

ALLAHABAD HIGH COURT

Smt. Prema Devi

Vs.

Joint Director of Consolidation

Civil Misc. Writ Nos. 1319 and 1235 of 1963
(B. Dayal, and B.N. Lokur, JJ.)

13.12.1968

JUDGMENT

B. Dayal, J.

1. These two connected writ petitions filed by Smt. Prema Devi, widow of Asharfilal and Satnarainlal and other have been referred to a Division Bench by a learned single judge of this Court as he found it difficult to agree with a single judge decision of this Court *Ram Jag Mistri v. Deputy Director of Consolidation*¹, The facts of the case are now no more in dispute and have been decided finally by the Joint Director of Consolidation who, in turn, accepted the findings of fact arrived at in Second Appeal by the Deputy Director of Consolidation. The relevant facts may now be stated in short.

One Udaibhan Lal had four sons, namely, Bhagwati Pd., Satya Narain Lal, Daya Shankar Lal and Asharfi Lal, Smt. Prema Devi is the widow of Asharfi Lal, who died in the lifetime of his father Udaibhan Lal. When Udaibhan Lal died in 1936, he left zamindari as also sir and khudkasht plots. On the death of Udaibhan Lal, the names of his three surviving sons, namely, Bhagwati Pd., Satya Narain Lal and Daya Shankar Lal, along with Smt. Prema Devi, widow of Asharfi Lal, were mutated in all the three villages, Dasuati, Sonahiti and Pathkauli in the district of Basti where the properties of Udaibhan Lal were situated. In 1947, two of the brothers, Satya Narain Lal and Bhagwati Pd., filed suit No. 460 of 1947 in the Court of the Munsif, Basti, for a declaration that Smt. Prema Devi had no share in the property and to this suit Smt. Prema Devi was made a defendant. The third brother Daya Shankar Lal was also joined as a pro forma defendant. This suit was ultimately compromised in 1949 and a compromise decree was passed. Under the compromise decree. Smt. Prema Devi was given certain plots for her maintenance in two villages, Dasuati and Pathkauli. It is now a finding of fact that after the compromise in 1949 Smt. Prema Devi is in possession of those plots. She is not in possession of any other property of the family. In this compromise it was expressly provided that she would be entitled to maintain herself out of the income of those plots but she would have no right to alienate the same. It was further provided in the compromise that on her death, the property would revert back to the collaterals of her husband. But it appears that even after the compromise the revenue records

were not corrected and her name continued as a co-proprietor in all the three villages. On the coming into force of the U. P. Zamindari

¹ AIR 1968 Allahabad 419

Abolition and Land Reforms Act, her name was recorded as co-bhumidhar of all the khudkasht and sir plots in all the three villages. In 1960, consolidation proceedings started and objections were filed by Satya Narain Lal and others that the name of Smt. Prema Devi was wrongly entered in the revenue records which should be expunged and that she was only entitled to be entered as an Asami over the plots given to her in the compromise in the two villages. Since the property lay in three villages and related to three different khatas, three separate objections were filed. The Consolidation Officer allowed all the three objections and expunged the name of Smt. Prema Devi as co-bhumidhar from all the three khatas. He directed her name to be recorded as an Asami over the plots given to her under the compromise. On appeal, the decision was reversed and her name was maintained as co-bhumidhar in all the khatas. On second appeal, the Deputy Director of Consolidation restored the order of the Consolidation Officer and allowed the appeal. On revision by Smt. Prema Devi, the learned Joint Director of Consolidation maintained the order expunging her name as co-bhumidhar in the two villages in which she had been given plots under the compromise and retaining her name as a Asami over the plots given to her. But he allowed the revision regarding village Sonahiti where she had not been given any plot. The Joint Director of Consolidation thought that her rights in that village were not governed by the compromise. He directed that her name as co-bhumidhar would continue on the plots relating to that village Sonahiti. Against this decision of the Joint Director of Consolidation, one writ petition has been filed by Smt. Prema Devi challenging the correctness of the order in two revisions which were dismissed by the Joint Director of Consolidation and the other cross-writ petition has been filed by Satya Narain Lal and others challenging the correctness of the decision relating to village Sonahiti. Both the writ petitions depending on common facts and law have been heard together and are being disposed of by this common judgment.

2. To deal first with writ petition 1235 of 1963 filed by Satya Narain Lal and others, it is sufficient to say that the learned Joint Director of Consolidation completely misdirected himself. The compromise in the civil suit related to all the three villages and in lieu of her right of maintenance, Smt. Prema Devi was allowed only the plots in two villages. It was not necessary to allow plots in all the three villages to satisfy her need of maintenance. The position on the date of the suit was that Smt. Prema Devi's husband having died in the lifetime of his father who also died in 193C Smt. Prema Devi got no interest in the joint family property. She was merely entitled to maintenance. Under this compromise she got certain plots of land in her possession for her maintenance. After the compromise she was merely in possession of those plots and her rights were confined to those plots only. Even if her name continued, as joint owner by mistake, it could not give her any rights. The Deputy Director of Consolidation in Second Appeal was, therefore, right in expunging her name from all the three villages.

3. In the petition filed by Smt. Prema Devi, the contention of the learned counsel for the

petitioner is that upon the passing of the Hindu Succession Act, 1956, Smt. Prema Devi acquired full Bhumidhari rights and in any case the compromise decree not having been enforced, had no effect upon her rights which she acquired by her name having been retained on the whole of the property as co-bhumidhar.

4. The second point is concluded by a finding of fact that she was never in possession of the property other than the plots given to her by the compromise decree and the mere fact of her name remaining on the revenue records cannot be sufficient to invest her with any right. Under the Hindu Law, as it stood in 1936, she got no right in the joint family property and the only property which came into her possession by means of the compromise decree were the specific plots. Even under Section 14 (1) of the Hindu Succession Act, 1956, she could improve her position only in respect of property in her possession. So its effect has to be considered only regarding the specific plots given to her in lieu of maintenance.

5. In the first place, we are of the opinion that the Hindu Succession Act, 1956, cannot be made applicable to agricultural plots. This Act was passed by the Central Legislature in 1956 and the only entry under which the Central Legislature had the jurisdiction to pass the Act, was entry No. 5 in the third list of the Seventh Schedule of the Constitution. This entry is as follows :-"5- Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law." This entry obviously relates only to personal law and laws passed under this entry do not apply to any particular property. They merely determine the personal law. In List 2, Entry No. 18 is as follows :-"Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization." This entry which is in the exclusive jurisdiction of the State Legislature is in the widest term. All laws relating to land and land tenures are therefore, within the exclusive jurisdiction of the State Legislature. Even personal law can become applicable to land tenures if so provided in the State Law, but it cannot override State legislation. It is noteworthy that in list 3 wherever the entry relates to rights in land 'agricultural land' has expressly been excluded. For instance, Entry No. 6 is as follows:"Transfer of property other than agricultural land....." Entry No. 7 is as follows :-

"Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land." No such exception was expressly mentioned in Entry No. 5 because this entry related only to matters personal to individuals and did not relate directly to any property. While legislating in respect of such general subject the Legislature must be assumed to pass law only affecting property which it had jurisdiction to legislate about. Gwyer, C. J. while delivering the judgment of the Federal Court in a reference on the Hindu Women's Rights to Property Act, 1937, reported in AIR 1941 FC 72 observed as follows :-

"There is a general presumption that a Legislature does not intend to exceed its

Jurisdiction. When a Legislature with limited and restricted powers makes use of a word of such wide and general import as "properly", the presumption must surely be that it is using it with reference to that kind of property with respect to which it is competent to legislate and to no other....."

The Hindu Succession Act, 1956, was passed merely to alter the personal law of succession applicable to Hindus. It had no reference to any kind of property in particular and was not meant to govern rights in agricultural tenancies. Sub-section (2) of Section 4 of the Act runs as follows :-

"For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings."

This sub-section indicates that it was only for the removal of doubts that this provision had been included. Even without this provision, the Act could not apply to agricultural holdings.

6. Under the U. P. Zemindar Abolition and Land Reforms Act which regulated the tenancy rights, there is no provision applying personal law to any of the tenures created under that Act and thus the provisions of the Hindu Succession Act are wholly inapplicable to the land tenures under the U. P. Zemindar Abolition and Land Reforms Act

7. Even if it be assumed that this Act is applicable to agricultural land and land tenures, it is obvious that Section 14, which is the only provision possibly applicable to the facts of the case and which is relied upon by the learned counsel on behalf of Smt. Prema Devi, cannot give her any benefit. On the coming into force of the U. P. Zemindar Abolition and Land Reforms Act, in 1952 Smt. Prema Devi who was in possession of certain plots of land in lieu of her maintenance, became an Asami under Section 11 of that Act. Section 11 of the U. P. Zemindar Abolition and Land Reforms Act is as follows:

"Notwithstanding anything contained in Section 10 where sir or khudkasht has been allotted by the sir or khudkasht holder thereof to a person in lieu of maintenance allowance, such person shall be deemed to be the asami thereof entitled to hold the land for so long as the right of maintenance allowance subsists."

Under this section Smt. Prema Devi became an Asami of the plots which had been given to her in lieu of maintenance. Subsequently, when the Hindu Succession Act, 1956, came into force, she could not become a bhumidhar, that is a tenure-holder of another class. Tenancy rights were created by the U. P. Zamindari Abolition and Land Reforms Act and bhumidhari rights could only be acquired under the provisions thereof. It is not possible to hold that the nature of her

tenure would change on the passing of the Hindu Succession Act.

Section 14, sub-section (1) of the Hindu Succession Act runs as follows:-

"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."

The property which Smt. Prema Devi held was Asami right in specific plots. She could not possibly become the full owner of those plots, for proprietary rights vest in the Government.

8. Apart from this, sub-section (2) of Section 14 of the said Act is as follows:-

"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."

In the present case, Smt. Prema Devi got these plots of land by means of a compromise decree. Before that decree, she had no right in the land. It was for the first time under the decree which was passed on a compromise that she got these plots of land. Even if it be assumed that this decree itself is a record of the compromise between the parties, then she got the property under the compromise which was filed in Court in writing and on the basis of which the decree was passed. This compromise is also covered by the words "other instrument" in sub-section (2) of Section 14 and, therefore, the rights given to Smt. Prema Devi under the compromise decree cannot be enlarged under sub-section (1) of the section. The scheme of Section 14 apparently is to give full proprietary rights to Hindu women where she got only limited rights by virtue of ancient Hindu Law but not to affect those which were received under an instrument by deliberate human volition. In the present case, limited rights were acquired under a compromise decree and are thus not affected even if the provisions of Section 14 of the Hindu Succession Act are applicable to the case.

9. Learned counsel on behalf of Smt. Prema Devi drew our attention to the case of *Shakuntala Devi v. Beni Madhav*¹, where a learned single Judge of this Court held that the provisions of the Hindu Succession Act are applicable to agricultural land also which decision has been followed by another single Judge of this Court in AIR 1968 Allahabad 419. We have carefully gone through these cases but, with respect, we are unable to agree with this conclusion. Learned counsel also relied upon the case of *Amar Singh v. Baldeo Singh*,² In that case personal law was applicable to the land in dispute and the matter for consideration was, whether Section 14 of the Hindu Succession Act was valid. It was held valid as it related to a matter of personal law. We respectfully agree with the conclusion.

10. The result therefore, is that Civil Misc. Writ No. 1319 of 1963 filed by Smt. Prema Devi is

dismissed while Civil Misc. Writ No. 1235 of 1963 filed by Satya Narain Lal and others is allowed. The order passed by the Joint Director of Consolidation is quashed and that of the Deputy Director of Consolidation in Second Appeal is restored. Parties will bear their own costs in this Court.

Orders accordingly.

¹AIR 1964 All 165

²AIR 1960 Pun 666 (FB)