

Radhey Krishan Singh and Others

Vs

Shiva Shankar Singh and Others

Civil Appeal No. 245 of 1967

(D. G. Palekar, A. Alagiriswami JJ)

30.07.1973

JUDGMENT

PALEKAR, J. –

1. This is an appeal by the plaintiffs, on a certificate, from the judgment and decree of the Patna High Court dated August 5, 1965, in First Appeal No. 68 of 1960.
2. One Babu Deonandan Prasad Singh died in 1925 leaving behind him considerable property. His widow Dulhin Janki Dulari Kuer, defendant No. 4 being the next heir, inherited that property. In about 1953 the widow settled about 80 bighas of bakasht land in favour of Defendants 1 and 2, who were the brothers of defendant No. 4 and defendant No. 3, who was the nephew of defendant No. 4. The plaintiffs, claiming to be the reversioners, filed the suit, out of which the present appeal arises, on September 7, 1957, alleging that the settlements were liable to be set aside as they were mala fide, illegal and without consideration and were designed to injure or jeopardize the right of inheritance of the reversioners. The original plaintiff No. 1 claimed to be the nearest reversioner and the other plaintiffs claimed to be a little remote reversioners.
3. Practically the same defence was raised on behalf to the defendants. It was contended that not the plaintiff No. 1 but one Jadunandan Sharma was the next heir, being the sister's son of the deceased Babu Deonandan Prasad; that the settlements were for legal necessity and that, in any case, in view of the Hindu Succession Act, 1956, the plaintiffs were not entitled to sue.
4. The trial court held that the settlements were neither bona fide nor for legal necessity. It accepted the defence that Jadunandan Sharma was the next reversioner but since his collusion with the defendants was patent the plaintiffs were entitled to sue. Accordingly, the trial court decreed the suit.
5. In the First Appeal filed by the defendants, the High Court agreed with the trial court that the settlements were neither bona fide not for legal necessity nor for the benefit of the estate. It did not agree with the trial court that Jadunandan Sharma was the next reversioner. It held that the plaintiffs in their representative capacity as the next reversioners were entitled to sue for a declaration that the settlements by the limited owner were invalid.
6. On that finding the decree of the trial court ought to have been confirmed but the High Court went further and held that in view of Section 6 of the Bihar Land Reforms Act, the lands having vested in the State in 1955 and settled with the persons who were then in possession, no purpose would be served by giving any relief in this suit. Alternatively, on the setting aside of the alienation,

possession would be deemed to have reverted to the widow when the Hindu Succession Act came into force in 1956 and that, thereafter the widow would get an absolute estate in the property and thus also all reversionary interests would fail. In that view the appeal was allowed and the suit was dismissed.

7. It is contended by Mr. Goverdhan on behalf of the appellants that the Court was plainly in error in dismissing the suit having held that the alienation in favour of Defendants 1 to 3 was bad since that was the only relief that the plaintiffs had claimed in the suit. As reversioners the plaintiffs had filed the suit in a representative capacity on behalf of the whole body of reversioners. The whole object of the suit was to preserve the estate for the benefit of the next heir of the deceased Babu Deonandan Singh who would be entitled to inherit that property on the death of defendant No. 4, Since defendant No. 4 was living, there was no question of the plaintiffs asking for possession till her death. The object of the present suit was only to remove the cloud on the title imposed by the settlement made by defendant No. 4 in favour of Defendants 1 to 3. In our opinion there is great force in this contention.

8. Our courts have recognized that a reversionary heir, although having only those contingent interests which are differentiated little, if at all, from a spes successionis, has a right to demand that the estate in the hands of a limited owner be kept free from waste and free from danger, during its enjoyment by the limited owner. Courts have also recognized that the reversionary heir is entitled to a declaration that an alienation made by the widow is not binding on the body of the reversioners, the object of the suit being to remove a common apprehended injury to the interests of all the reversioners, presumptive and contingent. See *Venkatanarayana Pillai v. Subbammal* (42 IA 125 : AIR 1915 PC 124.). a reversionary heir thus appealing to the court truly for the conservation and just administration of the property does so in a representative capacity so that the corpus of the estate may pass unimpaired to those entitled to the reversion. That being the object for which the courts have permitted the next reversioner to file a suit even though the right is no more than a spes successionis, such right to a remedy of a very substantial character cannot be taken away except by specific legislation. So far as the Hindu Succession Act, 1956 is concerned, there is nothing in it which has taken away such a right. In fact this Court has held in *Radha Rani Bhargava v. Hanuman Prasad Bhargava* ((1966) 1 SCR 1 : AIR 1966 SC 216 : (1966) 2 SCJ 587.), that a reversioner is entitled to file a suit for a declaration that an alienation made by a Hindu female limited owner before the coming into force of the Hindu Succession Act, 1956, was without legal necessity and was not binding upon the reversioners. In the present case the Hindu Successions Act, came into force in 1956 and the settlements challenged were much prior to that date. Therefore, the reversioners could not be precluded from maintaining the suit for setting aside the alienation.

9. As regards the other ground on which the High Court dismissed the suit, namely, Section 6 of the Bihar Land Reforms Act, it is sufficient to point out that no such pleas was raised in the written statement nor was any issue framed. It does not also appear that any argument was advanced on that basis before the trial court. The point seems to have been taken for the first time during the course of the argument before the High Court, and we are satisfied that the High Court was in error in entertaining that submission for the first time. It would be difficult to say if, on the alienation being set aside, Defendants 1 to 3 would be still entitled to claim an interest in the property sufficient to warrant the State to settle those lands on them as occupants. We do not want to express any opinion on the point. The widow is living and the plaintiffs have not asked for possession of the land. What would be the nature of the right to the property of a reversioner after the death of defendant No. 4 would depend upon future events and it will not be right to speculate on it. The High Court, was, therefore, in error in invoking the provisions of the Bihar Land Reforms Act at the present stage.

10. In the result the appeal must be allowed and the decree of the trial court confirmed with costs throughout in favour of the plaintiffs.

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