

Hardan Singh and other

Vs

Deputy Director of Consolidation and others

Civil Appeal No.2431 of 1977

(M.M. Punchhi, G.N. Ray JJ)

07.01.1992

JUDGMENT:-

1. Ram Bux owned agricultural lands in two villages, namely, Parson and Galand in the then Tehsil Ghaziabad, District Meerut in the State of Uttar Pradesh. He had two wives. From his first wife, he had a son named Rasal Singh. From his second wife, he had four sons. He died somewhere in the year (sic). His progeny were in occupation of his agricultural lands when consolidation operations started in the villages sometimes in the late sixties. A dispute arose between the heirs of Ram Bux with regard to the rule of succession. The progeny of the first wife claimed that they had half share in the owned agricultural lands of Ram Bux. The progeny of the second wife claimed that they had 4/5th share in the properties of Ram Bux, under the rules of succession known to Hindu Law, Ram Bux having left five sons. The customary succession pleaded by the progeny of the first wife was Chondapatt whereby the share is determined wifewise. It appears that in the ordinary course of litigation in village Parson the Deputy Director of Consolidation, Merrut when confronted with the subject, vide judgment dated 25-3-1971, took stock of the situation and determined in favour of the Chondapatt customary succession. Since the claim of the progeny of the first wife however was confined to 2/5th share instead of one half, as that had been their accepted share for a long time, their claim was allowed to the extent of 2/5th and their holdings were consolidated in village Parson on that basis. When the turn came to apply such rule in village Galand, the Consolidation Officer opted in favour of dividing the ownership lands in five equal shares. On appeal to the Settlement Officer, however, the view was reversed. He took in aid the order of the Deputy Director of Consolidation dated 25-3-1971 relating to village Parson to give to the progeny of the first wife half share and this view was affirmed by the Deputy Director of Consolidation in further appeal. As is evident the basis of the orders in favour of the progeny of the first wife is the order of the Deputy Director, Consolidation dated 25-3-1971 relating to village Parson taking the view that the same operates as res judicata. The Writ Petition of the progeny of the second wife of Ram Bux was dismissed by the High Court of Allahabad on July 29, 1977, being C.M.W.P. No. 8976 of 1972, which gave rise to this appeal by special leave.

2. We have heard learned counsel and have perused all the orders of the Consolidation Authorities. It is evident therefrom villages record in identical terms existence of such a custom amongst the Hindu Rajputs and that custom is known as Chondapatt. Such custom being tribal in nature primarily would apply to parties rather than to areas in which they live. If such custom was valid for the parties and was made applicable to their rights qua agricultural lands in village Parson, it is difficult to hold that a contrary rule of succession would apply, to the parties qua their agricultural lands in village Galand. The view taken by the authorities in this respect and as left uninterfered

with by the High Court seems to us unexceptional. However, there is one flaw on which the orders need to be modified. It is plain from the order dated 25-3-1971 passed by the Deputy Director, Consolidation, Merrut, that the progeny of the first Wife of Ram Bux had clearly stated that they had accepted 2/5th share for a long time as their rightful share and if this decision is to be res judicata then it has to be so for all intents and purposes in village Galand as well. The progeny of the first wife should then get 2/5th share in the entire owned agricultural lands of the family instead of one-half. On this basis it would require rectification in the impugned orders. Accordingly, we allow this appeal to this extent and direct the Deputy Director, Consolidation to re-record the share of the respective parties as 2/ 5th share for the progeny of the first wife and 3 / 5th share for the progeny of the second wife in the light of the findings of the Deputy Director of Consolidation, Meerut in his order dated 25-3-1971 as also by the observations made by us hereinbefore and re-record the share of the parties in accordance therewith. Parties through their counsel are directed to put in appearance before the Deputy Director, Consolidation, Merrut Gaziabad within six weeks for the purpose.

3. Some proposal was put across by learned counsel for, the appellants that since the appellants have been in possession of the land in dispute for a very long time the respondents shall consider selling the lands to them in the spirit of brotherhood. Parties can also settle the dispute outside court and can come together before the Deputy Director of Consolidation, Merrut for the purpose, when at least for one instance they would be together to have their shares re-recorded as directed.

4. As an interim measure this Court awarded a lump sum and some mesne profits to the respondents. That sum be appropriated by the respondents. In the circumstances, we leave the parties to bear their own costs. Appeal allowed.

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