trial court further found that Kamalabai and Ramdulari had been in adverse possession of the properties from 26-7-1927. The plaintiff's suit was accordingly barred by limitation. The Subordinate Judge, accordingly dismissed the plaintiff's suit.

4. We have examined the reasons given by the trial court for holding that the document of 1906

executed by Jotkunwar and the supposed act of Jira Bai amounted to a valid surrender of the whole estate of Raghurai accelerating the succession to his estate. We have also examined the grounds upon which the High Court took a contrary view holding that the document of 1906 and the supposed act of Jira Bai did not amount to a valid surrender of the whole estate of Raghurai. On a proper appreciation of the aforesaid transactions there had been no acceleration of the succession to the estate of Raghurai by a complete self-effacement on the part of Jotkunwar and Jira Bai. Accordingly, the transactions were in the nature of gifts which could only operate up to the death of Jotkunwar. We have construed the document of 1906 and have kept in mind the submissions made on behalf of the appellants and have come to the conclusion that the view taken by the High Court was the correct view. It is quite clear from the terms of the document that Jotkunwar did not surrender the whole of the estate which came to her from her husband. She had reserved to herself cultivating rights in the sir lands to the extent of 91.5 acres. Such an area was a substantial area. The surrender, therefore, was not complete. The self-effacement by Jotkunwar and her daughter Jira Bai to be of any consequence had to be complete self-effacement and with respect to the whole of the estate of Raghurai. A partial self-effacement was not a surrender in the true sense and did not accelerate the succession to the estate of Raghurai. The subsequent gift of 91.5 acres on similar terms to Jira Bai and her three sons did not advance the matter any further as neither the document of 1906 nor the latter gift amounted to a valid surrender.

5. If there was no valid surrender by Jotkunwar and succession to Raghurai's estate was not accelerated no question of adverse possession can arise in the present case. It is only on the death of Jotkunwar that the estate of Raghurai vests in the nearest reversioners in existence at that time. The present suit was brought within a few months of the death of Jotkunwar. It was accordingly not barred by limitation.

6. It may be mentioned that the Madhya Pradesh Abolition of Proprietary Rights (Estates. Mahals, Alienated Lands) Act, 1950, received the assent of the President on 22-1-1951 and was published in the Madhya Pradesh Gazette Extraordinary on 26-1-1951. Under this Act when a notification is issued under S. 3, all proprietary rights in an estate, mahal, alienated village or alienated land, as the case may be, in the areas specified in the notification, shall pass from such proprietor or such other person to and vest in the State for the purposes of the State free from all encumbrances. Section 4 deals with the consequences of the vesting ensuing upon the issue of such a notification. The Advocate for the appellants was asked as to how the rights of his clients would be affected by this legislation, if the properties, other than houses Nos. 2 and 3, had vested in the State. He found himself in some difficulty in explaining what would be the practical advantage to his clients if the appeal succeeded. We merely make a mention of this not because it has any relevancy on the question whether the High Court rightly decided that there had been no valid surrender by which succession to the estate of Raghurai was accelerated. This aspect of the mater merely arose in connection with the question whether costs of this Court should be allowed to the respondent if the appeal failed. The learned Advocate on behalf of the respondents, after consulting his client, informed us that he left the matter of costs to the discretion of the Court. Although we are of the opinion that the High Court gave a correct decision in the case and the appeal must be dismissed, the circumstances were such that there was no need to award costs to the respondents. The appeal is, accordingly, dismissed without costs of this Court.

Appeal dismissed.

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