

Amar Singh & Anr vs Asstt. Director Of Consolidation & Ors on 19 August, 1988

Equivalent citations: 1988 AIR 2020, 1988 SCR SUPL. (2) 524, AIR 1988 SUPREME COURT 2020, 1988 (4) SCC 143, (1988) 3 SCJ 246, (1988) 2 ALL WC 1222, (1988) REVDEC 360, 1988 UJ(SC) 2 623, 1988 ALL CJ 661, (1988) 3 JT 638 (SC)

Author: L.M. Sharma

Bench: L.M. Sharma, R.S. Pathak

PETITIONER:

AMAR SINGH & ANR.

Vs.

RESPONDENT:

ASSTT. DIRECTOR OF CONSOLIDATION & ORS.

DATE OF JUDGMENT 19/08/1988

BENCH:

SHARMA, L.M. (J)

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SHARMA, L.M. (J)

PATHAK, R.S. (CJ)

CITATION:

1988 AIR 2020

1988 SCR Supl. (2) 524

1988 SCC (4) 143

JT 1988 (3) 638

1988 SCALE (2) 365

ACT:

U.P. Zamindari Abolition & Land Reforms Act, 1951: s. 169-Bequest-Bhumidhar vesting life estate in wife and remainder in their daughters-Interest of life estate holder-Nature of-Whether could get enlarged defeating the bequest-Tesrator's personal law-Whether attracted.

HEADNOTE:

The Bhumidhar bequeathed life estate to his wife and the remainder in favour of the daughters. On his death the wife entered in possession of the land and executed a will in favour of the appellants. In a proceeding under the U.P. Consolidation of Holdings Act the Consolidation Officer

accepted the claim of the daughters (respondent Nos. 6 and 7) to Bhamidhari rights. That decision was reversed in appeal by the Settlement Officer, but restored on revision by the Assistant Director of Consolidation. The High Court dismissed the writ petition.

In this appeal by special leave it was contended for the appellants that for determining the heirship of a Bhumidhar, the personal law applicable to him must be held to be excluded by the provisions of the U.P. Zamindari Abolition & Land Reforms Act, 1951 dealing with succession exhaustively, and that Bhumidhari right is not consistent with limited interest and whenever such a right vests in a person, he becomes the absolute owner.

Dismissing the appeal,

HELD: The holder of a Hindu widow's estate is the owner of the property subject to certain restrictions on alienation. The whole estate is for the time vested in her and she represents it completely. Her right is of the nature of a right of property, her position is that of an owner and so long as she is alive no one has any vested interest in the succession {526H-527B}

Moniram Kolita v. Keerry Kolutany; 7 I.A. 115 and Janaki Ammal v. Narayanasami Aiyer; [1916] 43 I.A. 207, referred to..

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In the instant case, however, the personal law applicable to the testator and his wife is not attracted at all. The wife did not get the limited interest of a Hindu widow as recognised under the Hindu Law. What was bequeathed by her husband was a life estate as understood under the English Law. She did not enter into possession as an heir. She got the land under a will. The right of a Bhumidhar with transferable rights to bequeath his holding or any part thereof by a will is expressly recognised by s. 169(1) of the U.P. Zamindari Abolition and Land Reforms Act. While bequeathing his Bhumidhar right in favour of his daughters he could subject it to a life estate in favour of his wife. The interest of the life estate holder thus continued to be a life estate and did not get enlarged defeating the bequest in favour of the daughters. They should, therefore, be recognised as Bhumidhars. [527C, 526G, 527B, 525G, 526B]

Balbadra v. Board of Revenue, [1981] Allahabad Law Journal 781, approved.

Ramji Dixit & Anr. v. Bhrigunath and Ors. [1968] 2 SCR 767 and Prema Devi v. Jt Director, Consolidation, AIR 1970 All 238, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No.2791 of 1988.

From the Judgment and Order dated 28.1.1986 of the Allahabad High Court in Civil Writ Petition No. 9502 of 1980.

Satish Chandra and D. K. Garg for the Appellants. Mahabir Singh, N.S. Malik and P.D. Sharma for the Respondents.

The Judgment of the Court was delivered by SHARMA, J. The question involved in this case is this case is whether a Bhumidhar with transferable rights while bequeathing his Bhumidhari right in favour of certain beneficiaries can subject it to a life estate in favour of another beneficiary, and if he is held to be so authorised. whether the interest of the life estate holder shall continue to, be a life estate or shall get enlarged defeating the bequest in favour of the other beneficiaries.

2. The Bhumidhar of the disputed land Chukkhan executed PG NO 526 will directing that life estate will be vested in his wife Mst. Gilia and the vested remainder in their daughters- present respondent nos. 6 and 7. Smt. Gifia entered in possession of the land on Chukkhan's death and executed a will in favour of the present petitioners. On her death a dispute arose in a proceeding under the Consolidation of Holdings Act as to whether the petitioners should be recognised as Bhumidhars or the respondent nos. 6 & 7. The Consolidation Officer, respondent no. 3 herein, accepted the claim of the respondents nos.6 & 7 but the decision was reversed in appeal by the Settlement Officer. The matter was, thereafter, taken in revision before the Assistant Director of Consolidation, respondent no. 1 who agreed with the Consolidation Officer and restored his order. The petitioners challenged this judgment by a writ application under Article 226 of the Constitution before the Allahabad High Court. By the impugned decision the writ application has been dismissed. Special leave is granted.

3. The question for decision has been inaccurately formulated in the Special Leave Petition as to whether the provisions of the Hindu Succession Act or any other personal law can over-ride the provisions of the U.P. Zamindari Abolition & Land Reforms Act. Ic)5 1 (hereinafter referred to as 'the Act').

4. Mr. Satish Chandra, the learned counsel for the appellants contended that the Act has by section 171 laid down the rule of succession and it is not permissible to apply any other law for determining the heirship to a Bhumidhar. Reliance was placed on Ramji Dixit and Anr. v. Bhrigunath and Ors., [1968] 2 SCR 767 and Prema Devi v. Jt. Director, Consolidation, AIR 1970 Allahabad 238. The learned counsel placed the scheme of the Act before us for showing that the personal law applicable to a Bhumidhar must be held to be excluded by the provisions of the Act dealing with succession exhaustively. Our attention was drawn to the provisions of sections 155 and 156 restricting the right to create a mortgage or lease and it was contended that Bhumidhari right is not consistent with limited interest therein and whenever such a right vests in a person he becomes the absolute owner and any attempt to limit his interest must be repelled. We do not find any substance in the argument.

5. The main fallacy in the stand taken on behalf of the appellants is in assuming that Mst. Gilia got the limited interest of a Hindu widow as recognised under the Hindu Law. What was bequeathed by her husband was a life estate as understood under the English Law. The holder of a Hindu widow's estate is not a limited owner in that sense- she is PG NO 527 the owner of the property subject to certain restrictions on alienation. The whole estate is for the time vested in her, and she represents it completely (see *Moniram Kolita v. Keerry Kolutany* 7 Indian Appeals 115). As observed by the Privy Council in *Janaki Ammal v. Narayanasami Aiyer*, [1916] 43 Indian Appeals 207, her right is of the nature of a right of property, her position is that of an owner and so long as she is alive no one has any vested interest in the succession. That is not the position here. Mst. Gilia did not enter into possession as an heir. She got the land under a will. The right of a Bhumidhar with transferable rights to bequeath his holding or any part thereof by a will is expressly recognised by section 169(1) of the Act. It is manifest that in the present case the personal law applicable to Chukkhan and his wife does not come in the picture at all. So far sections 155 & 156 are concerned they are confined to cases of mortgage and lease and are not relevant in the present context.

6. The decision in *Ramji Dixit & Anr. v. Bhrigunath and Ors.* (supra) has no application in the present case. In that case, on the death of the owner of the land Raj Kishore, the lands devolved upon his wife Sanwari as a Hindu widow's estate and a dispute arose about her right of alienation. In the Allahabad case also Smt. Prema Devi whose title was in dispute acquired certain right in the capacity of a Hindu widow. The cases are therefore clearly distinguishable.

7. The case of *Balbhadra v. Board of Revenue*, [1981] Allahabad Law Journal 781 was similar to the present case and the view taken by the learned Single Judge there, appears to be correct. Accordingly, we find no merit in this appeal which is dismissed with costs.

P.S.S.

Appeal dismissed.