

Lachman Singh

Vs

Raja Ram

Civil Appeal No. 2660 of 1983

(S. Saghir Ahmad, S. Rajendra Babu JJ)

30.03.1999

JUDGMENT

S. Rajendra Babu, J

1. This appeal is directed against an order made by the High Court in a proceeding arising out of two suits filed under Section 209 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as 'the Act') one suit for claiming damages amounting to Rs. 25,000/- and another under Section 176 of the Act claiming 1/3rd share in the land in dispute.

2. The properties in dispute were held to be bhumidhari lands and pertained to one Arjun Singh, who had no male issue. Arjun Singh executed a Will which was registered on June 17, 1952. As per the said Will, after his death the land devolved upon his wife, Raj Kumari, and she held the said land till her death on April 1, 1968. The plaintiffs in the suit claimed to be the sister's sons of Arjun Singh claimed that they should get 1/3rd share in the suit lands. The Trial Court, after recording the evidence and hearing the parties, dismissed the suit filed under Section 176 of the Act. Against that order an appeal was preferred before the Additional Commissioner, Lucknow Division, who held that the Will did not include bhumidhari rights and after the death of Raj Kumari, the widow of Arjun Singh, who got the property in her own right as their of Arjun Singh, the succession will not be governed by the will but by the provisions of Section 171 of the Act. Against that order of the Additional Commissioner the plaintiffs in the suit preferred two appeals to the Board of Revenue, U.P. The Board of Revenue upheld the order of the Additional Commissioner and the appeals stood dismissed. Thereafter a writ petition was preferred in the High Court by the defendants in the suit. The high Court noticed that the plaintiff's allegations were that the plaintiffs were sons of sister of Arjun Singh, whereas the defendants contended that under the registered Will Arjun Singh vested all his movable and immovable properties in favour of his wife for her life time and after her death to his daughter, Smt. Bittaram for her life time and on their death the land had devolved upon them as khandani waris. As contended on behalf of the plaintiffs that the Will had been executed prior to the commencement of the Act and sir or *khud kasht* land is not transferable under Section 9 of the U.P. Tenancy Act and, therefore, the defendants got no ownership on the basis of the Will. The High Court concluded that the rights arising out under Section 9 of the U.P. Tenancy Act will not bar exchange and gift and that there can be no transfer of the land as the word 'Will' is ordinarily understood and, therefore, it could not be covered under the definition of the term 'transfer' and the Will was only a mode of devolution and did not amount to transfer. At the time his death of Arjun Singh was a bhumidhar of the lands in question and, therefore, under the Will all the movable and immovable properties that is haquiat Zamindari and residential house, kachha and gonda kachha were disposed of with the entire property belonging to Arjun Singh and it must be construed that it would include the property or right of *bhumidhari* in the land in question and, therefore, the High

Court held that the Board had erred in confirming the order made by the Additional Commissioner and allowed the petition quashing the order made by the Board of Revenue. It is against that order this appeal has been filed by special leave.

3. The learned counsel on either side contended that the question for our consideration in this appeal is the interpretation to be placed upon the Will executed by Arjun Singh and whether under the said Will the *bhumidhari* rights have been disposed of in terms of Section 169 of the Act and, if that is so, the appellants or the respondent constitute the *waris khandan* of the said Arjun Singh.

4. Decisions of this Court in *Rano Sheo Ambar Singh v. Allahabad Bank Ltd. Allahabad, 1962(2) SCR 441*; *Shri Ram Prakash v. Mohammad Ali Khan (dead) Thr. L.Rs., 1973(2) SCC 163*; *Sri Vidya Sagar v. Smt. Sudesh Kumari & ors., 1976(1) SCC 115*, and *Jamshed Jahan Begam & ors. v. Lakhan Lal & ors., 1970(2) SCR 566*, were brought to our notice explaining the nature of rights arising out of Section 18 of the Act. It was again pointed out that what is disposed of by the Will is not the *Zamindari* rights but the entire property of Arjun Singh which would include *bhumidhari* right. It has also been brought to our notice that Section 90 of the Indian Succession Act should also be adopted in considering the Act. The contention of behalf of the appellants is that though the Will had been executed it is only in respect of *Zamindari* had which stood extinguished on the commencement of the Act and, therefore, the Will could not affect the rights arising out under the Act and, therefore, the view taken by the Additional Commissioner and the Board of Revenue stands to reason in preference to that of the High Court.

5. In construing a Will the principle enunciated in Section 90 of the Indian Succession Act is relevant. Where a property is bequeathed in generic and may increase, diminish or other wise change during the testator's life so that the description may from time to time apply to different amounts of property of like nature or to different subjects, then the effect of the section is that the property answering the description at the death of the testator passes under the Will unless contrary intention is shown.

6. Will became operative only on the death of Arjun Singh in 1958. Therefore, on that date, whether the Will could have been executed by Arjun Singh and what right could flow therefrom has to be seen. It is not in dispute that under Section 18 of the Act Arjun Singh became *bhumidhar* of the lands in question. A *bhumidhar* is enabled under Section 169 of the Act to make a Will and bequeath his holding or any part thereof and general order of succession provided under Section 171 is subject to Section 169 of the Act. The Will executed by Arjun Singh, as far as the portion relevant for our purpose is concerned, reads as follows :-

"After my death however my *all properties whether movable or immovable* i.e. Haquait *Zamindari* and a residential house *Kachha* and a *Gonda Kacha* will devolve on my wife Mrs. Raj Kumari d/o Gajaidhar Singh, Thakur, resident of Baderi mentioned above who would enjoy its ownership under the provisions of the will, and after her death my above daughter Mrs. Bitto resident of above Badera will enjoy ownership rights over the properties of the will throughout her life, after the death my family heirs will succeed to the properties under the will."

(emphasis supplied by us)

7. The intention of the testator is very clear that he wanted to bequeath to his wife all properties whether movable and immovable which included at the time of execution of the Will Haquait

Zamindari and a residential house Kaccha and a Gonda Kacha for her life time and thereafter to his daughter for her life time and subsequently to the heirs who will succeed to the properties under the Will. Therefore, a reading of the Will makes it clear that when the testator made the Will he did dispose of all his properties whatever be the nature of the same and thus bhumidhari rights in respect of the lands in question were also covered by the same applying the principle underlying Section 90 of the Indian Succession Act to which we have adverted to, and there is no contrary intention expressed.

8. The next question that arises for consideration is what is the meaning to be attributed to the expression *waris khandan* in the Will ? Neither of the parties have placed any foundation on the said expression by way of pleadings much less evidence before the original authority or the appellate authorities or in the writ petition in this regard. Therefore, we are handicapped to decide this question of fact. In these circumstances, while upholding the order made by the High Court, we modify it to the extent of stating that the properties could now devolve on the death of daughter of the testator upon the waris khandan under the Will. It will now be the task of the Assistant Collector to identify the waris khandan and whether the appellants or the respondents or both of them are covered in this expression or otherwise. This appeal stands disposed of accordingly. In the circumstances of the case, we make no order as to costs.