

Amar Singh and Another

Vs

Asstt. Director of Consolidation and Others

Civil Appeal No. 2791 of 1988

(R. S. Pathak, L. M. Sharma JJ)

19.08.1988

JUDGMENT

L. M. SHARMA J –

1. The question involved in this case is whether a bhumidhar with transferable rights while bequeathing his bhumidhari right in favour of certain beneficiaries can subject it to a life estate in favour of another beneficiary, and if he is held to be so authorised, whether the interest of the life estate holder shall continue to be a life estate or shall get enlarged defeating the bequest in favour of the other beneficiaries.

2. The bhumidhar of the disputed land Chukkhan executed a will directing that life estate will be vested in his wife Mst. Gilia and the vested remainder in their daughters - present respondents 6 and 7. Smt. Gilia entered in possession of the land on Chukkhan's death and executed a will in favour of the present appellants. On her death a dispute arose in a proceeding under the U. P. Consideration of Holdings Act. 1953 as to whether the petitioners should be recognised as bhumidhars or respondents 6 and 7. The Consolidation Officer, respondent 3 herein accepted the claim of respondents 6 and 7 but the decision was reversed in appeal by the Settlement Officer. The matter was, thereafter, taken in revision before the Assistant director of Consolidation, respondent 1 who agreed with the Consolidation Officer and restored his order. The petitioners challenged this judgment by a writ application under Article 226 of the Constitution before the Allahabad High Court. By the impugned decision the writ application has been dismissed. Special leave is granted.

3. The question for decision has been inaccurately formulated in the special leave petition as to whether the provisions of the Hindu succession Act or any other personal law can override the provisions of the U. P. Zamindari Abolition and Land Reforms Act 1951 (hereinafter referred to as "the Act").

4 Mr. Satish Chandra, the learned counsel for the appellants contended that the Act has by Section 171 laid down the rule of succession and it is not permissible to apply any other law for determining the heirship to bhumidhar. Reliance was placed on Ramji Dixit v. Brighunath and Prema Devi v. Jt. Director Consolidation. The learned counsel placed the scheme of the Act before us for the showing that the personal law applicable to a bhumidhar must be held to be excluded by the Act dealing with succession exhaustively. Our attention was drawn to the provisions of Sections 155 and 156 restricting the right to create a mortgage or lease and it was contended that bhumidhari right is not consistent with limited interest therein and whenever such a right vests in a person he becomes the absolute owner and any attempt to limit his interest must be repelled. We do not find any substance in the argument.

5. The main fallacy in the stand taken on behalf of the appellants is in assuming that Mst. Gilia got the limited interest of a Hindu widow as recognised under the Hindu Law. What was bequeathed by her husband was a life estate as understood under the English law. The holder of a Hindu widow's estate is not a limited owner in that sense - she is the owner of the property subject to certain restrictions on alienation. The whole estate is for the time vested in her, and she represents it completely (see *Moniram Kolita v. Keerry Kolutany*) As observed by the Privy council in *Janaki Ammal v. Narayanaswami Aiyer*, her right is of the nature of a right of property, her position is that of an owner and so long as she is alive no one has any vested interest in the succession. That is not the position here. Mst. Gilia did not enter into possession as an heir. She got the land under a will. The right of a bhumidhar with transferable rights to bequeath his holding or any part thereof by a will is expressly recognised by Section 169 (1) of the Act. It is manifest that in the present case the personal law applicable to Chukkhan and his wife does not come in the picture at all. So far as Sections 155 and 156 are concerned they are confined to cases of mortgage and lease and are not relevant in the present context.

6. The decision in *Ramji Dixit v. Brighunath* has no application in the present case. In that case, on the death of the owner of the land Raj Kishore, the lands devolved upon his wife Sanwari as a Hindu widow's estate and a dispute arose about her right of alienation. In the Allahabad case also *Smt. Prema Devi* whose title was in dispute acquired certain right in the capacity of a Hindu widow. The cases are therefore clearly distinguishable.

7. The case of *Balbhadra v. Board of Revenue* was similar to the present case and the view taken by the learned Single Judge there, appears to be correct. Accordingly we find no merit in this appeal which is dismissed with costs.

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