BOMBAY HIGH COURT

Sitabai W/o. Shriram

Vs.

Kothulal Budhu Lodhi

Second Appeals Nos. 651 and 641 of 1952, in Civil Appeal No. 91-A of 1951

(D.V. Vyas, J.)

27.08.1957

JUDGMENT

D.V. Vyas, J.

1. These appeals arise out of the judgment and decree passed by the learned Additional District Judge, Bhandara, in Civil Appeal No. 91-A of 1951 which was heard and decided by the learned Judge on 12-7-1952. The said Civil Appeal No. 91-A of 1951, in its turn, arose out of the judgment and decree passed by the Civil Judge, Class II, Gondia, in Civil Suit No. 54-A of 1950 which was heard and decided by him on 27-10-1951. Second Appeal No. 651 of 1952 is filed by defendants Nos. 3, 4 and 5 and Second Appeal No. 641 of 1952 is filed by defendant No. 2.

2. These appeals raise a question under the Hindu Succession Act, 1956 (No. 30 of 1956) and the question raised is whether the principle of reversion to the tenancy rights in respect of agricultural holdings of a Hindu leaving behind him surviving no issue but only a widow is saved from the operation of the Act. This point arises upon the following facts.

3. The plaintiff who is one of the respondents in these appeals has filed Civil Suit No. 54-A of 1950 for a declaration that the alienations made by his deceased brother's wife Bhagirathabai, who is defendant No. 1 in this litigation, in favor of other defendants were made without legal necessity and, therefore, they were not binding upon him. It is to be noted that after the death of her first husband Narayan, Bhagirathabai remarried and it is the contention of the plaintiff that the various alienations made by her were not binding upon him beyond her own lifetime or after her remarriage. The learned Judge of the trial Court dismissed the suit of the plaintiff. The learned Judge of the lower appellate Court reversed the decree of the trial Court and decreed the suit of the plaintiff, holding that the alienations made by Bhagirathabai were without legal necessity. Feeling dissatisfied with the decree of the lower appellate Court, defendants Nos. 2, 3, 4 and 5 have appealed against it and these are those appeals.

4. One Budhu who died in the year 1938 had two sons, Kothulal and Narayan. Kothulal is the present plaintiff. Narayan died in the year 1945, leaving behind him surviving his two widows, Bhagiratha and Mantura. Bhagiratha is defendant No. 1. There is no dispute that the two fields

which are the subject-matter of this litigation, namely, khasra Nos. 183 and 553, belonged to Budhu. These lands, upon the death of Budhu, devolved upon his son Narayan alone. The reason for the devolution of the above-mentioned lands on Narayan was that during the lifetime of Budhu, Kothulal had separated from the family. Upon the death of Narayan, the lands were inherited by Bhagiratha and Mantura and Bhagiratha made the following alienations thereof. She sold khasra No. 183 admeasuring 2.88 acres to defendants Nos. 4 and 5 on 23-6-1949 for Rs. 800. Then she sold 3 acres out of khasra No. 553 to defendant No. 3 for Rs. 1,500/- on 28-9-1949. Thereafter, on 12-10-1949, she sold 3.50 acres out of khasra No. 553 to defendant No. 2 for Rs. 2,000. It is these alienations which, says the plaintiff, were not made for any legal necessity, and, therefore, they are not binding upon him. The plaintiff says, that he is entitled to declaration sought by him in the suit on the ground that he is the next reversioner to the estate of Narayan.

5. The suit of the plaintiff is resisted by the defendants. They contend that the alienations made by Bhagiratha were for legal necessity. It is submitted on their behalf that Bhagiratha's house was burnt and the plaintiff instigated her co-widow, Mantura, to remove the crops from the lands of Narayan. It is contended by the defendants that in these circumstances. Bhagiratha was left without any means of livelihood and had to incur debts and it is said that the debts' incurred by her were to the tune of Rs. 5,000. It is contended that it was in order to pay off those debts which were incurred by her to maintain herself that the above mentioned alienations, all the three of them, relating to khasra Nos. 183 and 553 were made by her in favour of defendants 2, 3, 4 and 5.

6. The learned Judge of the trial Court came to the conclusion that all the transfers which were made by Bhagiratha were made for legal necessity and accordingly he dismissed the suit of the plaintiff.

7. Now, upon the question whether the alienations of khasra Nos. 183 and 553 by Bhagiratha were for legal necessity or otherwise, the learned Judge of the lower appellate Court has come to a conclusion contrary to the one arrived at by the learned Judge of the trial Court. Speaking about the alienations of khasra No. 183 in favour of defendants Nos. 4 and 5, the learned Judge has pointed out in the course of his judgment that according to the sale deed dated 23-6-1949 in respect of this alienation, the necessity for Bhagiratha to sell this land was two-fold. It became necessary for her to sell the land firstly because she had to meet the expenses incurred by her in the matter of a certain Civil suit and secondly because she required money for future cultivation of the land which remained with her. The learned Judge has observed that if the register pertaining to' the civil suit concerned had been called for and produced in the Court, it could have been shown as to when the court-fees were paid by Bhagiratha in the matter of that suit. As the learned Judge said, it was unlikely that the money would remain unpaid for nearly nine months. The decree in that suit (Civil Suit No. 115-A of 1947) had been passed on 23-9-1948 and the sale deed in respect of khasra No. 183 in favor of defendants Nos. 4 and 5 was executed precisely nine months later on 23-6-1949. The learned Judge came to the conclusion and rightly in my view, that the payment of expenses by way of court-fee could not have been kept pending for nearly nine months. As the learned Judge said, during the above-mentioned interval of nine months Bhagiratha had got the crops of the year 1948-49 and the crops were to the extent of 60 to 70 khandis. Then again, the learned Judge of the lower appellate Court held, upon the evidence before him, that Bhagiratha was not indebted and that,, therefore, she had not to pay

any amount to anybody. It may be that the conclusions reached by the learned Judge in this connection, upon the evidence before him, may not be strictly correct, but the appreciation of evidence is a question of fact and it is not open to this Court in second appeal to disturb that finding of fact. Accordingly, the finding of the learned Judge below that the alienation by Bhagiratha of khasra No. 183 in favour of defendants 4 and 5 was without legal necessity in a finding with which I cannot interfere in second appeal.

8. For similar reasons as those set out above, it would not be open to me to disturb the learned Judge's finding that the alienations of different portions of khasra No. 553 by Bhagiratha in favor of defendants Nos. 3 and 2 were also without legal necessity. Speaking about the alienation in favor of defendant No. 2 which was the alienation made on 12th October 1949 for Rs. 2000 and which was in respect of 3.50 acres of land from khasra No. 553 the learned Judge observed that the receipts which were produced by defendant No. 2 were spurious documents and it was impossible to hold in the case of this alienation that he paid any consideration to Bhagiratha for 3.50 acres out of khasra no. 553. Speaking about the alienation of the remaining portion of the land of khasra no. 553 in favour of defendant no. 3, the learned Judge pointed out that so far as the item of Rs. 100 out of the consideration of that transaction was concerned, there was no receipt on the record of the case. In the sale deed itself, there are no recitals as to how much amount had to be paid by Bhagiratha and to whom it was to be paid. In fact, the learned Judge came to the conclusion, upon the evidence before him that Bhagiratha had no debts to pay. It is upon these reasons that the learned Judge held that both these alienations, one in favour of defendant no. 2 and the other in favour of defendant no. 3, which were made by Bhagiratha in respect of Khasra no. 553 were without legal necessity. These findings also being findings of fact, it would not be open to me to disturb them in second appeal. Therefore, so far as the findings of fact recorded by the learned Judge of the lower appellate court in this case are concerned, they must be upheld and it would not be competent to me to examine them again in the light of the evidence on the record of the case.

9. Now, it is to be noted that the plaintiff has filed this declaratory suit upon the basis that he is the next reversioner to the estate of Narayan, the husband of Bhagiratha. Mr. Bobde, appearing for defendants Nos. 3, 4 and 5, contends that since the coming into force of the Hindu Succession Act, 1956, the principle of reversion has been abrogated and the class of persons known as reversioners has been put an end to. Mr. Bobde says that upon this position in law having been created by the enactment of the Hindu Succession Act, there would be no body as a reversioner to the estate of Narayan upon the death of his widow Mantura. I have stated above that Bhagiratha remarried sometime after the death of Narayan. By reason of the said remarriage, she must be considered as having suffered a civil death. Nevertheless, there is the other widow, namely, Mantura, of Narayan still living and Mr. Bobde says that in view of the Hindu Succession Act, there would be no person who could legally call himself a reversioner upon the death of Mantura. Mr. Bobde says that upon Mantura's death, her heirs would succeed her; they would not succeed to the estate of her deceased husband. In short, the submission which Mr. Bobde has made upon the basis of the Hindu Succession Act is that the Act has put an end to the class of persons who were hitherto known as reversioners and that accordingly the entire basis of the plaintiff's suit must fail and the suit must be dismissed.

10. Although a decision of the Madhya Pradesh High Court in *Dhirajkunwar v. Lakhansingh*[1], supports the view which Mr. Bobde is contending for, namely, that the principle of reversion hitherto known to the Hindu law has been abrogated by the Hindu Succession Act, I do not

consider it necessary for the purpose of these appeals to decide that question and I leave it open. I would assume for the purpose of these appeals that Mr. Bobde is right in his submission that the class of persons hitherto known as reversioners has been put an end to by the Hindu Succession Act. Even so, Mr. Bobde must fail in his contention that the plaintiff's suit claiming a declaration on the basis of reversion to the occupancy tenancy rights of Narayan, the husband of Bhagiratha, must fail. The reason for this lies in the provisions of Sub-Section (2) of Section 4 of the Act. Before setting out Sub-Section (2), I shall set out the provisions of Sub-Section (1). Sub-Section (1) provides :

> "Save as otherwise expressly provided in this Act, -
> (a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;
> (b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act."

Then follows Sub-Section (2) which is in the nature of an exception to Sub-Section (1). Sub-Section (2) says :

> "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 ceiling or for the devolution of tenancy rights in respect of such holdings."

Thus, it is clear that the law regarding the devolution of tenancy rights in respect of agricultural holdings which was in force at the time when the Hindu Succession Act was enacted was expressly saved from the operation of the Act. Now, what was the law regarding the devolution of tenancy rights in respect of agricultural holdings which was in force at the time when the Hindu Succession Act was enacted ? That law was contained in Section 151 of the Madhya Pradesh Land Revenue Code, 1954. Prior to the enactment of the Madhya Pradesh Land Revenue Code, the law of devolution of tenancy rights regarding agricultural holdings was contained in Section 11 of the C. P. Tenancy Act. Upon the repeal of the C.P. Tenancy Act, the Madhya Pradesh Land Revenue Code was enacted, Section 151 whereof was substantially similar to Section 11 of the C.P. Tenancy Act. Thus, then, the law regarding devolution of tenancy rights in respect of agricultural holdings which was in force when the Hindu Succession Act was enacted and which was saved by Sub-Section (2) of Section 4 from the operation of the Hindu Succession Act, was the law contained in Section 151 of the Madhya Pradesh Land Revenue Code. Section 151 of the M.P. Land Revenue Code provides :

> "Subject to his personal law, the interest of a tenure-holder shall on his death pass

[1] AIR 1957 Mad Prad 38

> by inheritance, survivorship or bequest, as the case may be." It is not disputed, indeed it cannot be disputed, that in the context of the Hindus, the expression "personal law" in Section 151 of the M.P. Land Revenue Code meant the Hindu law. It is also not disputed

that until the Hindu Succession Act was enacted, the Hindu law recognized reversion. Thus, the law regarding devolution of tenancy rights in respect of agricultural holdings amongst the Hindus which was in force at the time of enactment of the Hindu Succession Act clearly recognized reversion. As I have just said, that law was saved by Sub-Section (2) of Section 4 of the Hindu Succession Act. Mr. Bobde says that the expression "personal law" in Section 151 of the M.P. Land Revenue Code must be construed to mean the personal law contained in the Hindu Succession Act. This contention of Mr. Bobde is wholly untenable. It is clearly against the plain language of Sub-Section (2) of Section 4 and against the intention of the Legislature. The words "any law for the time being in force" in Sub-Section (2) of Section 4 must be given their natural meaning and the natural meaning of these words would be any law which was in force at the time when the Hindu Succession Act was enacted. The intention of the Legislature was to save that law, i.e., the law regarding devolution of tenancy rights, which was in force before the coming into force of the Hindu Succession Act. Mr. Bobde says that the words "any law for the time being in force" in Sub-Section (2) of Section 4 should be construed to mean "any law which came into force". Such a construction would do violence to the language and would be unnatural. In making a patently untenable submission that the personal law in regard to devolution of tenancy rights amongst the Hindu which the Legislature intended to save by Sub-Section (2) of Section 4 must be construed to mean the personal law contained in the Act itself (the Hindu Succession Act), Mr. Bobde overlooks a most obvious distinction between the law which saves and the law which is saved. The saving provisions of the law are the provisions of Section 4, Sub-Section (2) and the law which they save is the law contained in Section 151 of the M.P. Land Revenue Code. It is clear, therefore, that so far as the law regarding devolution of tenancy rights in respect of agricultural holdings amongst the Hindu is concerned, the principle of reversion still holds good, notwithstanding the enactment of the Hindu Succession Act.

11. Mr. Bobde's next contention is that as Manturabai, the second widow of Narayan, is still alive the first widow having suffered a civil death by her remarriage the plaintiff's suit based on his right as a reversioner is premature and must fail. The answer to this question is to be found in paragraph 202 at page 228 of Mulla's Principles of Hindu Law. In paragraph 202 the learned author says that a reversionary heir –

> "may therefore sue to restrain a widow or other limited heir from committing waste or injuring the property. The reason why such a suit by a reversionary heir is allowed is that the suit is by him in a representative character and on behalf of all the reversioners, so that the corpus of the estate may pass unimpaired to those entitled to the reversion. For the same reason he may bring a suit for a declaration that an alienation effected by her is not binding on the reversion. In both cases the right to sue is based on the danger to the inheritance common to all the reversioners, presumptive and contingent alike, the object being to forestall an injury which threatens the common interest of all the reversioners."

Thus the present suit, being a declaratory suit, is maintainable.

12. For the reasons stated above, the appeals fail and are dismissed with costs.
Appeals dismissed.