The State of Uttar Pradesh

Vs

Rajkumar Rukmini Raman Brahma

Civil Appeal No. 748 (N) of 1966

(J. C. Shah, V. Ramaswami-I JJ)

11.09.1969

JUDGMENT

RAMASWAMI, J. –

1. This appeal is brought by special leave from the judgment of the Allahabad High Court, dated February 16, 1965 in Civil Revision No. 373 of 1963 which was filed against the judgment of the Additional Civil Judge, Mirzapur, dated December 4, 1962 in Revenue Appeal No. 417 of 1961.

2. The respondent made an application before the Rehabilitation Grants Officer, Mirzapur, under Section 79 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 to obtain the determination and payment of rehabilitation grant to him. The case of the respondent was that he was the son of the late Raja Sharda Mahesh Narain Singh Shah of Agori Barhar Raj, tehsil Robertsgunj in Mirzapur district. Raja Anand Brahma Shah who was a Malgujar of more than Rs. 10,000 annually executed Gujaranama deeds in favour of his younger brother and his mother separately in the year 1949. By these deeds, certain villages were transferred by the Raja to the Raj Kumar and the mother in lieu of their right of maintenance. One of such Gujaranamas was executed by Raja Anand Brahma Shah in favour of respondent, Raj Kumar Rukmini Raman Brahma who is one of his younger brothers. The document was executed on October 5, 1949 and registered on January 18, 1950. The application of the respondent before the Rehabilitation Grants Officer was opposed by the appellant. The objection of the appellant was that the transfer in favour of the respondent cannot be legally recognised in view of Section 23(1)(a) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act 1 of 1951), (hereinafter called the Act), for the purpose of assessing the amount of Rehabilitation grant. By his order dated January 28, 1961 the Rehabilitation Grants Officer held that the respondent was entitled to rehabilitation grant. The appellant preferred an appeal against the order of the Rehabilitation Grants Officer. The appeal was heard by the Additional Civil Judge, Mirzapur, who rejected the objection of the appellant and dismissed the appeal. The appellant took the matter in revision to the Allahabad High Court, but the Revision Application was dismissed on February 16, 1965.

3. It is necessary at this stage to set out the relevant provisions of the Act :

> Section 3(12) :
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> "In this Act, unless there is anything repugnant in the subject or context -
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> # .. ..##

(12) 'Intermediary' with reference to any estate means a proprietor, under-proprietor, sub-proprietor, thekedar, permanent lessee in Avadh and permanent tenure-holder of such estate or part thereof."

"Transfer by way of sale or gift not to be recognised -

(1) Notwithstanding anything contained in any law, no transfer, by way of sale or gift, of any estate or part thereof -

(a) made on or after the first day of July, 1948, shall be recognised for the purpose of assessing the amount of rehabilitation grant payable to the intermediary;

(2) Nothing in sub-section (1) shall apply to -

(a) any sale made under order of a court in execution of any decree or order for payment of money; or

(b) any sale or gift made in favour of a wakf, trust, endowment or society established wholly for charitable purposes, unless the State Government in any particular case directs otherwise."

Section 24(b) -

"Any contract or agreement made between an intermediary and any person on or after the first day of July, 1948, which has the effect, directly or indirectly, -

#(a) X X X##

(b) of entitling an intermediary to receive on account of rehabilitation grant an amount higher than what would be, but for the contract or agreement, be entitled to under this Act,

shall be made and is hereby declared null and void."

Section 73 :

"There shall be paid by the State Government to every intermediary (other than a thekedar), whose estate or estates have been acquired under the provisions of this Act, a rehabilitation grant as hereinafter provided;

Provided that, where on the date immediately preceeding the date of vesting, the aggregate land revenue payable by the intermediary in respect of all his estates situate in the areas to which this Act applies exceeded rupees ten thousand, no such grant shall be paid to him."

4. The principal question involved in this appeal is whether the Gujaranama deed, dated October 5, 1949 executed by Raja Anand Brahma Shah is a transfer by way of sale or gift within the meaning of Section 23(1) of the Act and cannot, therefore, be recognised for propose of assessing the amount of Rehabilitation Grant. It was argued on behalf of the appellant that on a true construction of the document the transaction must be taken to be a gift of the property by Raja Anand Brahma Shah to

the respondent. In our opinion there is no warrant for this argument. The relevant portion of the Gujaranama deed, dated October 5, 1949 states :

> "..... I, Shri Raja Anand Brahma Shah, son of Shri Raja Sharda Mahesh Prasad Singh Shah of Agori Barhar Raj, Rampur Estate, Pargana Barhar, Tehsil Robertsganj, District Mirzapur, as the proprietor of Angori Raj, District Mirzapur, which is an impartible estate. That according to law and custom the eldest son of the Raja becomes the owner of the estate on the death of the earlier Raja and the younger sons have a right to maintenance and they are given a reasonable share of the estate in lieu of the right of maintenance so as to enable them to pass their life in accordance with their status. The estate is under an obligation to provide maintenance of this type. Therefore, it is obligatory upon me also to make some provision for the maintenance of my younger brother Shri Rukmini Raman Brahma by giving him some property. He also desires that some maintenance should be provided for him. Therefore, I out of my sweet will and willingness do hereby execute this document in the terms following :
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> (1) That from today's date I give the property detailed below to my younger brother, Shri Rukmini Raman Brahma in lieu of his right of maintenance and I deliver to him the proprietary possession of the properties afore-mentioned which include all rights pertaining to sir land, self cultivated land, water and forest rates, houses and buildings, shops, jungles, hills etc.
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> (2) That Shri Rukmini Raman Brahma and his male lineal descendants will as per the custom of maintenance prevailing in my estate, remain in possession of the said properties from generation to generation and that in case of there being no male lineal descendants of the transferee the property shall revert to the holder of the jagir.
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> (3) That the erstwhile transferee for maintenance shall be competent to transfer the property detailed below subject to the condition that prior to sale it is and shall be obligatory on his part to give intimation in this behalf to the erstwhile holder of the jagir by means of a registered notice and if he be not willing to have the deed executed in his favour the property may be given in sale to any other person. Otherwise the deed of sale shall be invalid and shell be liable to pre-emption.
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> (4) That the transferee for maintenance shall pay land revenue and other customary dues and taxes to the Government. The jagir shall not be responsible for the payment of the same.
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> (5) That the transferee for maintenance may get his name entered in the revenue papers. We shall have no objection in this regard.
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5. Since the decision of the Privy Council in Shiba Prasad Singh v. Rani Prayag Kumari Devi (59 IA 331) it must be taken to be well settled that an estate which is impartible by custom cannot be said to be the separate or exclusive property of the holder of the estate. If the holder has got the estate as an ancestral estate and he has succeeded to it by primogariture, it will be a part of the joint estate of the undivided Hindu family. In the case of an ordinary joint family property the members

of the family can claim four rights : (1) the right of partition; (2) the right to restrain alienations by the head of the family except for necessity; (3) the right of maintenance; and (4) the right of survivorship. It is obvious from the very nature of the property which is impartible that the first of these rights cannot exist. The second is also incompatible with the custom of impartibility as was laid down by the Privy Council in the case of Rani Sartaj Kuari v. Deoraj Kuari (15 IA 51) and the First Pittapur case. (36 IA 23). The right of maintenance and the right of survivorship, however, still remain and it is by reference to these rights that the property, though impartible has, in the eye of law, to be regarded as joint family property. The right of survivorship which can be claimed by the members of the undivided family which owns the impartible estate should not be confused with a mere spes successionis. Unlike spes successionis, the right of survivorship can be renounced or surrendered. It was held by the Judicial Committee in Collector of Gorakpur v. Ram Sunder Mal (61 IA 286) the right of maintenance to junior members out of an impartible estate was based on joint ownership of the junior members of the family. In that case Lord Blanesburgh after stating that the judgment of Lord Dunedin in Baijnath Prasad Singh v. Taj Bali Singh (48 IA 195) had definitely negatived the view that the decisions of the Board in Sartaj Kuari's case (supra) and the First Pittapur case (supra) were destructive of the doctrine that an impartible zamindari could be in any sense joint family property, went on to observe :

> "One result is at length clearly shown to be that there is no reason why the earlier judgments of the Board should not be followed, such as for instance the Challapalli case (Raja Yarlagudda Mallikarjuna Prasad Nayudu v. Raja Yarlagadda Durga Prasad Nayudu (27 IA 151) which regarded their right to maintenance, however, limited, out of an impartible estate as being based upon the joint ownership of the junior members of the family, with the result that these members holding zamindari lands for maintenance could still be considered as joint in estate with the Zamindar in possession."

Lord Blanesburgh said :

> "The recent decisions of the Board constitute a further landmark in the judicial exposition of the question at issue here. While the power of the holder of an impartible raj to dispose of the same by deed [Sartaj Kuari's case (supra)] or by will [the First Pittapur case (supra) and Pratap Chandra Deo v. Jagdish Chandra Deo (54 IA 289)] remains definitely established, the right of the junior branch to succeed by survivorship to the raj on the extinction of the senior branch has also been definitely and emphatically reaffirmed. Nor must this right be whittled away. It cannot be regarded as merely visionary. As pointed out in Baijnath Prasad Singh's case (48 IA 195) when before the Allahabad High Court the junior members of a great zamindari enjoy a high degree of consideration, being known as babus, the different branches holding babuana grants out of the zamindari. Their enjoyment of these grants is attributable to their membership of the joint family, and until the decisions above referred to beginning in 1888 supervened, they had no reason to believe that their rights of succession were being imperilled by their estrangement from the zamindar in possession."

6. In the present case there is the statement of Raja Anand Brahma Shah in the Gujaranama deed that according to law and custom for the estate, the eldest son of the Raja becomes the owner of the estate on the death of the earlier Raja and that the "younger sons have right to maintenance and they are given reasonable share of the estate in lieu of right of maintenance." In view of this admission of

Raja Anand Brahma Shah it is not possible to hold that the transfer of the properties in the Gujaranama deed was a transfer by way of gift. It is also not possible to contend that it was a sale of the properties for there is no money consideration. It is manifest that the transaction is by way of a settlement to the respondent by Raja Anand Brahma Shah in lieu of the right of maintenance of the respondent which is obligatory upon the holder of impartible estate. In our opinion, the Gujaranama deed dated October 5, 1949 is not hit by the provision of Section 23 of the Act and the argument of the appellant on this aspect of the case must be rejected.

7. It was contented on behalf of the appellant that the case should be remanded to the Rehabilitation Grants Officer on account of certain procedural irregularities. It was pointed out that the Rehabilitation Grants Officer did not follow the provisions of the Civil Procedure Code by treating the application under Section 79 as a plaint and the objection of the State Government as a written statement. It was said that the Rehabilitation Grants Officer was bound to frame proper issues and to take evidence of the parties on the issues as in the civil suit. But no case has been made out for remand because the appellant has not denied in the written statement that there was the customary right of maintenance of the junior members of the family of Raja Anand Brahma Shah. No disputed question of fact was raised on behalf of the appellant before the Rehabilitation Grants Officer, the award of the Rehabilitation Grants Officer was challenged only on a question of law.

8. For these reasons we hold that this appeal fails and must be dismissed with costs.

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