

SUPREME COURT OF INDIA

Jagan Singh (Dead) Through LRS.

Vs.

Dhanwanti

C.A.No.2467 of 2005

(P.Sathasivam and H.L.Gokhale JJ.)

19.01.2012

JUDGEMENT

H.L. GOKHALE J.

1. This appeal under Article 136 of the Constitution of India raises the question as to whether a bhumidhar having a right to transfer his land under U.P. Zamindari Abolition and Land Reforms Act, 1951 (the U.P. Act for short), while bequeathing his bhumidhari right in favour of a beneficiary can impose a restriction on the right of the legatee to make it a life estate, and if he does so whether the interest of the holder of a life estate shall continue to remain so restricted, or whether such a legatee can claim his interest to be unrestricted to affect the bequest in favour of other beneficiaries. The second question is with respect to the application of doctrine of `lis pendens' in the facts of the present case. These questions have arisen in the present appeal which seeks to challenge the judgment and order dated 18.11.2004 passed by a learned Single Judge of Allahabad High Court dismissing the Second Appeal No.982 of 2004 filed by the appellant herein (original plaintiff). By dismissing this Second Appeal, the learned Single Judge has confirmed the judgment and order dated 28.7.2004 passed by the Additional District Judge, Bijnaur in Civil Appeal No.97 of 2002 whereby the learned Additional District Judge has dismissed the said appeal of the appellant herein against the judgment and order dated 13.2.2002 passed by the Civil Judge, Junior Division, Najibabad which dismissed the Original Suit No.121 of 1994 filed by the appellant. Facts leading to this present appeal are as follows:-

2. One Umrao Singh S/o Jiraj Singh, R/o village Sarkara Khed in Tehsil Najibabad, District Bijnaur, U.P. owned certain parcels of bhumidhari lands which

are covered under the provisions of the above U.P. Act. He executed a will on 30.12.1985 concerning these lands. He stated in the will that he had no issues, and had a younger brother by name Jagan Singh (the appellant herein) who was looking after him. The will further stated that during the testator's life the testator will remain owner in possession of the said property with all the rights. However after his death, barring a plot bearing No.140-8-10-19, Jagan Singh will become the exclusive owner of all his movable and immovable properties. As far as this plot No. 140-8-10-19 is concerned, Umrao Singh stated in his will as follows:- My wife Dhanwanti R/o village Sarkara Khera will be the owner of my share of plot No. 140-8-10-19 but the restriction would be that she would not have any right to transfer the said property that would pass on to her, but this restriction will not apply to Jagan Singh.

3. It is the case of the appellant that he has been cultivating this plot No. 140-8-10-19, and further that he and the above referred Dhanwanti (the first respondent herein) each took half share of the crop therefrom. It was also his case that Dhanwanti was not the lawfully married wife of Umrao Singh, and after the death of Umrao Singh she had planned to dispose of the above plot of land in favour of one Ghasita Ram S/o Ram Chander Singh (the respondent No.2 herein). According to the appellant, she did not have such right, and therefore he filed the above suit for permanent injunction to restrain her from disposing of this particular parcel of land either to this Ghasita Ram or otherwise.

4. The respondent No.1 defended the suit, and contended that she was a lawfully married wife of Umrao Singh. She submitted that the will was a forged one, and that the defendant No.2 had no connection with this parcel of land. The defendant No.2 contended in his written statement that he had been wrongfully joined in the suit, and that the respondent No.1 herself continued in possession of the land.

5. The learned Civil Judge who tried the suit, framed the issue as to whether the appellant was entitled to prohibit the respondent No.1 from selling half share of the disputed land as claimed by him. The learned Judge held that the will was a duly executed one, and also noted that it had been registered. He however held that the respondent No.1 will have the benefit of the provision of Section 14 (1) of the Hindu Succession Act, 1956, and in view thereof the property possessed by the respondent No.1 will have to be held as her wholly owned property, and that she was not a restricted owner. The learned Judge declined to accept the submission on behalf of the appellant that the right of the respondent No.1 in the land was only on account of the will made by deceased Umrao Singh. He declined to accept that her

right was restricted under Section 14 (2) of the Hindu Succession Act, 1956, and dismissed the suit.

6. The appellant carried the matter in appeal, but the learned Additional District Judge also dismissed the appeal. Thereafter, when the appellant filed the Second Appeal to the High Court, the High Court dismissed the same by holding that no substantial question of law arose in the matter. The learned Judge held that under section 152 of the U.P. Act a bhumidhar had a right to transfer his property, and such right was subject only to the restrictions contained in the Act as provided in section 152 (1) itself. The learned High Court Judge referred to Section 169 (2) of the U.P. Act, and observed that the said Sub-section which restricted the right of a female bhumidhar to bequeath her holding by will has now been deleted. The learned Judge went on to hold that the right to transfer cannot be restricted either by contract or by a will of a tenure holder, and that the restriction contained in the will that the legatee would not have a right to transfer the property was repugnant to the incidents of a bhumidhari tenure under the U.P. Act.

7. The present appeal raises principally two questions of law. Firstly, whether section 169 of the U.P. Act prohibits a bhumidhar with transferable rights from imposing a restriction on the rights of a legatee by limiting the bequest to the life time of the legatee. Secondly, whether such a restricted bequest is permissible in view of section 14 (2) of the Hindu Succession Act, 1956. This Court while admitting this Civil Appeal on 4.4.2005 passed the following order:-

Leave granted.

Until further orders, status quo as it exists today shall be maintained.

Let the original record be requisitioned.

Consideration of the rival submission

8. The learned counsel for the appellant submitted that the Courts below had completely misdirected themselves. He pointed out that the present bequest by Umrao Singh would be clearly covered under Sub-section (1) of Section 169 of the U.P. Act, read with Section 14 (2) of Hindu Succession Act, 1956, and that the right of a bhumidhar to deal with his own property had not been taken away in any way. Besides, this provision had already been interpreted in the judgments of this Court. The counsel for the respondents on the other hand submitted that all the

courts below had taken a consistent view in this matter, and this Court should not interfere therein.

Whether the bequest in favour of respondent No.1 created a restricted estate?

9. For deciding the issue raised in this appeal, we may refer to Section 169 of the U.P. Act which reads as follows:-

169. Bequest by a bhumidhar - (1) A [bhumidhar with transferable rights] may by will bequeath his holding or any part thereof, except as provided in [sub-section(2-A)].

(2) [***]

[(2-A) In relation to a [bhumidhar with transferable rights] belonging to a Scheduled Caste or Scheduled Tribe, the provisions of [sections 157-A and 157-B] shall apply to the making of bequests as they apply to transfer during lifetime.]

(3) Every Will made under provision of sub-section (1) shall, notwithstanding anything contained in any law, custom or usage, [be in writing, attested by two persons and registered].

(*** deleted by U.P. Act 30 of 1975.)

If we read this Section, it is very clear that Sub-section (1) permits a bhumidhar to bequeath his holding or any part thereof by making a will. Sub-section (3) however requires that this has to be done in writing, and the will has to be attested by two persons and it has to be registered. The only restrictions on this right are those provided under Sub-section (2), which in turn refers to sections 157- A and 157-B of the said Act. Section 157-A provides that in relation to a bhumidhar belonging to a Scheduled Caste, such land cannot be transferred to a person not belonging to a Scheduled Caste except with the prior approval of the collector. The other restriction is under section 157-B viz. that the land belonging to a Scheduled Tribe cannot be transferred except to a person belonging to a Scheduled Tribe.

10. (i) In the present case the facts are very clear. Umrao Singh was owner of the concerned land. He made a will, it was duly attested by two persons, and it was registered as required by section 169 (3) of the U.P. Act. Under that will he created

a restricted interest in favour of respondent No.1 in plot No. 140-8-10-19. This cannot be said to be impermissible under section 169 (1) of the U.P. Act. It is nobody's case that section 169 (2) thereof applied to the present case. (ii) Section 14 of the Hindu Succession Act, 1956 undoubtedly declares in Sub-section (1) thereof that a property of a female hindu is her absolute property, but it creates an exception in Sub-section (2) which provides that Sub-section (1) will not apply to any property which is given away by instruments such as by way of a gift or under a will. In the present case Umrao Singh had made a will, and under that he had created a restricted estate in favour of respondent No.1 which was permissible under this section 14 (2).

Section 14 of the Hindu Succession Act, 1956 reads as follows:- 14. Property of a female Hindu to be her absolute property.- (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation - In this sub-section, 'property' includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance of arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

11. The issue raised in this Civil Appeal is no-longer res-intigra. In Navneet Lal Vs Gokul and others reported in 1976 (1) SCC 630, a bench of three judges of this court was concerned with an almost identical situation, wherein a life estate was created by the testator in favour of his wife. After going through the will, this Court held that it was permissible for the testator to create a limited estate in favour of his wife by making a will. Later, in Amar Singh Vs. Assistant Director of Consolidation reported in 1988 (4) SCC 143, this Court in terms held in paragraph 5 as follows:-

The right of a bhumidhar with transferable rights to bequeath his holding or any part thereof by a will is expressly recognised by Section 169 (1) of the Act.

12. In *Amar Singh* (supra) this Court explained an earlier judgment *Ramji Dixit Vs. Bhirgunath* reported in AIR 1968 SC 1058. In that matter after the death of the owner, the land had devolved upon his wife as a Hindu widow's estate. A dispute arose about the alienations effected by her, and it was held that undoubtedly she had the right to alienate. But as can be seen, in that matter the estate had devolved by inheritance, and not by will. That is why in para 8 of *Amar Singh* (Supra) this Court specifically observed that the facts in *Ramji Dixit* were quite distinguishable. Besides, as held by this Court in *Mst. Karmi Vs. Amru* reported in AIR 1971 SC 745, a widow who succeeds to the property of her deceased husband on the strength of his will, cannot claim any right other than those conferred by the will. Thus life estate given to her under a will cannot become an absolute estate under the provisions of Section 14 (2) of the Hindu Succession Act, 1956.

13. The learned Single Judge of the High Court held the transfer by respondent No.1 was not invalid since sub-section (2) of Section 169 of the U.P. Act had been deleted, which has been so done by U.P. Act No. 30 of 1975. This erstwhile sub-section (2) read as follows:-

(2) No bhumidhar entitled to any holding or part in the right of a [widow, widow of a male lineal descendant in the male line of descent, mother, daughter, father's mother, son's daughter, sister or half-sister being the daughter of the same father as the deceased], may bequeath by will such holding or part.

As can be seen, the purport behind this sub-section is to prohibit a bhumidhar entitled to any holding in the right of a female Hindu from bequeathing such holding by a will. The learned Judge clearly erred in reading this sub-section (2), and the effect of its deletion. He ignored that the present case was one falling under sub-section (1) of Section 169 and not under sub-section (2) since in the present matter the appellant was asserting his right with respect to the land which he received by way of the will of Umrao Singh. Respondent No.1 was entitled to a share in the land on account of that will only, and not on the basis of her own independent right. The will giving her a share had restricted it to her life time which Umrao Singh was entitled to do under Section 169 (1) of the U.P. Act, and the same would remain restricted in view of Section 14 (2) of Hindu Succession Act,

1956. . The learned Judge had relied on section 152 (1) of the U.P. Act, but that section also cannot be read to take away the right of a bhumidhar to bequeath his holding by a will because section 152 (1) states as follows:-

152. Bhumidhari interest when transferable- (1) The interest of a bhumidhar with transferable rights shall subject to the conditions hereinafter contained, be transferable.

The present case is one of a bhumidhar bequeathing his land by a will, and as held in Amar Singh (supra) the same was clearly permissible. The bequest made under section 169 (1) in favour of a female Hindu, if it is a restricted one, shall remain a restricted one under sub-section (2) of section 14 of Hindu Succession Act, since the same will be governed by the terms of the will. The learned Single Judge of the High Court thus clearly erred in holding that the bequest in favour of Respondent No. 1 was not a restricted one. In view of what is stated above, the Courts below erred in dismissing the suit filed by the appellant. In the circumstances, the judgments rendered by the High Court as well as by the Additional District Judge and by the Civil Judge are clearly erroneous in law and on facts.

The question of applicability of doctrine of 'lis pendes'

14. However, there are some subsequent developments which we must note. On 15.02.2010, one Smt. Poonam Rajput filed Interim Applications Nos. 3 and 4 of 2010 in this Civil Appeal. In I.A No. 3 she has applied for being impleaded as respondent, and in I.A No. 4 she sought exemption from filing the official translation of the annexures to I.A No. 3 of 2010. By its order dated 10.8.2010, this Court directed that both these I.A. Nos. 3 4 to be listed alongwith the main appeal. We have heard the learned senior counsel for the applicant in support of the I.A.s and the counsel for the appellant in reply thereto. In I.A No. 3 the applicant has claimed that the respondent No. 1 Dhanwanti has executed a registered sale deed in her favour on 27.9.2004, and her name had been directed to be mutated in the revenue records vide order dated 4.11.2004, and recorded in the Khatauni on 13.5.2005. She has submitted that this sale had taken place at a time when the suit No. 121/1994 and the First Appeal No. 97/2002 filed by the appellant herein had been dismissed on 28.7.2004. She claims to be a bonafide purchaser of the land in dispute for a good price of Rs. 3,35,000/-.

15. (i) The applicant further stated that in view of this sale, the appellant herein filed another suit No. 731/2004 on 8.10.2004 in the Court of Civil Judge (S.D.)

Bijnaur, against respondent No. 1 herein, wherein he joined the applicant as defendant No. 2. The appellant had prayed for cancellation of the said sale deed dated 27.9.2004. He had sought a permanent injunction restraining the defendants from taking possession of the disputed land.

(ii) It is further stated that in this I.A No. 3, that respondent No. 1 and the applicant opposed the suit, and prayed for its dismissal by filing a joint written statement on 28.11.2004 wherein it was contended that the respondent No. 1 was the owner of half share of the disputed land, and she had been cultivating the same. It was also submitted that the first suit having been dismissed, a second suit for the same subject matter was not maintainable.

(iii) It is pointed out that on 12.5.2005 the appellant filed an application in this suit No. 731/2004, and placed it on record that he had filed SLP (C) No. 6131/2005 (which is numbered as Civil Appeal No. 2467/2005 after the leave having been granted i.e. the present appeal) against the judgment of the Allahabad High Court arising out of the first suit. He placed it on record that the Civil Appeal was admitted on 4.4.2005, and that this court had directed maintenance of status quo in respect of the disputed land. The appellant had therefore prayed that the second suit filed by himself be stayed till the decision on the SLP by this Court, so that the multiplicity of the proceedings can be avoided.

(iv) It was thereafter pointed out that the respondent No. 1 and applicant had opposed that application for stay of the second suit by their reply dated 22.8.2005. Amongst other it was contended by them that certified copy of the order of this Court had not been filed.

(v) It is further stated in this I.A No. 3 of 2010 that this suit No. 731/2004 remained pending for some time, and it came to be dismissed for non-prosecution on 27.1.2010.

16. This I.A. No. 3 of 2010 has been opposed by the legal representatives of the appellant who have come on record consequent upon his death. They have stated in their reply that they had no knowledge about this second suit No. 731/2004 which was filed by the appellant, their predecessor in interest. In any case they contend that the transfer made by the respondent No. 1 in favour of the applicant was 'pendente lite', and therefore will have to be subject to the final decision of the Civil Appeal. Inasmuch as a plea based on the principle of 'lis pendens' has been

raised, we may now examine the applicability thereof to the facts of the present case.

17. The facts which have come on the record through I.A. No.3 and 4 of 2010 and the reply thereto disclose that the respondent No. 1 had entered into the agreement of sale of the land in dispute with applicant Smt. Poonam Rajput on 27.9.2004 when suit No. 121/1994 and Civil Appeal No. 97/2002 filed by the appellant had already been dismissed by orders dated 13.12.2002 and 28.7.2004 respectively. It is however necessary to note that this sale is within the period of limitation when the second appeal could have been filed. The appellant however chose first to file the second suit on 8.10.2004 for cancellation of the sale deed, wherein he joined the aforesaid Smt. Poonam Rajput as respondent No. 2. (In the meanwhile he obtained the certified copy of the judgment and order in the First Appeal on 5.8.2004.) Thereafter, he filed the Second Appeal on 1.11.2004 which was filed within the period of limitation. This appeal was dismissed on 18.11.2004 at the admission stage, though after hearing both the parties. The appellant then filed the present Special Leave Petition. Special Leave was granted in the present matter, and an order of status quo came to be passed on the SLP on 4.4.2005. The original appellant has however not disclosed either in the Second Appeal or in the SLP that he had filed the second suit for setting aside the sale deed. Consequently, it did not come on record at that stage that the applicant claims to have purchased the land even before filing of the Second Appeal at a time when there was no order of stay in favour of the appellant. It is also material to note that thereafter the appellant herein had applied on 12.5.2005 for stay of his own second suit by pointing out about the pendency of the present proceedings and the order of status quo having been passed therein. This second suit came to be dismissed for non-prosecution on 27.1.2010. It is contended by the legal representatives of the appellant in their reply to I.A No. 3/2010, that they were not aware about this second Suit No. 731/2004 filed by their predecessor in title, and that is how, according to them the suit came to be dismissed for default.

18. Section 52 of the Transfer of Property Act, 1882 (T.P. Act in short) which lays down the principle of 'lis-pendens' reads as follow:- 52. Transfer of property pending suit relating thereto - During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government.... Or any suit or proceeding which is not collusive and in which any right or immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party

thereto under any decree or order which may be made therein, except under the authority of the court and on such terms as it may impose.

Explanation- For the purpose of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed off by a final decree or order and complete satisfaction or discharge or such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.

19. The broad principle underlying section 52 of the T.P. Act is to maintain the status quo unaffected by the act of any party to the litigation pending its determination. Even after the dismissal of a suit, a purchaser is subject to *lis pendens*, if an appeal is afterwards filed, as held in *Krishanaji Pandharinath Vs. Anusayabai* AIR (1959) Bom 475. In that matter the respondent (original plaintiff) had filed a suit for maintenance against her husband and claimed a charge on his house. The suit was dismissed on 15.7.1952 under order IX, Rule 2, of Code of Civil Procedure 1908, for non-payment of process fee. The husband sold the house immediately on 17.7.1952. The respondent applied for restoration on 29.7.1952, and the suit was restored leading to a decree for maintenance and a charge was declared on the house. The plaintiff impleaded the appellant to the darkhast as purchaser. The appellant resisted the same by contending that the sale was affected when the suit was dismissed. Rejecting the contention the High Court held in para 4 as follows:-

.....In section 52 of the Transfer of Property Act, as it stood before it was amended by Act XX of 1929, the expression active prosecution of any suit or proceeding was used. That expression has now been omitted, and the Explanation makes it abundantly clear that the '*lis*' continues so long as a final decree or order has not been obtained and complete satisfaction thereof has not been rendered. At page 228 in Sir Dinshah Mulla's Transfer of Property Act, 4th Edition, after referring to several authorities, the law is stated thus:

Even after the dismissal of a suit a purchaser is subject to '*lis pendens*', if an appeal is afterwards filed.

If after the dismissal of a suit and before an appeal is presented, the 'lis' continues so as to prevent the defendant from transferring the property to the prejudice of the plaintiff, I fail to see any reason for holding that between the date of dismissal of the suit under Order IX Rule 2, of the Civil Procedure Code and the date of its restoration, the 'lis' does not continue.

20. It is relevant to note that even when Section 52 of T.P. Act was not so amended, a division bench of Allahabad High Court had following to say in *Moti Chand Vs. British India Corporation* AIR (1932) Allahabad 210:- The provision of law which has been relied upon by the appellants is contained in S. 52, T.P. Act. The active prosecution in this section must be deemed to continue so long as the suit is pending in appeal, since the proceedings in the appellate Court are merely continuation of those in the suit: see the case of *Gobind Chunder Roy v. Guru Chur Kurmokar* 1888 15 Cal. 94.

21. If such a view is not taken, it would plainly be impossible that any action or suit could be brought to a successful termination if alienations pendente lite were permitted to prevail. The explanation to this section lays down that the pendency of a suit or a proceeding shall be deemed to continue until the suit or a proceeding is disposed of by final decree or order, and complete satisfaction or discharge of such decree or order has been obtained or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force. In the present case, it would be canvassed on behalf of the respondent and the applicant that the sale has taken place in favour of the applicant at a time when there was no stay operating against such sale, and in fact when the second appeal had not been filed. We would however, prefer to follow the dicta in *Krishanaji Pandharinath* (supra) to cover the present situation under the principle of *lis-pendens* since the sale was executed at a time when the second appeal had not been filed but which came to be filed afterwards within the period of limitation. The doctrine of *lis-pendens* is founded in public policy and equity, and if it has to be read meaningfully such a sale as in the present case until the period of limitation for second appeal is over will have to be held as covered under section 52 of the T.P. Act.

22. In the circumstances, we hold as follows:-

(i) The judgment and order dated 13.2.2002 rendered by the Civil Judge, Junior Division, Najibabad in the suit No. 121/1994, the judgment and order dated 28.7.2004 passed by the Additional Distt. Judge, Bijnaur in Civil Appeal No. 97 of 2002, and the one dated 18.11.2004 by a learned Single

Judge of Allahabad High Court in Second Appeal No. 982 of 2004 will have to be held as not laying down the correct law and will therefore have to be set aside. The appellant had sought a permanent injunction against the respondent No. 1 from selling the concerned parcel of land either to the respondent No. 2 or otherwise. That sale had not taken place. The relief in Suit No. 121/1994 will therefore have to be moulded to grant only a declaration that the respondent No. 1 had no right to sell the disputed parcel of land.

(ii) The applicant Smt. Poonam Rajput has claimed that the said parcel of land has been sold to her by the first respondent subsequently on 27.9.2004. The second suit filed by the appellant bearing Suit No. 731 of 2004 in the Court of Civil Judge, Senior Division, Bijnaur sought to set-aside the sale in favour of the applicant. It has come to be dismissed for default though the legal representatives of the appellant contend that it was so dismissed since they were not aware about that suit. However, although we have dealt with the applicability of the principle of *lis pendens* to the present matter, the order concerning the second sale passed in the second suit is not under challenge before us. It will be for the legal representatives of the appellant to apply to that court for appropriate orders, and it will be for that court to decide their application in accordance with law after hearing all the parties including the applicant.

(iii) Since, the learned senior counsel for the applicant has been heard in support of the I.A. No.3 and 4 of 2010 no separate order is necessary thereon. The same are disposed of accordingly.

23. Hence, we pass the following order:-

(a) The impugned judgment and order dated 13.2.2002 rendered by the Civil Judge, Junior Division, Najibabad, U.P. in the Suit No. 121/1994, and those arising in the appeals therefrom rendered by the Additional District Judge, Bijnaur and the High Court of Allahabad are held to be bad in law and are hereby set aside. (b) There shall be a declaration in favour of the appellant that the respondent No. 1 had no right to sell the disputed parcel of land. Suit No. 121/1994 filed by the appellant in the Court of Civil Judge, Junior Division, Najibabad, U.P. shall stand decreed to that extent.

24. The Civil Appeal and I.A. Nos. 3 and 4 of 2010 stand disposed of as above. The parties will bear their own costs.