

SUPREME COURT OF INDIA

Chhedi Lal

Vs.

State of U.P.

C.A.No.8166 of 2003

(J.M. Panchal and Gyan Sudha Misra JJ.)

19.10.2010

JUDGEMENT

J.M.Panchal, J.

1. The instant appeal is directed against the judgment dated October 11, 2002 rendered by the learned Single Judge of the High Court of Judicature at Allahabad (Civil Side) in Civil Miscellaneous Writ Petition No. 23709 of 1995 by which the order dated February 28, 1995 passed by the prescribed authority under the provisions of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 (the Act for short) declaring 16.95 acres of land as surplus holding of the appellant and the order dated August 14, 1995 passed by the appellate authority affirming the order of the prescribed authority, have been upheld.

2. The appellant is resident of village Shingpur Mafi, Tehsil Atarra, Distt. Banda, U.P. He is tenure holder.

3. The Sub-Divisional Officer, Atarra submitted a report dated 27.9.91, stating that the appellant was holding 16.95 acres of land in excess of the prescribed ceiling limit. Therefore, he was served with a notice dated March 24, 1993 under Section 10(2) of the Act calling upon him to show cause, as to why land admeasuring 16.95 acres mentioned in the notice out of his total holding be not declared as surplus. On receipt of the said notice, the appellant filed his objections on July 30, 1993. In the objections, it was mentioned that in khata No. 132, the deceased father of the appellant was having 1/4th share and not 1/3rd share as mentioned in the notice whereas in khata Nos. 138 and 341, he had only 1/8th share. It was also mentioned that lands of khata Nos. 180, 349, 1456 and 177 were already sold out through the sale deeds dated February 5, 1973 and July 16, 1973 and therefor notice issued was illegal. The case of the appellant in the objections was that on January 10, 1980, the members of his family had entered into a family settlement wherein the land was partitioned and as his two major sons were entitled to hold 2 hectares of land each, he was not holding any surplus land. According to the appellant, the notice also related to un-irrigated land and it was further stated that the un-irrigated land was liable to be excluded while determining the

question whether he was holding the land in excess or not. By filing the objections, the appellant pleaded that he was not holding 16.95 acres of land in excess of the prescribed limit.

4. The prescribed authority framed necessary issues for determination. The appellant adduced evidence in support of his case. After considering the evidence adduced by the appellant, the prescribed authority, by order dated February 28, 1995, held that the appellant was holding 16.95 acres of land as surplus land.

5. Feeling aggrieved, the appellant preferred Appeal No. 23/1994-95 before the Commissioner, Jhansi Division, Jhansi. The appellate authority confirmed the findings recorded by the prescribed authority and dismissed the appeal by judgment dated August 14, 1995. Thereupon the appellant invoked extra-ordinary jurisdiction of the High Court under Article 226 of the Constitution by filing Civil Miscellaneous Writ Petition No. 23709 of 1995 and challenged the order of the prescribed authority as well as that of the appellate authority. The High Court by the impugned order has dismissed the writ petition giving rise to the present appeal.

6. This Court heard the learned counsel for the parties and considered the documents forming part of the appeal.

7. The only contention raised by the learned counsel for the appellant is that the deceased father of the appellant had inherited 1/4th share from the properties left by his uncle Ram Gopal and, therefore, the authorities below as well as the High Court committed error in holding that the appellant had inherited 1/3rd share, while determining the question whether the appellant was holding any surplus land or not. The pedigree of the family as given in the impugned judgment indicates that one Mr. Jagannath was original owner of the disputed land. He had four sons i.e. (1) Parag, (2) Beni Prasad, (3) Bhagwat and (4) Ram Gopal. It is not in dispute that Mr. Parag, Mr. Beni Prasad and Mr. Bhagwat pre-deceased Mr. Ram Gopal. It is also not in dispute that Ram Gopal expired in the year 1965 intestate without any issue. It is not in controversy that deceased Mr. Ram Gopal being a bhumidhar, his holding would devolve upon his heirs being the relatives as provided under Section 171 of U.P. Zamindari Abolition and Land Reforms Act, 1950 (the Act of 1950, for short).

8. Section 171 of the Act of 1950, reads as under:-

“171. General order of succession.- (1) Subject to the provisions of Section 169, when a bhumidhar or asami, being a male dies, his interest in his holding shall devolve upon his heirs being the relatives specified in sub-section (2) in accordance with the following principles, namely:-

(i) the heirs specified in any one clause of sub-section (2) shall take simultaneously in equal shares;

(ii) the heirs specified in any preceding clause of sub-section (2) shall take to the exclusion of all heirs specified in succeeding clauses, that is to say, those in clause (a) shall be preferred to those in clause (b), those in clause (b) shall be preferred to those in clause (c), and so on, in succession;

(iii) if there are more widows than one, of the bhumidhar or asami, or of any predeceased male lineal descendant, who would have been an heir, if alive, all such widows together shall take one share;

(iv) the widow or widowed mother or the father's widowed mother or the widow of any predeceased male lineal descendant who would have been an heir, if alive, shall inherit only if she has not remarried.

(2) The following relatives of the male bhumidhar or asami are heirs subject to the provisions of sub-section (1), namely:- [(a) widow, unmarried daughter and the male lineal descendant per stripes:

Provided that the widow and the son of a predeceased son of a predeceased son how low-so-ever per stirpes shall inherit the share which would have devolved upon the predeceased son had he been alive;

(b) mother and father (c) . . .

(d) married daughter (e) brother and unmarried sister being respectively the son and the daughter of the same father as the deceased;

and son of a predeceased brother, the predeceased brother having been the son of a predeceased brother, the predeceased brother having been the son of the same father as the deceased;

(f) son's daughter;

(g) father's mother and father's father;

(h) daughter's son;

(i) married sister;

(j) half sister, being the daughter of the same father as the deceased;

(k) sister son (l) half sister's son, the sister having been the daughter of the same father as the deceased;

(m) brother's son's son;

(n) mother's mother's son;

(o) father's father's son's son]”

9. A glance, at the above quoted provisions makes it clear that when a bhumidhar being a male, dies, his interest in his holding devolves upon his heirs being the relatives specified in sub-section (2), in accordance with the principles, specified in sub-section (1) of Section 171. The principle of devolvement mentioned in Section 171 (1) (i) is that the heirs specified in any one clause of sub-section (2), take interest in holding of a deceased bhumidhar simultaneously in equal shares. Sub-clause (e) of sub-section (2) of Section 171 of the Act of 1950 specifies and includes, inter alia, son of a predeceased brother, the predeceased brother having been the son of the same father as the deceased.

10. Therefore, in terms of Section 171 of the `the Act of 1950', the properties left by Mr. Ram Gopal would devolve on sons of his three brothers who had predeceased him.

11. The names of sons of his three brothers are (1) Rajaram, (2) Shiva Mohan, (3) Surajdeen and (4) Shivbalak. It may be mentioned that the appellant i.e. Chhedilal is the son of deceased Surajdeen, who was the son of brother of deceased Ram Gopal. The appellant, therefore, along with Rajaram and Shiva Mohan who are sons of deceased Parag and Shivabalak who is son of deceased Beni Prasad would take the interest of deceased Ram Gopal simultaneously in equal shares i.e. each would get 1/4th share in the holding of deceased Ram Gopal. Thus, there is no manner of doubt that the prescribed authority as well as the appellate authority had committed error in holding that the appellant had inherited 1/3rd share from the properties left by Mr. Ram Gopal. Obviously, the calculation of the surplus land made on the basis that the appellant had inherited 1/3rd share in the holding of deceased Ram Gopal, will have to be regarded as contrary to the express provisions of Section 171 of the Act of 1950 and the matter will have to be remitted to the prescribed authority for calculation of the surplus land held by the appellant on the basis that the appellant had got 1/4th share in the holding of deceased Ram Gopal.

12. For the foregoing reasons, the appeal partly succeeds. The judgment dated October 11, 2002 rendered by the learned Single Judge of the High Court of Allahabad in Civil Miscellaneous Writ Petition No. 23709 of 1995, confirming the judgment dated 28.2.1995 passed by Additional Collector (Finance)/Prescribed Officer, Banda in Case No. 1 of 1992 concluding that the appellant holds land admeasuring 16.95 acres in excess of the ceiling limit prescribed, as well as the judgment dated 14.8.1995 passed by Commissioner, Jhansi in Appeal No. 23 of year 1994-95 upholding the judgment of the prescribed authority, is hereby set aside. It is hereby declared that the appellant had inherited 1/4th share in the holding of deceased Ram Gopal. The prescribed authority, Banda, is hereby directed to redetermine the extent of surplus land held by the appellant on the footing that the 1/4 th share in the holding of deceased Ram Gopal had devolved upon the appellant. The redetermination of the excess

land held by the appellant shall be made within four months from the date of the receipt of the writ from this Court.

13. There shall be no order as to costs.