

Bulaki (Smt)

Vs

Lal Dhar and Others

Civil Appeal No. 3456 of 1979

(S. Saghir Ahmed, K. Ramaswamy JJ)

19.02.1997

ORDER

1. This appeal, by special leave, arises from the judgment dated 14- 12-1977 passed by the Allahabad High Court in Second Appeal No. 500 of 1965.
2. The admitted facts are that the last maleholder in the family, Bechan had two wives, Bhungi and Bhikni. Bhungi had given birth to three daughters, Gulabi, Sulabi and Bulaki, the appellant. Gulabi died on 7-2-1963. Smt. Sulabi and Smt. Bulaki were substituted as legal heirs after the demise of Bhungi. Bechan's second wife Bhikni had a son, Lal Dhar, born to her former husband, and brought him along with her when she was married to Bechan. After her marriage with Bechan she had a daughter by the name Gunia. During the lifetime of Bechan, who was a bhumidhar under the U.P. Zamindari Abolition and Land Reforms Act, 1950, he had executed three gift deeds in favour of Lal Dhar. The first two gift deeds were made in the year 1951 and the third gift deed on 18-11-1957. When the said gift deeds were challenged by the appellant, the appellate court and the High Court upheld the validity of the first two gift deeds and declared the third gift deed to be invalid.
3. Shri Juneja, learned counsel appearing for the appellant has contended that the permission for alienation was not properly obtained from the competent officer and that, therefore, it was invalid. He has pointed out that the first two gift deeds were made on 1-6-1951 and 2-6-1951. On 1-1-1951 an application for permission to the Sub-Divisional Officer was made and the sanction thereof was granted on the next day, namely, 2-6-1951. By operation of the proviso to Section 24 of the Act, it is contended that even subsequent permission validates the alienation by way of a gift. We find no infirmity in the grant of sanction. It is then contended by Shri Juneja that the Sub-Divisional Officer had no jurisdiction to grant the permission since the lands were situated outside his Division. The High Court has looked into the map and held that the lands are situated in that Sub-Division only and that, therefore, he has got jurisdiction to grant the permission. It is then contended that it was not the plea of either of the parties and the High Court would not have gone into that question for the first time. May be the learned counsel is right in this behalf, but with a view to satisfy his conscience the learned Judge had secured the official map and looked into the area and found, as a fact, that the lands were situated within the area of the officer who granted permission. Even though it is found to be not legally permissible, since the learned Judge has done it to do justice, we do not interfere with the finding in the appeal under Article 136. Therefore, the two gift deeds of 1-6-1951/2-6-1951 are valid. Under those two deeds, Lal Dhar has got the properties and that therefore, the properties are not open to succession.
4. As regards the property under the third gift deed, it is seen that Bechan died in the year 1957. As a consequence, under Section 171(b) of the Act succession is open and under clause (b) the widow

succeeds the property. Since he had left behind him two widows, the two widows jointly succeeded to the property. Since pending the proceedings Bhungi died, the a co-widow, namely, Bhikni succeeded to the estate by operation of Section 175 of the Act which reads as under :

"175. Passing of interest by survivorship. - In the cases of a co-widow, or a co-tenure-holder, who dies leaving no heir entitled to succeed under the provisions of this Act, the interest in such holding shall pass by survivorship"

5. Pending this appeal the co-widow, viz., Bhikni too died.

6. In consequence, if the co-widow dies leaving behind no heirs entitled to succeed under the provisions of the Act, the interest in such holding shall pass by survivorship. Since she had left behind one heir - daughter, namely, Gunia and equally Bhungi left behind her three daughters Gulabi, Sulabi and Bulaki, and Gulabi having predeceased the mother, Sulabi, Bulaki and Gunia would succeed to the estate of maleholder by operation of Section 172(1)(b) read with Section 171(1)(g) of the Act. Under these circumstances, in respect of the properties conveyed under the third gift deed, dated 18-11-1957, all the three are entitled to 1/3rd share each.

7. The appeal is accordingly allowed and the decree of the trial court stands modified to the above extent. No costs.