

Ram Avtar and Others

Vs

Ram Dhani and Others

Civil Appeal No. 1803 of 1982

(N. P. Singh, Faizanuddin JJ)

26.09.996

ORDER

1. One Sethi, the husband of Smt. Phoola died in a state of jointness in the year 1911. The said Smt. Phoola continued to be the member of the joint family along with other brother of her husband. A dispute arose in the family and a compromise was entered into on 8-2-1932 in which it was agreed that Smt. Phoola who was the widow in the family should be given some lands of maintenance. Her name was also mutated in revenue records.

2. The said Phoola executed sale deeds in favour of the respondents on 6-4-1956 in respect of the lands in question. She died in the year 1966. Thereafter, the appellants filed a suit for declaration that Smt. Phoola having only a limited interest in the said property could not have transferred the same in favour of the respondents. That suit abated in view of issuance of the notification under the provisions of the U.P. Consolidation of Holdings Act, 1954 (5 of 1954). Thereafter, the same question as to whether the transfer could have been made or not by Smt. Phoola in favour of the respondents was raised before the Consolidation Officer. The Consolidation Officer upheld the right of Smt. Phoola to transfer the lands in question. The appeal filed on behalf of the appellants before the Settlement Officer (Consolidation) was also dismissed with the same finding. However, on revision application being filed on behalf of the appellants, the Deputy Director, Consolidation set aside the orders passed by the Consolidation Officer and the Settlement Officer (Consolidation). Thereafter, a writ petition was filed on behalf of the respondents before the High Court. A learned Judge of the High Court after taking into consideration the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951) (hereinafter to be referred to as "the Land Reforms Act") and the provisions of the Hindu Succession Act, 1956 (hereinafter to be referred to as "the Succession Act") came to the conclusion that even before coming into force of the provisions of the Succession Act Smt. Phoola had acquired absolute right under Section 18 of the Land Reforms Act on the basis of which she could have conveyed valid title to the respondents. The High Court also proceeded to consider the effect of the provisions of the Succession Act in connection with the arguments raised before the High Court that the lands which had been given to Smt. Phoola for maintenance, were in lieu of a pre-existing right.

3. The learned counsel appearing for the appellants took the stand that in the present case, Section 11 of the Land Reforms Act shall be attracted and not Section 18. Section 11 and relevant part of Section 18 of the Land Reforms Act are as follows :

"11. Sir or Khudkasht allotted in lieu of maintenance allowance. - Notwithstanding anything contained in Section 10, where sir or Khudkasht has been allotted by the sir or khudkasht-holder thereof to a person in lieu of maintenance allowance, such

person shall be deemed to be the asami hereof entitled to hold the land for so long as the right of maintenance allowance subsists.

18. Settlement of certain lands with intermediaries or cultivators as Bhumidhar. - (1) Subject to the provisions of Section 10, 15, 16 and 17, all lands -

(a) in possession of or held or deemed to be held by an intermediary as sir, khudkasht or an intermediary's grove,

(b) held a grove by, or in the personal cultivation of a permanent lessee in Avadh,

(c) held by a fixed-rate tenant or a rent-free grantee as such, or

(d) held as such by -

(i) an occupancy tenant,

(ii) a hereditary tenant,

(iii) a tenant on Patta Dawami or Istamrari referred to in Section 17,

possessing the right to transfer the holding by sale,

(e) held by a grove-holder,

on the date immediately preceding the date of vesting shall be deemed to be settled by the State Government with such intermediary, lessee, tenant, grantee or grove-holder, as the case may be, who shall, subject to the provisions of this Act, be entitled to take or retain possession as a Bhumidhar thereof.

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4. On a plain reading of Section 18(1) it appears that all lands in possession of an intermediary as sir or khudkasht on the date immediately preceding the date of vesting shall be deemed to be settled by the State Government with such intermediary. The High Court was of the opinion that as Smt. Phoola was in possession of the lands in question on the date immediately preceding the date of vesting, it shall be deemed to have been settled by the State Government with her in view of Section 18(1) and she had right to retain the same as Bhumidhar thereof.

5. On behalf of the appellant it was pointed out that Smt. Phoola shall not be deemed to be an intermediary so as to avail the benefit of Section 18(1). The Consolidation Officer, the Settlement Officer (Consolidation) and the High Court have proceeded on the assumption that after the compromise in the year 1932 Smt. Phoola came in possession of the lands which are the subject-matter in dispute, in lieu of maintenance on the basis of compromise in the family. The family was joint. There is no finding that there was any petition at any stage later. As such, it shall be deemed that Smt. Phoola continued to be a member of the joint family which was admittedly an intermediary within the meaning of the provisions of the Land Reforms Act. In this background, according to us Section 18(1) was fully attracted and on the basis thereof it shall be deemed that the land which she was holding as sir or khudkasht was settled by the State Government with her and she was entitled to retain possession as Bhumidhar thereof.

6. This Court in the case of Ramji Dixit v. Bhrigunath [(1968) 2 SCR 767 : AIR 1968 SC 1058] has considered the scope of the provisions of the Land Reforms Act in connection with a widow holding a life estate and has held that in view of the provisions of the Land Reforms Act she will be deemed to be a Bhumidhar. The learned counsel tried to distinguish the judgment by saying that in that case, the land had devolved on the widow from her husband directly and not on the basis of any compromise. According to us, the ratio of that judgment cannot be distinguished on this ground.

7. The High Court has rightly rejected the stand of the appellants that as Smt. Phoola got the lands by way of maintenance it will be covered by Section 11 of the Act and after vesting she will be deemed to be the asami and not Bhumidhar. It appears Section 11 shall be applicable where the holder of sir or khudkasht lands allots such lands to a person in lieu of maintenance allowance. In the present case, Smt. Phoola got the lands on the basis of compromise entered into in the year 1932 and she was in possession thereof.

8. We are surprised as to how the Deputy Director while exercising the revisional power entered into all questions of fact and came to the conclusion on pure conjecture that the appellant before this Court shall be deemed to be in possession of the lands since 1932. This Court has repeatedly pointed out that however wide the power under statutory revision may be in contrast to Section 115 of the Code of Civil Procedure, still while exercising that power the authority concerned cannot act as court of appeal so as to reappreciate the evidence on record for recording findings on questions of fact. According to us, the High Court should have set aside the order of the Deputy Director, on this ground alone and should have restored the order of the Consolidation Officer and the Settlement Officer (Consolidation). We are in agreement with the conclusions arrived at by the High Court. Accordingly, this appeal fails and is dismissed. No costs.