MADHYA PRADESH HIGH COURT

Kumari Ramlali

Vs.

Bhagunti Bai

Letters Patent Appeal No. 6 of 1965, Decided on 6.4.1965, from judgment of K.L. Pandey, J., in Civil Appeal No. 69 of 1963
(P.V. Dixit, C.J. and R.J. Bhave, J.)

20.04.1968

JUDGMENT

Dixit, C.J.

1. This is a Letters Patent appeal from a decision of Pandey, J. whereby the learned Single Judge, setting aside the judgments of the original Court and the first appellate Court, dismissed the plaintiff-appellant Ramlali's suit for partition and separate possession of certain agricultural plots.

2. The material facts are that one Ramnath died in February 1954 leaving two widows, one Mst. Bilasabai and another Mst. Bhaguntibai, and two daughters, the appellant Kumari Ramlali and Kumari Keshbai born of Mst. Bilasabai. At the time of his death Ramnath held some plots situated in villages Deori and Tigwan on Bhumiswami and Bhumidhari tenure. After his death his two widows jointly inherited the plots. Mst. Bilasabai died on 19th March 1957. Thereafter disputes started between Mst. Bhaguntibai and the two daughters of Mst. Bilasabai about the possession of the plots. Ultimately, in proceedings under Section 145 of the Code of Criminal Procedure an order was made in favour of Bhaguntibai. On 9th April 1958 Bhaguntibai sold one of the plots, namely khasra No. 296 having an area of 13.47 acres of village Tigwan to the respondents Nos. 2 to 5.

3. Ramlali and her sister Keshbai then instituted a suit claiming partition and separate possession of half share of the plots in suit alleging that on the death of their mother Bilasabai they inherited Bilasabai's half share in the plots. The respondent Bhaguntibai contested the suit inter alia on the ground that on the death of her co-

widow Bilasabai, she became the exclusive owner of the plots and that the plaintiffs had no right or title to the plots during her lifetime. The plea of the other respondents was that they were *bona fide* purchasers for value of the plot bearing khasra No. 296 and had also spent Rs. 2,000 in making some improvements in the plots. The Civil Judge, Class II, Sihora, who tried the suit, accepting the plaintiffs' claim passed a preliminary decree against Bhaguntibai declaring that the plaintiffs had a half share in the plots and directing partition of the suit lands. He also directed that "the value or area of khasra No. 296 will be adjusted from the share of the defendant No. 1, that is Bhaguntibai". Bhaguntibai then unsuccessfully appealed before the Additional District Judge, Jabalpur. It appears from the record that in the interval between the decreeing of the claim by the original Court and the filing of the appeal by Bhaguntibai, Keshbai died.

4. In the second appeal which Bhaguntibai then preferred in this Court the learned Single Judge took the view that under Section 151 of the Madhya Pradesh Land Revenue Code, 1954 (hereinafter referred to as the Code), the interest of the tenure-holder Ramnath in the plots devolved after his death on his co-widows according to his personal law; that the 'personal law' spoken of by Section 151 of the Code meant the personal law as it stood when the Code was enacted and not the personal law which obtained after the enactment of the Hindu Succession Act, 1956; and that, therefore, Section 14 of the Hindu Succession Act did not in any way affect the devolution of the plots in the present case. On this reasoning and following the decisions of the Privy Council in *Bhugwandeen Doobey v. Myna Baee,* [1] *Sri Gajapathi Nilamani Patta Maha Devi Garu v. Sri Gajapathi Radhamani Patta Maha Devi Garu,* [2] *Chotay Lall v. Chammoo Lall,* [3] and *Sri Gajapati Radhamani Garu v. Maharani Sri Pusapati Alakarajeswari,* [4] the learned Single Judge held that on the death of Ramnath the two co-widows succeeded as co-heirs to the plots of their deceased husband and took as joint tenants with rights of survivorship and equal beneficial enjoyment and that on the death of Bilasabai her interest survived to Bhaguntibai and did not descend to the other heirs of Ramnath and that so long as Bhaguntibai was alive, no portion of Ramnath's estate could descend to his other heirs. Accordingly, he allowed Bhaguntibai's appeal and dismissed the plaintiff's suit.

5. At the outset it must be stated that as Bilasabai died on 19th March 1957, the question of the devolution of her rights in the plots is governed by Section 151 of the Madhya Pradesh Land Revenue Code of 1954 and not by any provisions of the

Madhya Pradesh Land Revenue Code of 1959. It must also be noted that entry No. 5 of List III of the Seventh Schedule to the Constitution does not exclude agricultural lands from the power of legislation relating to wills, intestacy and succession as was done by entry No. 7 of List III of the Seventh Schedule to the Government of India Act, 1935, which contained the expression "save as regards agricultural Land". That being so, the Hindu Succession Act, 1956, applies also to agricultural lands. After the coming into force of the Constitution, the Union Parliament became competent under Schedule 7, List III, entry No. 5 to legislate in the matter of wills, intestacy and succession in respect of agricultural lands also. See *Hari Dass v. Hukmi,* [5] *Laxmi Debi v. Surendra Kumar,* [6] and *Sant Ram Dass v. Gurdev Singh,* [7] Till the coming into force of the Hindu Succession Act, 1956, the law about two widows inheriting their husband's property as settled by the Privy Council decisions referred to earlier and reiterated by the Supreme Court in *Commissioner of Income Tax v. Smt. Indira,* [8] and *Karpagathachi v. Nagarathinathachi,* [9] was that two widows inheriting their husband's properties took together as joint tenants with rights of survivorship and equal beneficial enjoyment; they were entitled to enforce a partition of those properties so that each could separately possess and enjoy the portion allotted to her, but neither could, without the consent of the other, enforce an absolute partition of the estate so as to destroy the right of survivorship. But this law has been modified by the provisions contained in Section 14(1) of the Hindu Succession Act, 1956. Sub-Section (1) of Section 14 prescribes that any property possessed by a female Hindu, whether acquired before or after the commencement of the Act of 1956, shall be held by her as full owner thereof and not as a limited owner. This Section has retrospective operation so as to make a female Hindu a full owner of immovable property acquired by her including property acquired either at a partition or by way of gift or by inheritance or by devise.

6. Now, Section 151 of the Code contained a provision about the devolution of interest of the tenure-holder on his death. It said :-

> "Subject to his personal law, the interest of a tenure-holder shall on his death pass by inheritance, survivorship or bequest, as the case may be."

Thus, according to Section 151 the devolution of the interest of a tenure-holder is according to his personal law. Bilasabai died on 19th March 1957. If the personal law is taken as one modified by Section 14 of the Hindu Succession Act, 1956, and

obtaining when the succession opened, that is on 19th March 1957, then undoubtedly Bilasabai having become full owner of her share in the plots which she inherited from her husband, her co-widow, the respondent Bhaguntibai, cannot make any claim to get the plots by survivorship. Bilasabai's share in the plots would descend to her daughters. If, on the other hand, "personal law" according to which the interest of a tenure-holder was to devolve under Section 151 of the Code is taken as meaning the personal law which existed at the time when the Code was enacted, then there can be no doubt that under the personal law as it stood in 1954 on the death of Bilasabai her interest in the plots would go to the surviving widow, the respondent No. 1.

7. The question, therefore, that arises for determination is whether the personal law referred to in section 151 of the Code means the personal law as it existed before the enactment of the Hindu Succession Act, 1956, or the personal law as modified by that Act, and which obtained at the time the succession opened. The learned Single Judge took the view that the mode of devolution laid down in Section 151 of the Code was in no way affected by Section 14 of the Hindu Succession Act, 1956, as that devolution provided for the devolution of tenancy rights, and Section 4(2) of the Hindu Succession Act expressly declared that nothing in that Act shall affect the provisions of any law for the time being in force providing for the devolution of tenancy rights. He was also inclined to think that Section 151 of the Code was an instance of legislation by reference when it said that the devolution of the interest of the tenure-holder would be according to his personal law; that, therefore, the personal law as existing on the date of the enactment of the Code would be the personal law and it would not be permissible to read the words "personal law" as meaning the personal law as obtaining from time to time. The learned Single Judge relied on the decision of the Bombay High Court in *Sitabai v. Kothulal,* [10] In that case Vyas, J. held that in the context of the Hindus the expression "personal law" in Section 151 of the Code meant the law regarding devolution of tenancy rights in respect of agricultural holdings amongst the Hindus which was in force at the time of the enactment of the Hindu Succession Act, and that law clearly recognized reversion and that the law contained in Section 151 of the Code was saved by Section 4(2) of the Hindu Succession Act, 1956.

8. With respect to the learned Single Judge, we do not find ourselves in agreement with the view taken by him. The personal law according to which the devolution of the interest of a tenure-holder is to take place is clearly the personal law by which the

tenure-holder was governed when the succession opened. Section 151 does not contain any words for even suggesting that the personal law spoken of there is the personal law in vogue at any particular date. "Personal law" clearly means the law applicable to a community by religion and as gatherable from the texts and customs governing the community to which the tenure-holder belonged or the statute law as applicable to him. In our opinion, Section 151 of the Code when it says that "subject to his personal law, the interest of a tenure-holder shall on his death pass by . . ." does not in any way lay down a rule of devolution by incorporating by reference the provisions of any statute. There is in Section 151 no more incorporation of any specific law by reference than there is in a provision just saying that a matter shall be decided in accordance with law. That being so, the principle laid down by the Privy Council in *Secy. of State v. Hindustan Co-operative Insurance Society Ltd.,*[11] which the learned Single Judge followed, has no applicability whatsoever. The Privy Council decision only lays down that where a statute is incorporated by reference into a second statute, any change or addition to the former Act, which is not expressly made applicable to the subsequent Act, cannot be deemed to be incorporated in it. It cannot be maintained with any degree of force that by referring generally to personal law Section 151 incorporated the provisions of any statute prevailing when the Code was enacted. The view that under Section 151 of the Code the devolution of the interest of a tenure-holder would be according to the personal law prevailing at the time of the opening of the succession is supported by the statement in Statutes and Statutory Construction by Sutherland (3rd Edition), Vol.2, at page 550. That statement is :

> "A statute which refers to the law of a subject generally adopts the law on the subject as of the time the law is invoked. This will include all the amendments and modifications of the law subsequent to the time the reference statute was enacted."

9. Section 4(2) of the Hindu Succession Act does not in any way save Section 151 of the Code and make Section 14 of the Act of 1956 inapplicable in determining the personal law existing when the succession opened after the coming into force of the Act of 1956. Section 4(2) of the Hindu Succession Act 1956, is 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 right in respect of such holdings."

It is plain from the language of this sub-section that the law which is taken out of the purview and effect of the Act of 1956 is the law "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." The learned Single Judge assumed that Bhumiswami and Bhumidhari rights were tenancy rights and Section 151 of the Code prescribed a law of devolution of tenancy rights. This assumption is not correct. An examination of the provisions contained in Chapter XII and some other provisions of the Madhya Pradesh Land Revenue Code, 1954, shows that Bhumidhari and Bhumiswami rights are not tenancy rights and the provision contained in Section 151 of the Code is not any provision for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights.

10. Section 2(7) of the Code defines a "holding" as meaning inter alia "a parcel of land separately assessed to land-revenue". Section 2(20) defines a "tenure-holder" as meaning a person holding land from the State Government as a Bhumiswami or a Bhumidhari. "Tenant" has been defined by Section 2(19) as a person holding land from a tenure-holder as an ordinary or an occupancy tenant under Chapter XIV. These definitions themselves show that a Bhumiswami or a Bhumidhari is not a tenant. Chapter XII of the Code deals with tenure-holders. By Section 145 it is provided that there shall be two classes of tenure-holders of lands held from the State, namely, Bhumiswami and Bhumidhari. Sections 146 and 147 describe the persons who can be called Bhumiswamis and Bhumidharis and who have all the rights and are subject to all the liabilities conferred or imposed upon a Bhumiswami or a Bhumidhari under the Code. Then section 148 says that every person becoming a Bhumiswami or a Bhumidhari shall pay as land revenue –

(a) if he was paying land-revenue in respect of the lands held by him such land-revenue, and
(b) if he was paying rent in respect of the lands held by him - an amount equal to such rent.

It is important to note that a Bhumiswami or a Bhumidhari pays land revenue and not rent. Chapter XII of the Code also contains provisions for the transfer of Bhumiswami

or Bhumidhari rights, partition of Bhumiswami and Bhumidhari holdings when there are more than one tenure-holders, etc. It is worthy of note that tenancy rights are dealt with separately by the Code in Chapter XIV thereof. That Chapter also contains Sections 168 and 172 which deal with the devolution of rights of an ordinary tenant and an occupancy tenant. Those rights also pass on the death of a tenant in accordance with personal law. All these provisions read together show that Bhumiswamis and Bhumidharis who hold land directly from the State and pay land revenue to the State like owners of land are not tenants; they have permanent rights in the land which are not taken away by the Government except in certain cases.

11. Indeed, there can now be no doubt about the status of a Bhumiswami or a Bhumidhari in view of the decision of the Supreme Court in *Mahadeo v. State of Bombay,* [12] In that case the Supreme Court has held that the land in possession of the Bhumiswami, who is a tenure-holder, is in substance an estate. After referring to the relevant definitions in the Code and to the provisions of Chapter XII of the Code the Supreme Court has said :-

> "Thus reading the relevant definitions along with the provisions of section 146 of the Code it would follow that the land in the possession of the Bhumiswami who is a tenure-holder is in substance an estate. It is true that the word 'estate' as such has not been employed in the Code, but it must be borne in mind that Article 31-A(2) refers not only to estate but also to its local equivalent. It was realized that in many areas the existing law relating to land tenures may not expressly define an estate as such though the said areas had their local equivalents described and defined. That is why the relevant provision of the Constitution has deliberately used both the words 'estate' as well as its 'local equivalent'. The petitioners hold lands under the State and they pay land revenue for the lands thus held by them. Therefore, there is no difficulty in holding that under the existing law relating to land tenures the lands held by them fall within the class of the local equivalents of the word 'estate' as contemplated by Article 31-A(2)(a)."

12. If, as we think, Bhumiswami and Bhumidhari rights are not tenancy rights, then it follows that Section 151 of the Code which deals with the devolution of the interest of a Bhumiswami or a Bhumidhari tenure-holder cannot be regarded as a provision dealing with the devolution of tenancy rights. The aforesaid discussion explaining the

status of a Bhumiswami and a Bhumidhari also shows that Section 151 does not provide "for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings". It is, therefore, clear that Section 4(2) of the Hindu Succession Act, 1956, in no way saves Section 151 of the Code and it cannot be held that Section 14 of the Act of 1956 does not affect the personal law according to which the devolution of the interest of a tenure-holder passes under Section 151 of the Code. In our judgment, Section 14 of the Hindu Succession Act, 1956, applies in the present case. According to that provision, Bilasabai became a full owner of the plots she inherited from her husband and, therefore, on her death, her interest in the plots would pass to the plaintiff-appellant and not to the respondent No. 1 Bhaguntibai by survivorship.

13. The decision of the Bombay High Court in AIR 1959 Bombay 78 (supra) on which the learned Single Judge relied has been overruled by a Division Bench of that High Court in *Indubai v. Vyankati,* [13] taking the view similar to the one expressed by us. In Indubai's case (supra) it has been held that in order that the exception created by Section 4(2) of the Hindu Succession Act, 1956, can apply, the legislation must provide for devolution of tenancies and that the Madhya Pradesh Land Revenue Code, 1954, is not a tenancy legislation and consequently the exception made in Section 4(2) of the Act cannot apply to it. It has further been held in that case that the holdings of tenure-holders are not tenancies; that the personal law contemplated by Section 151 only means the law as applicable to the tenure-holders when the succession opened; and that it does not mean the law prevailing at the time the Land Revenue Code was enforced. The decision of the Punjab High Court in *Gopi Chand v. Bhagwani Devi,*[14] also supports this view. Under the Delhi Land Reforms Act, 1954, the status of Bhumidhars is similar to that of the Bhumidhars under the Madhya Pradesh Land Revenue Code, 1954. In regard to the status the Punjab High Court has said that under Section 4(2) of the Delhi Reforms Act, Bhumidhars are those who hold land directly from the State and are liable to pay land revenue to the State like owners of land and that the ownership rights of these persons are not taken away by the Government except in certain cases; their status is not that of a tenant and the Act does not provide for devolution of tenancy rights and does not fall under the exception provided by Section 4(2) of the Hindu Succession Act, 1956.

14. There are also two decisions of Single Judges of this Court where it has been held that the personal law as amended by the Hindu Succession Act, 1956, must be regarded to be the personal law mentioned in Section 151 of the Code. Those cases are *Bhagatram v. Sitaram,* [15] decided by Sharma, J., and *Bhondu v. Smt. Nira,* [16] decided

by Tare, J. The learned Single Judge in his judgment under appeal in this case noticed these cases but found himself unable to agree with the view taken in those cases. With all due respect to the learned Single Judge, we must say that a reference to a larger Bench should have been made by him when he was not inclined to follow the decisions in Civil Revn. No. 513 of 1958, D/-12-8-1959 (Madh Pra) (supra) and Second Appeal No. 512 of 1958, D/-28-10-1961 (Madh Pra) (supra). A Judge has always the right to express his opinion indicating that he is not in agreement with an authority binding on him but he nevertheless is in duty bound to follow it. A Single Judge differing from a decision of another Single Judge in a previous case on a question of law should refer the case to a larger Bench instead of deciding the case in accordance with his own view. In this connection it would be pertinent to reproduce the observations made by the Supreme Court in *Mahadeolal v. Administrator-General of West Bengal,* [17]

> "We have noticed with some regret that when the earlier decision of two Judges of the same High Court in Deorajin's case, 58 Cal WN 64 : AIR 1954 Calcutta 119, was cited before the learned Judges who heard the present appeal they took on themselves to say that the previous decision was wrong, instead of following the usual procedure in case of difference of opinion with an earlier decision, of referring the question to a larger Bench. Judicial decorum no less than legal propriety forms the basis of judicial procedure. If one thing is more necessary than any other thing, it is the quality of certainty. That quality would totally disappear if judges of co-ordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion, the position would be equally bad when a Judge sitting singly in the High Court is of opinion that the previous decision of another single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such case lawyers would not know how to advice their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court."

15. Sri Dabir, learned counsel appearing for the respondent No. 1 Bhaguntibai raised the objection that in this appeal the question whether Section 4(2) of the Hindu

Succession Act, 1956, saved Section 151 of the Code could not be considered as that point was not raised before the learned Single Judge. It was said that the only point canvassed before the learned Single Judge was whether the personal law mentioned in Section 151 meant the personal law as existing at the time of the coming into force of the Hindu Succession Act, 1956, or the personal law as amended by the Hindu Succession Act, 1956. We are unable to accede to the contention that in this appeal the question whether Section 4(2) of the Hindu Succession Act saved Section 151 cannot be considered. It no doubt appears from the judgment under appeal that the question whether Section 151 was a provision falling within the scope of Section 4(2) of the Hindu Succession Act was not considered. As we have said earlier, the learned Single Judge assumed that Bhumiswami and Bhumidhari were tenancy holdings and that Section 151 provided for the devolution of tenancy rights. But then the question of the meaning of "personal law" as used in section 151 of the Code cannot be decided without considering the issue whether Section 151 is a provision providing for the devolution of tenancy rights and therefore, saved by Section 4(2) of the Hindu Succession Act, 1956. The main issue is about the scope and meaning of "personal law" mentioned in Section 151 and the question whether Section 151 provides for the devolution of tenancy rights and is saved under section 4(2) of the Hindu Succession Act, 1956, is only an aspect of that question. It is not in any sense a new plea raised for the first time in this appeal. In fact, the learned Single Judge, after reproducing the provisions of Section 4(2) of the Hindu Succession Act, 1956, noted the contention advanced before him on behalf of the plaintiff, namely, that

> "since the personal law, which governed the devolution under Section 151 was itself changed by the Hindu Succession Act, 1956, the devolution thereafter must be in accordance with the changed personal law even under Section 151 of the Code".

This contention of the plaintiff necessarily involved the consideration of the question whether Section 151 contained a provision for the devolution of tenancy rights and was thus saved by Section 4(2) of the Hindu Succession Act, 1956. In any case, the question whether section 151 of the Code is saved by Section 4(2) of the Hindu Succession Act, 1956, goes to the very root of the matter which we have been called upon to decide in this appeal. The objection raised by learned counsel for the respondent No. 1 is, therefore, rejected.

16. For the foregoing reason, this appeal is allowed with costs throughout, the decision

of the learned Single Judge is set aside and the decree passed by the Civil Judge, Class II, Sihora, in favor of the plaintiff-appellant and affirmed by the Additional District Judge, Jabalpur, is restored.

Appeal allowed.

Cases Referred.

1. (1906) 11 Moo Ind App 487 (PC)
2. (1876-77) 4 Ind App 212 (PC)
3. (1878-79) 6 Ind App 15 (PC)
4. (1892) 19 Ind App 184 (PC)
5. AIR 1965 Pun 254
6. AIR 1957 Ori 1
7. AIR 1960 Pun 462
8. AIR 1960 SC 1172
9. AIR 1965 SC 1752
10. AIR 1959 Bom 78: ILR (1958) Bom 604
11. 58 Ind App 259: AIR 1931 PC 149
12. AIR 1961 SC 1517
13. AIR 1966 Bom 64
14. AIR 1964 Pun 272
15. Civil Revn. No. 513 of 1958, D/-12-8-1959 (Madh Pra)
16. Second Appeal No. 512 of 1958, D/-28-10-1961 (Madh Pra)
17. AIR 1960 SC 936 at p. 941