State of Maharashtra

Vs

Smt. Banabai and Another

Civil Appeal No. 2004 of 1972

(A. P. Sen, B. C. Ray JJ)

17.09.1986

JUDGMENT

SEN, J. -

1. In this case, the only question is whether even though the landholder Sukhdeo Shelke died on December 29, 1961 i.e. prior to January 26, 1962, the appointed day as specified by Section 2(4) of the Act, his two widows having succeeded to 135 acres of land left by him being members of a family as defined in Section 2(11) of the Act and therefore they would constitute one family unit and take a single ceiling area i.e. 85 acres in all, as provided by Section 3(1) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961.

2. Briefly stated, the facts are that the landholder Sukhdeo died on December 29, 1961 i.e. prior to the appointed day, leaving behind him his two widows Smt. Banabai and Smt. Shevantabai. He was possessed of 135 acres of land which devolved on his two widows in equal shares. On September 12, 1963, the Sub-Divisional Officer issued a notice to Sukhdeo under Section 13 of the Ceiling Act calling upon him to show cause why he should not be penalised for not filing a return. In response to the notice, his two widows Smt. Banabai and Smt. Shevantabai, the respondents herein filed their written statement denying that there was any surplus land. They pleaded inter alia that upon the death of their husband Sukhdeo they effected a partition of their holding on January 1, 1962 as recited in the registered partition deed dated September 20, 1962 whereby Smt. Banabai was allotted 70.11 acres and Smt. Shevantabai 71.37 acres. Accordingly, they pleaded that they having inherited the estate upon the death of their husband Sukhdeo as co-sharers, each of them would have a half share therein and since the share of each was less than the ceiling area of 85 acres, there was no surplus land in their hands.

3. The Sub-Divisional Officer by his order dated September 18, 1968 held that there was no partition in fact and even otherwise the alleged partition would be hit by Section 8 and 10 of the Ceiling Act. He accordingly made a declaration under Section 21(1) of the Ceiling Act to the effect that the respondents were in possession of 22.12 acres of land in excess of the ceiling area. The Maharashtra Revenue Tribunal by the impugned order dated January 28, 1970 held that Sukhdeo having died on December 29, 1961 i.e. prior to the appointed day, the respondents would simultaneously inherit the estate of their deceased husband. According to the Tribunal, the two widows as heirs belonging to Class I would by virtue of Section 19 of the Hindu Succession Act, 1956 take as tenants-in-common. As such co-owners, it held that each of the two widows would have a held share in the lands left by Sukhdeo i.e. less than the ceiling area of 85 acres and thus there was no surplus land. In coming to that conclusion, the Tribunal relied on the decision of a Division Bench of the High Court in Dadarao Kashi Rao v. State of Maharashtra [1969 Mah LJ 813]

and held that the two widows taking the property as tenants-in-common, each would have a half share in the lands left by Sukhdeo i.e. less than 85 acres the ceiling area, and therefore there was no surplus land. Aggrieved, the State of Maharashtra moved a petition under Article 227 of the Constitution but the High Court dismissed the petition in limine on the ground that the matter was covered by the Division Bench decision. Hence, this appeal by way of special leave.

4. Shri Bhasme, learned counsel for the appellant contends that the decision of the Tribunal as well as the High Court that the two widows should be treated as two separate persons for purposes of determination of the ceiling area under sub-section (1) of Section 3 runs counter to the scheme of the Ceiling Act and would lead to manifest absurdity. It is pointed out that the Ceiling Act introduces the artificial concept of the 'family unit' as defined in Explanation to sub-section (1) of Section 4. It is argued that even if the landholder died prior to the appointed day, his surviving spouse or spouses and the minor sons and minor unmarried daughter could not after the commencement of the date hold land in excess of the ceiling area, as determined in the manner provided under the Act. It is pointed out that the effect of sub-section (1) of Section 4 of the Act is that only one ceiling area is allowed for the family unit and there is clubbing of the land held by the members irrespective of the whether their holdings are joint or separate. It is urged that under Section 6 of the Act, when a family unit consists of members which exceed five in number, the family unit shall be entitled to hold land exceeding the ceiling area to the extent of one-fifth of the ceiling area for each member in excess of five, nut the total holding of such a family cannot exceed twice the ceiling area. The submission is that if the landholder was to die leaving a widow and four children they would get not more than the ceiling area for the family unit. If that be so, it cannot be that merely because the landholder Sukhdeo died leaving two widows, they should be entitled to twice the ceiling area. In other words, the submission is that the two spouses of the deceased Sukhdeo had to be regarded as constituting one spouse as is clear from clause (a) of Explanation to Section 4(1) of the Ceiling Act for the purpose of determination of the ceiling area. The High Court has not touched upon these aspects. We refrain from expressing any opinion thereon. We wish to add that the decision of the High Court in Dadarao case [1969 Mah LJ 813] has since been reversed by this court in Bhikoba Shankar Dhumal v. Mohan Lal Punchand Tathed [(1982) 1 SCC 680].

5. In the result, the appeal must succeed and is allowed. The judgment and order of the High Court as well as the impugned order of the Tribunal are set aside and the petition under Article 227 of the Constitution is remitted to the High Court for a decision arrest after notice to the parties. No order as to costs.

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