PUNJAB AND HARYANA HIGH COURT

Tokha

Vs

Sama

Regular Second Appeal No. 295 of 1961

(D.K. Mahajan, J.)

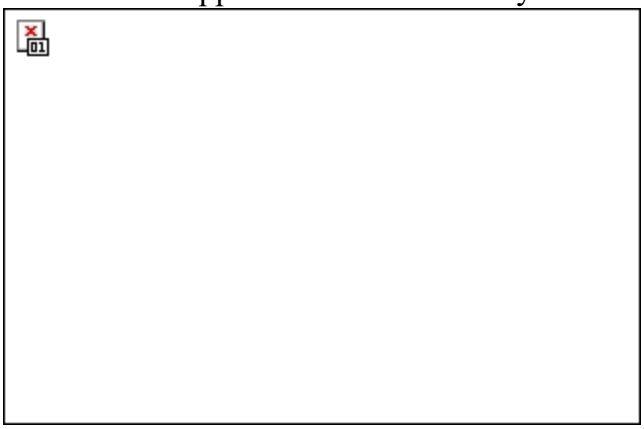
03.02.1972

JUDGMENT

Mahajan, J.

1. This second appeal is directed against the concurrent decisions of the Courts below dismissing the plaintiff's suit.

2. In order to appreciate the controversy in this appeal, a short pedigree-table may be set down :-



On the death of Chet Ram, there was a dispute between his two widows and his adopted son Tok ha. This dispute was settled by a compromise before the Revenue authorities. The compromise w as that the widows will make a statement before the revenue officer and get the mutation sanction ed in all the three villages in which the land will be entered as one-third, one-third and one-third in the names of the adopted son and the two widows. In case they do not make such a state ment then the land in village Sheikhupura will remain in possession of the adopted son and the la nd in villages Kheowali and Phaggu would remain in possession of the two widows. Steps were t aken to get the mutation entered but they failed. The result was that the adopted son remained in possession of the land in Sheikhupura and the two widows remained in possession of the land in t he two remaining villages. It was also provided in the compromise that on the death of any one o f the widows, the land left by her would be mutated half and half between the adopted son and th e surviving widow. However, on the death of Rupan, which took place in 1932, this clause of the compromise was no given effect to and in village Kheowali her share of the land was mutated in the name of Mst. Sama and half of it was not mutated in the name of Tokha as provided in the co

mpromise. It may be mentioned that Tokha took no steps to enforce the compromise within 12 ye ars of the death of Mst. Rupan. In the year 1957, Mst. Sama gifted the land in village Kheowali t o her daughter Mst. Patori. This led to the present suit by Tokha to challenge the gift. A number o f pleas were advanced by Tokha but without success and he was failed in the trial Court as well a s in the lower appellate Court. He has now come up in second appeal to this Court.

The contention of Mr. Aggarwal in the second appeal is that Tokhan can challenge the gift made by Mst. Sama because Mst. Sama was holding the occupancy tenancy rights on the date when sh e made the gift and under section 59(3) of the Punjab Tenancy Act, her gift would be void. There fore, the short question that has to be settled is whether the gift made by Mst. Same is void ?

There are two ways of looking at the matter. One, what is the effect of the Hindu Succession Act on section 59(3) of the Tenancy Act Section 4 of the Hindu Succession Act in the following terms :-

> (1) 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 t o apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.
>
> (2) 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 t he devolution of tenancy rights in respect of such holdings."

Thus, it provides that its provisions will override all other provisions on other laws which are inc onsistent with its provisions. Section 14 is one of the provisions of the Hindu Succession Act. It s tipulates that any female Hindu in possession of property whether acquired before or after the co mmencement of the Act, shall be the full owner thereof and in the explanation, property acquired by way of maintenance or as a limited estate would be property within the meaning of sub-section (1) of section 14. It would be different if the case had fallen under sub-section (2) of section 14. On the facts, that is not the case and it is also not the contention of the l earned counsel that his case falls under section 14(2) of the Hindu Succession Act. His real conte ntion is that if reference is made to section 4(2) of the Hindu Succession Act, it must follow that t he provisions of section 14 will not apply to occupancy tenants. The learned counsel was constrai ned to admit that the rights of an occupancy tenant are property and that being so it follows that s ection 14 will govern the case. However, the learned counsel was under a impression that absolut e right of occupancy would mean proprietary right instead of occupancy right, i.e. Mst. Sama wo uld cease to be an occupancy tenant and would become a proprietor. This is not what would happ en under section 14(1). Mst. Sama before the Hindu Succession Act came into force held the occ upancy rights as a widow that is, for her lifetime and on her death they would not pass on to her h eirs but to the heirs of her husband under section 59 of the Tenancy Act. If the law as it existed pr ior to the Hindu Succession Act had stood, the position would be different. But after the coming i nto force of the Hindu Succession Act and by reason of section 14(1) she has become the absolut e owner of those rights and the limited estate she held in those rights no longer exists. Therefore,

her position *vis-a-*
vis the occupancy rights is that of an absolute owner and even better than that of a male owner of such rights. The male owner's alienation of occupancy rights, if the rights were ancestral, could b e questioned by his reversioners, whereas the alienation of such rights by a female owner cannot be questioned. If the matter is viewed in this perspective, it will be clear that in view of section 4 of the Hindu Succession Act read with section 14, the embargo put on the alienation of occupanc y rights on the widow under section 59(3) of the Tenancy Act does not exist; That being the positi on of matters, it is idle to contend that the gift by Mst. Sama in 1957 was void.

In any case, if I am wrong in my view that section 4 of the Hindu Succession Act overrides sectio n 59(3) of the Tenancy Act, there would be no difference in the position. It is true that in 1957 oc cupancy tenants of evacuee landowners did not become proprietors of their holdings under the P unjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952. But the position was reverse d by an Ordinance which came into force on 15th of July, 1958, and from that date the female oc cupancy tenants of owners who were evacuees also became the absolute owners of the land whic h was under their possession as occupancy tenants. In other words, they became proprietors of th at land and section 59(3) will not apply, because the occupancy rights have disappeared by merge r in the larger estate, i.e. ownership, by operation of law. The gift by widow being void this result would inevitably follow. The gift being void, the land of which Mst. Sama was the occupancy ten ant remained vested in her and with effect from 15th July, 1958, when the Occupancy Tenants (V esting of Proprietary Rights) Act came into force she became the absolute owner of those rights. It has been settled by this Court that when female acquires occupancy rights under the Occupanc y Tenants (Vesting of Proprietary Rights) Act, she becomes the absolute owner of the rights acqui red, that is, she becomes an absolute owner of the land of which she was the occupancy tenant an d as an absolute owner she can do whatever she likes with the land.

In this view of the matter, there is no force in this appeal; the same fails and is dismissed, but ther e will be no order as to costs

Appeal dismissed.