

Darshan Prashad and another

Vs

Civil Judge II, Gorakhpur and others

Civil Appeals Nos. 2838-39 of 1980

(N. M. Kasliwal, K. Ramaswamy JJ)

13.03.1992

JUDGEMENT

KASLIWAL, J.:-

1. These two appeals by grant of Special Leave are directed against the judgment of the Allahabad High Court dated 11-5-1979. A notice under S. 10(2) of the U. P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as the 'Ceiling Act, 1960') as amended by Act No. 20 of 1976 was issued to the appellant Darshan Prashad. The appellant filed objections, but the same were dismissed by the prescribed authority by order dated 28-5-1976. Thereafter two appeals were filed one by Darshan Prashad and the other by Smt. Saraswati Devi claiming to be the judicially separated wife of Darshan Prashad. Both appeals were dismissed by the Civil Judge No. 11, Gorakhpur. Darshan Prashad then filed Writ Petition No. 2764 of 1977 and Smt. Saraswati Devi Writ Petition No. 2856 of 1977 challenging the order of the Civil Judge. The High Court dismissed both the Writ Petitions by order dated 11-5-1979. Being aggrieved by the findings of the prescribed authority and the High Court, the appellants have now filed the present appeals.

2. The first contention raised by Learned Counsel for the appellants was that notice issued under S. 10(2) was illegal and without jurisdiction. It was contended that in the earlier ceiling proceedings 0.87 acres of land was declared surplus under the provisions of the Ceiling Act, 1960 before coming into force of the Amendment Act No. 20 of 1976 and the order passed in the earlier ceiling proceedings would operate as res judicata. It was submitted that there was no change in the law to justify issuing of fresh notice.

3. We do not find any force in this contention. The Amendment Act No. 20 of 1976 inserted two Sections 38-A and 38-B in the Principal Act of 1960. Section 38-A and 38-B are reproduced as under..-

"38-A. Power to call for particulars of land from tenure-holders.- (1) Where the prescribed authority or the appellate Court considers it necessary for the enforcement of the provisions of this Act, it may, at any stage of the proceedings under this Act, require any tenure-holder to furnish such particulars by affidavit in respect of the land held by him and members of his family as may be prescribed.

(2) The particulars of land filed under sub-section (1) may be taken into consideration in determining the surplus land of such tenureholder.

38-B. Bar against res judicata. - No finding or decision given before the

commencement of this section in any proceeding or on any issue (including any order, decree or judgment) by any court, tribunal or authority in respect of any matter governed by this Act, shall bar the retrial such proceeding or issue under this Act, in accordance with the provisions of this Act as amended from time to time. "

4. The above provisions clearly show that the prescribed authority was given power to require any tenure-holder to furnish such particulars, by affidavit in respect of the land held by him and members of his family as may be prescribed which may be considered necessary for the enforcement of the provisions of the Ceiling Act. It is clearly provided under Section 38-B inserted by the Amending Act as mentioned above that any finding or decision given before the commencement of this Section will not operate as a bar for the retrial of such proceeding or issue in accordance with the provisions of the Act as amended from time to time. The appellants had raised a similar objection before the High Court, but the same was rejected on the ground that if an earlier judgment is said to operate as *res judicata* in the subsequent proceedings, then all the necessary facts including pleadings of the earlier litigation must be placed in the subsequent proceedings. The High Court further observed that in the instant case, the earlier notice under Section 10(2) which was issued to the tenure-holder along with the statement prepared in Form No. 3 were not placed before the ceiling authorities in subsequent proceedings. It was further held that even in the writ petition no such material was placed in order to enable the Court to decide whether the second notice could be said to be illegal. Section 30(3) of the U. P. Act No. 20 of 1976 clearly provided that the prescribed authority was authorised to issue fresh notice within a period of two years from the date of any order passed in earlier ceiling proceedings. We are in agreement with the view taken by the High Court. Learned Counsel for the appellants was unable to show that in the facts and circumstances of the case, the notice issued under Section 10(2) of the present proceedings was in any manner illegal or without jurisdiction.

5. It was next contended on behalf of the Learned Counsel for the appellants that Smt. Saraswati Devi had left the company of the appellant Darshan Prashad and had started living with her parents even before the year 1955. The appellant (Darshan Prashad) had given her agricultural lands for her maintenance and thereafter married with another woman. It was submitted that Smt. Saraswati Devi had filed a suit on 22nd February, 1956 for permanent injunction to restrain the appellant Darshan Prashad from interfering with her possession over the lands given to her in lieu of maintenance. In that suit arbitrators were appointed by the Court and an award was given in favour of Smt. Saraswati Devi on 5-12-1956. The said award was made a rule of the Court and a decree was passed on 21-1-1957 in favour of Smt. Saraswati Devi restraining the appellant by a decree of permanent injunction from interfering with the possession of Smt. Saraswati Devi over the lands situated in village Karmahava Khurd, Tappa Lehara, Pargana Haveli, Gorakhpur. It was submitted that even in the proceedings taken under the provisions of Ceiling Act, 1960, Smt. Saraswati Devi was recognised as owner of land by virtue of the decree dated 21-1-1957, and also in consolidation proceedings which took place after the coming into force of the Ceiling Act, 1960. Learned Counsel for the appellants also contended that Smt. Saraswati Devi was also entitled to separate residence and maintenance from her husband under the provisions of the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946. It was thus contended that even though a judicial separation of Smt. Saraswati Devi may not have taken place, Smt. Saraswati Devi for all intents and purposes was a judicially separated wife and the agricultural lands in her ownership and possession long before the coming into force of the Ceiling Act, 1960, cannot be clubbed in the land of the appellant husband for determining the ceiling area.

6. We do not find any force in the above contention in view of the clear provisions of the Ceiling

Act, 1960. Section 3(7) defines 'family' as under:-

"family in relation to a tenure-holder, means himself or herself and his wife or her husband, as the case may be (other than a judicially separated wife or husband), minor sons and minor daughters (other than married daughters)."

7. It is clear from the above definition that the wife is included in the family of her husband other than a judicially separated wife.

8. It is important to note that the Hindu Marriage Act, 1955 had come into force on 18th May, 1955, Section 10 of this Act provided for the judicial separation. Under S. 10 of the Hindu Marriage Act either party to a marriage was entitled to present a petition to the District Court praying for a decree for judicial separation on any of the grounds specified in sub-section (1) of Section 13 and in the case of wife also on any of the grounds specified in sub-section (2) thereof, as grounds on which a petition for divorce might have been presented. Thus, in order to get a judicial separation, it was necessary to obtain a decree under the above provision and then alone it could be recognised as a judicial separation. The Ceiling Act, 1960 was enacted and brought into operation long after the Hindu Marriage Act, and as such the legislature was fully aware of the meaning of judicially separated wife or husband while using this term in the definition of 'family' under Section 3 (7) of the Ceiling Act, 1960. It is further important to note that sub-section.(3) of Section 5 of the Ceiling Act, 1960, prescribes, while determining the ceiling area, the land of 'adult son/ sons' who were themselves tenure-holders being excluded, but no such land is allowed to be excluded in the case of the wife, even though she might be a separate tenure-holder. Thus, it is abundantly clear from a perusal of the above provisions that in the case of determining ceiling area of the land belonging to a person, the land even if owned or possessed by his wife in her own right would have to be included in the land of the husband treating the wife as a member of his family. The only exception has been made in the case of a judicially separated wife. It was contended by the learned Counsel for the appellants that a wider meaning should be given to the term judicially separated 'wife to include a wife who may be living separately from her husband and agricultural land owned or possessed in lieu of her right of maintenance should be excluded from the ceiling limit of her husband. It is difficult for us to accept this contention in view of the clear provisions of the Ceiling Act, 1960 which apart from being a beneficial Act for the landless has used the term 'judicially separated 'wife after the coming into force of the Hindu Marriage Act, 1955. This cannot be given a meaning to include a wife merely living separately from the husband, but having not obtained a decree for judicial separation under the provisions of the Hindu Marriage Act, 1955.

9. In view of these circumstances, we find no force in these appeals and the same are dismissed with no order as to costs. Appeals dismissed.

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