

ALLAHABAD HIGH COURT

Ram Jag

Vs.

Director of Consolidation

Special Appeal No. 784 of 1967

(Satish Chandra and P.N. Bakshi, JJ.)

13.09.1974

JUDGEMENT

Satish Chandra, J.

1. Sheo Harakh died leaving three sons, Ram Rup, Ram Jag and Ram Sundar. He left a large property, including many occupancy tenancy plots. One of his sons, Ram Sundar, died in 1939, and was succeeded by his widow Smt. Phulbasi. Differences having arisen between her and the brothers of her husband, she filed a suit for partition, claiming a one-third share in the family properties. She pleaded that her husband, Ram Sundar, was separate from the other brothers, that occupancy tenancy holdings were governed by personal law in matters of succession, and that she, as the heir of her husband, had inherited a one-third share. The other members of the family contested the suit. They pleaded that Ram Sundar had died as a member of the Hindu undivided family and his interest went to his other brothers by survivorship.

2. During the pendency of the suit the parties settled their dispute outside court. Smt. Phulbasi recognized that her husband had died in a state of jointness with his brothers, and that the entire property was joint family property. The defendants recognized that Sm. Phulbasi was entitled to maintenance, in lieu of which she was given a large number of plots mentioned in the agreement. Such plots included the two occupancy tenancy plots now in dispute, namely, Nos. 199 and 200, situate in village Chakia, Taluqa Chauthar, district Varanasi. The agreement further stated that Sm. Phulbasi will enjoy them for her life and have no right to transfer the plots given to her on any ground. This agreement dated 18-1-44 was filed before the court, where the suit for partition was pending, and soon after the court passed a decree in terms of the compromise on February 29,

1944.

3. On commencement of the consolidation proceedings Sm. Phulbasi claimed a one-third share in the holdings. The Consolidation Officer held that she was bound by the compromise decree, and under it she only had a right of enjoyment of the plots and that she had no interest in them. He directed that she be recorded as occupant over the two plots, namely, plots Nos. 199 and 200, which were in dispute in those proceedings. On appeal the Settlement Officer held that the effect of the compromise decree was that two plots were transferred to the lady and she became their bhumidhar. This view was affirmed by the Deputy Director of Revision.

4. The other members of the family filed a writ petition in this Court. A learned single Judge held that under Section 14 (1) of the Hindu Succession Act Sm. Phulbasi became full owner of the two plots. Sub-section (2) of Section 14 was held inapplicable because the rights in favour of the lady were not created by the compromise decree but were recognised by the antecedent family arrangement. It could not hence be said that any instrument, decree or order prescribed a restricted estate in her favour. The ultimate decision that Sm. Phulbasi had become bhumidhar was upheld and the writ petition was dismissed. Aggrieved, the other members of the family have come up in appeal.

5. The suit for partition filed by Sm. Phulbasi ended in a compromise decree which had become final and is binding between the parties. The compromise stated that the plaintiff accepted that her husband Ram Sundar died in a state of jointness with his brothers and that the defendants were the owners of the joint family property. The family properties were liable for the maintenance of the plaintiff, namely, Sm. Phulbasi. It was further stated that the defendants were agreeable to give Sm. Phulbasi the plots mentioned in the agreement in lieu of the plaintiff's right of past and future maintenance. The plaintiff was to remain in possession of the plots allotted to her in lieu of maintenance during her lifetime. She was to have the right to enjoy their usufruct. She was not to have the right to transfer or waste them on any ground. She was to be liable to pay the rent due and payable for the plots allotted to her. Among the plots given to Sm. Phulbasi were two plots Nos. 199 and 200 in village Chakia.

6. It is evident that under this family settlement the lady was given certain plots in satisfaction of her right of maintenance. She was allotted the plots for enjoyment during her lifetime only. She had no right of transfer or alienation or waste in regard to the plots allotted to her.

7. The plots were occupancy tenancy. The compromise recognized that the other male members of the family were the occupancy tenants. Sm. Phulbasi had no interest in them. The agreement did not purport to transfer the occupancy tenancy rights vesting in the other members of the family to the lady. Some of the plots were allotted to her in lieu of maintenance. She was entitled to remain in possession of the plots allotted to her during her lifetime as maintenance-holder. She did not become the occupancy tenant of the plots. Under the compromise she was to remain in possession for her lifetime. She could not hence be a fresh stock of descent. On her death the plots could not go to her personal heirs. They were evidently to revert to the family of her husband.

8. In *Basdeo v. Director of Consolidation*, ¹ it was held that where under a compromise possession over land was given to a Hindu widow only for the period of her life and she was prohibited from making any transfer of this property it cannot be said that she became owner or proprietor of the land in virtue of the compromise. She was given only a right of enjoyment of the property for her lifetime under certain limitations, from which it followed that the general and residuary rights in the estate continued to remain vested in the sole heir of the last male sir-holder and to whom the property would revert on her death.

9. It is thus clear that the lady did not acquire the interest of occupancy tenancy in the plots. In *Prema Devi v. Joint Director*. ² a Division Bench of this Court held that the provisions of the Hindu Succession Act, 1956, did not apply to agricultural plots. Learned counsel for the lady submitted that this view was not correct. Assuming that the provisions of the Hindu Succession Act are applicable to agricultural plots and that Section 14 would consequently apply, then sub-section (2) of Section 14 would also become applicable. Section 14 of the Hindu Succession Act provides;-

"14 (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 or 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 stridhan 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."

10. Under sub-section (2) the enlargement of the interest of a female under sub-section (1) is not to apply to property acquired either under any instrument or under a decree of a civil court in cases where the instrument or decree prescribed a restricted estate in such property. In the present case the compromise decree restricted the lady's right to enjoy the plots for her lifetime. She did not have the right to transfer them. These restrictions would continue to apply to her. Assuming that the decree itself did not prescribe a restricted estate, because it was based upon an earlier family settlement, the position would nonetheless be the same. In *Prema Devi's* case, 1969 All LJ 253 it was held that even if it be assumed that the decree itself is a record of the compromise between the parties, then she got the property under the compromise which she filed in Court in writing, and on the basis of which the decree was passed, and this compromise will be covered by the words "other instrument" in sub-section (2) of Section 14. In the present case the parties filed a written agreement, i.e., the compromise dated 18th January, 1944, in the civil court. This written agreement prescribed restrictions subject to which the plots were allotted to the lady. The compromise was clearly an "instrument" within meaning of sub-section (2) of Section 14, and so the restrictions prescribed by it would continue

to govern her and sub-section (1) of Section 14 would be inapplicable.

11. For the lady reliance was placed, upon *Maturi Pulliah v. Maturi Narasimham*,³ and *Ram Charan Das v. Girja Nandini Devi*,⁴ In the former case it was held that a family arrangement will need registration only if it creates any interest in immovable property in present in favour of the parties mentioned therein. In the latter case it was held that the transaction of a family settlement between members of a family does not create an interest.

12. If the case of the lady be that she did not acquire any interest in the plots allotted to her by virtue of the family settlement as mentioned in the document dated 18th January. 1944, then no right or interest having been created in her favor there under, the position will be that her rights were created by the decree. The restrictions upon her rights would likewise be under the decree. The decision in *Ramgopal v. Tulshi Ram*,⁵ is also not helpful. There the question was whether a document containing the terms of a family settlement was liable to registration, and it was held that if the document was inadmissible for want of registration the mere fact that mutation has taken place and that possession has been taken cannot remedy the absence of registration. It was also held that where a document containing the terms of an oral family arrangement is filed in court merely for the purpose of informing the court, then it is not liable to be registered. But if the document was filed with a desire to make formal record of the arrangement then it will need registration if the value of the property covered by it is Rs. 100 or more. Our attention was not invited to any finding that the document was filed before the court merely with an intention to inform the court of any oral family arrangement. Moreover, no objection that the document containing the terms of the settlement was inadmissible for want of registration was ever raised by any party either in the civil court or in the consolidation proceedings. The case has throughout proceeded on the basis that the compromise followed by the decree was valid and binding. If the document of settlement which contained the terms of the agreement was an operative transaction and the rights of the parties were to be governed by it, then the restrictions prescribed by it would equally be binding : otherwise the decree which ended the suit for partition filed by the lady would be deemed to have prescribed and decided the rights of the parties. In either view of the matter Section 14 (2) of the Hindu Succession Act was applicable.

13. The position was that on the date preceding the date of vesting under the Zamindari Abolition and Land Reforms Act the lady was in possession of the plots in lieu of maintenance. Section 10 of the Zamindari Abolition and Land Reforms Act conferred asami rights, on a lady in possession of sir and Khudkasht in lieu of maintenance. The Zamindari Abolition and Land Reforms Act does not confer any status upon persons in possession in lieu of maintenance of plots other than sir or khudkasht. Sm. Phulbasi was in possession of occupancy tenancy plots in lieu of maintenance, so she acquired no rights under the Zamindari Abolition and Land Reforms Act.

14. The result is that Sm. Phulbasi was entitled to remain in possession of the plots allotted to her under the compromise decree, during her lifetime, in lieu of maintenance. With her death, the plots were liable to revert to the other members of the family. Her personal heirs had no title or interest in them.

15. Sm. Phulbasi died during the pendency of the present appeal. On 26th March, 1968, a Bench of this Court directed that her daughter Sm. Girja Devi be substituted in her place. This order was passed on the footing that counsel for parties agreed that Smt. Girja Devi may be substituted in place of Sm. Phulbasi for purposes of representation in this appeal. It is thus evident that she was substituted pendente lite. As seen above she did not inherit any interest in the land in dispute from Sm. Phulbasi.

16. In the result the appeal succeeds and is allowed. The judgment of the learned single Judge is set aside. The writ petition is allowed. The orders of the consolidation authorities are set aside and it is directed that the names of the appellants shall be recorded over the plots in dispute. The appellants will be entitled to costs here and in the courts below.

Appeal allowed.

Cases Referred.

1. 1970 RD 75 (All)
2. 1969 All LJ 253
3. AIR 1966 SC 1836

4. AIR 1966 SC 323

5. AIR 1928 All 641 (FB)