

SUPREME COURT OF INDIA

Audhar

Vs.

Chandrapati

C.A.No.6302 with 6303 of 2001

(Shivaraj V. Patil and D. M. Dharmadhikari JJ.)

15.09.2003

JUDGEMENT

D.M.Dharmadhikari, J.

1. A common judgment is being passed in these two appeals as the subject-matter of dispute in both of them is the same. Civil Appeal No. 6302 of 2001 has been preferred against the judgment dated 24-8-1998 passed by the learned single Judge of the Allahabad High Court in Civil Misc. Writ Petition No. 678 of 1979. Rejection by order dated 9-12-1998 of Review Petition No. 54933/98 filed by the appellants against the said judgment has given rise to connected Civil Appeal No. 6303 of 2001.

2. The facts of this case are many and somewhat complicated but the question of law involved is a short one.

3. It is not disputed by the appellants, as is apparent from the contents of their petition for special leave, that the lands in Khata Nos. 91, 92, 95 and 96 are tenancy lands of category 'Bhumidari' and other lands in dispute in Khata Nos. 256, 283, 356 and 357 are tenancy lands of another category 'Sirdari'. The lands are in village Patilo Gausput, District Azam Garh in the State of Uttar Pradesh.

4. The writ petition before the High Court arose out of order dated 9-11-1976 of the Assistant Director, Consolidation, Azam Garh which was passed in exercise of his revisional powers under Section 4 of the U.P. Consolidation of Holdings Act of 1953 [for short 'the Consolidation Act of 1953].

5. Bereft of unnecessary details, the relevant facts are as under:-

“The main ancestor of the parties named Duggan was survived by four sons viz., Prag, Tulsi, Narain and Ram Saran. Narain died issueless. The elder son - Prag left behind a son named Abhilash. Abhilash died in the year 1922 leaving behind widow Akashi. She died in 1951. The lands in dispute constituting her alleged 1/4th share

were gifted by her during her lifetime on 2-5-1945 in favour of her two daughters namely Mitia and Basanti. Contesting respondents - Chandrapati and Mannar are sons respectively of Mitia and Basanti and they now claim 1/4th interest in all the properties left behind by Parag and his son - Abhilash.”

6. The appellants represent the branches of two other sons of Duggan viz., Tulsi and Ram Saran.

7. For better appreciation of the relationship between the parties, the following pedigree as contained in the impugned judgment of the High Court may be reproduced:-

8. In the proceedings for consolidation under the Consolidation Act of 1953, the present appellants, who represent the branches of two sons of main ancestor - Duggan viz., Tulsi and Ram Saran, objected to the entry in the Khatas of the names of contesting respondents Chandrapati and Mannar. It was contended that widow - Akashi got only a limited estate in 1/4th share of her husband Abhilash who died in the year 1922. According to the appellants, the Khatas included Khudkasht and Sir lands. The mode of succession to Sir and Khudkasht lands was in accordance with the personal law meaning uncodified Hindu Law as was applicable on the date of death of Abhilash in the year 1922. It is contended that Akashi had inherited her husband's 1/4th share as a limited owner for the period of her life. The gift deed executed by her on 2-5-1945 in favour of her two daughters could create title in favour of her daughters only till her lifetime. On her death in the year 1951, the daughters could claim no title in the lands gifted in their favour and the contesting respondents as their heirs derived no title.

9. On behalf of the contesting respondents, who represent the branch of Abhilash, the objection in consolidation proceedings raised by the present appellants was repelled by contending that both under the *Agra Tenancy Act, 1926* which was applicable when Abhilash died in the year 1922 and United Provinces Tenancy Act of 1939, there was a separate mode of succession prescribed for tenancy lands of the category of 'Bhumidari' and 'Sirdari'. Later under Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 which governed mode of succession to tenancy lands, widow is a preferential heir to male collaterals in another branch of deceased Abhilash. It is submitted by contesting respondents that Khatas in dispute did not contain Khudkasht and Sir lands hence succession to them was not governed by Personal Law i.e. Hindu Law.

10. The revisional authority in consolidation proceedings and the High Court in writ petition accepted the contention advanced by the contesting respondents. It has been held that the lands being tenancy lands of the category of 'Bhumidari' and 'Sirdari' governed by the special mode of succession prescribed in the tenancy law, the contesting respondents representing branch of Abhilash and widow Akashi have derived a valid title by inheritance to lands and they are entitled to seek mutation of their names in the Khatas which they have received under a decree passed in partition suit filed by them.

11. The learned counsel appearing for the appellants has made strenuous effort to assail the correctness of the order of the revisional authority passed under the Consolidation Act of 1953 which has been affirmed by the High Court. From the arguments advanced what we have been able to gather is that according to the appellants, some lands in Khatas in dispute are 'Sir' and 'Khudkasht' lands and the succession in respect thereof was governed by Hindu Law and not by special mode of succession provided in the tenancy laws. It is also pointed out that there was a civil litigation between the parties on the validity of the gift deed in which the civil Court had delivered judgment declaring the gift deed executed by widow Akashi in favour of her daughters as invalid. The learned counsel for the appellants thus submits that ignoring the above facts and the legal position, the revisional authority under the Consolidation Act of 1953 committed error in rejecting the objection of the appellants to the claim of entry of the names of the contesting respondents in the Khatas.

12. We have heard in reply the learned counsel appearing for the contesting respondents. It is pointed out that throughout in the proceedings before the authorities under the Consolidation Act of 1953 and in the High Court, it was never disputed that the lands in the Khatas in dispute before us were tenancy land and were neither Sir nor Khudkasht lands.

13. All tenancy lands in possession of intermediaries including of the categories 'Bhumidari' and 'Sir' are saved from vesting in the State under Sections 18 and 19 of the *U P Zamindari Abolition and Land Reforms Act, 1950*. Under special mode of succession provided in tenancy law, Akashi had inherited the land not as limited owner but as absolute owner. She was the preferential heir in the absence of any male descendant of her husband-Abhilash. She being an absolute owner of the land inherited by her as sole heir of her husband could make a valid gift in favour of her daughters. Even in the absence of Gift-deed after death of widow Akashi on 18-10-1951, in accordance with the special mode of succession provided in Section 172 read with Section 171 of the *U P Zamindari Abolition and Land Reforms Act, 1950*, her daughters (married or unmarried) were preferential heirs to male collaterals in branches of her husband's brothers.

14. The legal position thus not in dispute is that if the lands were tenancy lands, both under the Agra Tenancy Act, 1926 and U. P. Tenancy Act, 1939, the widow of a holder had a right to inherit as an absolute owner from her husband. The argument, therefore, advanced on the basis that the lands were Sir and Khudkasht is misleading and not based on facts pleaded and found. Such argument was rightly not considered by the High Court and rejected by the revisional Authority under the Consolidation Act of 1953. We also reject the same as being without any basis.

15. So far as the argument based on the civil litigation between the parties is concerned, the respondents in their counter-affidavit have given full history of the civil litigation. It shows that the judgment of the trial Court in the civil suit did not attain finality on the question of validity of the gift deed. Civil Suit No. 900 of 1951 was filed by the predecessor-in-title of the appellants against the two daughters of widow Akashi in which validity of the gift deed was challenged. The learned munsif dismissed the suit. An appeal was preferred which was allowed and the suit was decreed. The two daughters of widow Akashi then filed Second

Appeal No. 1312 of 1956 in the High Court. By judgment dated 22-9-1970, the High Court remanded the matter to the Appellate Court for a fresh decision after determining the nature of the lands as to whether they are Sir or Khudkasht or they are tenancy lands of the category of Bhumidari or Sirdari. The High Court also clarified the legal position that if the lands are Sir or Khudkasht, the succession would be governed by personal law i.e. Hindu Law applicable to the parties and if the lands are tenancy lands, the succession would be governed by special mode of succession in tenancy law.

16. Pursuant to the remand by the High Court and before the First Appellate Court could take a decision in the case, a notification for consolidation was issued under Section 4 of the Consolidation Act of 1953. The submission made on behalf of the contesting respondents is that as the notification for initiating consolidation operations had been issued under Section 4 of the Consolidation Act of 1953, jurisdiction of civil Court stood ousted due to bar contained in Section 49 of the Consolidation Act of 1953. Section 49 of the Consolidation Act of 1953 reads thus:-

"49. Bar to civil jurisdiction.- Notwithstanding anything contained in any other law for the time being in force, the declaration and adjudication of rights of tenure-holders in respect of land lying in an area, for which a [notification] has been issued [under sub-section (2) of Section 4] or adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under this Act, shall be done in accordance with the provisions of this Act and no civil or revenue Court shall entertain any suit or proceeding with respect to rights in such land or with respect to any other matters for which a proceeding could or ought to have been taken under this Act.

Provided that nothing in this section shall preclude the Assistant Collector from initiating proceedings under Section 122-B of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 in respect of any land possession over which has been delivered or deemed to be delivered to a Gaon Sabha under or in accordance with the provisions of this Act.

[Emphasis added]

17. It is reported that the first appellate Court held the proceedings as abated in view of the bar under the Consolidation Act of 1953. A second appeal filed in the High Court against the judgment of the appellate Court is said to be still pending. This appeal arises out of revisional order passed under the Consolidation Act of 1953. During Consolidation proceedings, the second appeal in the High Court was pending. Section 49 of the Consolidation Act of 1953 confers exclusive jurisdiction on the authorities under the Act and the jurisdiction of the civil Court is barred. The Authorities under Consolidation Act of 1953 could justifiably conclude its proceedings under that Act despite pendency of second appeal against order of first appellate Court declaring the proceedings in civil suit to have abated.

18. We find that the main issue on facts is concluded against the appellants. The lands in the Khatas in question are found to be tenancy lands of the class 'Bhumidari' and 'Sridari. They

are not Sir or Khudkasht lands. Under the special mode of succession provided under the tenancy law widow Akashi inherited absolute title to 1/4th share of her husband and she could execute a valid gift deed in favour of her daughters.

19. The present legal position as it stands during pendency of the second appeal before the High Court is that the civil Court's decree declaring the gift deed as invalid has not attained finality because during pendency of proceedings before the first appellate Court after remand by the High Court, proceedings under Consolidation Act of 1953 had commenced and the jurisdiction of civil Court stood ousted. We, therefore, find no merit in any of the contentions advanced on behalf of the appellants.

20. The connected Civil Appeal No. 6303 of 2001 has been filed against the order dated 9th December, 1998 rejecting the Review Petition filed against the judgment of the High Court dated 24-8-1998 in Civil Misc. Writ Petition No. 678 of 1971. In this separate appeal filed against rejection of the Review Petition, one of the grounds urged is that the appellants being in continuous possession of the lands in dispute, have prescribed title by adverse possession. From the contents of order of the Assistant Director of Consolidation dated 9-11-1978, it is clear that the ground of adverse possession stands negated by the revisional authority. It has been held that no foundation was laid either in the pleadings or evidence as to when the adverse possession of the appellant commenced on the land to the knowledge of the contesting respondents. No plea based on adverse possession was raised in the Writ Petition preferred against the order of the revisional authority. This has been so recorded in the order of the learned single Judge dated 9-12-1988 by which the Review Petition has been rejected. The learned single Judge has also noted the fact that the contesting respondent had filed Civil Suit No. 29/51 for partition of the lands claiming title in them through the gift deed and as heirs of widow - Akashi. The Partition Suit was decreed. It has been rightly held that if under the stay order passed against execution of the decree the appellants continued in possession, they cannot acquire title by adverse possession. In the Review Petition before the High Court attempt was also made to urge that part of the lands in the Khatas in dispute were Sir and Khudkasht lands. The learned single Judge has also negated this ground of review and has pointed out that the Deputy Director of Consolidation has recorded a specific finding that the suit lands in disputed Khatas were all tenancy lands and the succession to them was governed by special mode prescribed in Tenancy Law applicable to the parties on the relevant date. No error, therefore, appears to have been committed by the learned single Judge in rejecting the Review Petition. The connected Civil Appeal No. 6303 of 2001 against rejection of the Review Petition also has no merit.

21. Consequently, both the appeals fail and are hereby dismissed but in the circumstances without any order as to costs.

Appeal dismissed.