

PETITIONER:
HIRA

Vs.

RESPONDENT:
KASTURIBAI & ORS.

DATE OF JUDGMENT: 03/09/1996

BENCH:
SINGH N.P. (J)
BENCH:
SINGH N.P. (J)
MAJMUDAR S.B. (J)

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

This appeal has been filed on behalf of the defendant to suit in question. Respondent Nos. 1 and 2 (hereinafter to be referred to as the respondents) filed the aforesaid suit for declaration that the registered sale deed dated November 12, 1960 executed by their mother (respondent No.3) in favour of the appellant was invalid because on that date she had no title over the lands in question. On behalf of the respondents it was asserted that their mother after the death of their father, Khuman Singh some time in the year 1955-56 remarried in the year 1958 and because of that she forfeited the right to the lands which had devolved on her as widow.

There is no dispute that Khuman Singh, the father of the respondents was a pakka tenant in respect of 23 Bighas of land in Khata No.27 which is the subject matter in dispute. He died some time in the year 1955-56 before coming into force of the Hindu Succession Act (hereinafter referred to as the 'Succession Act'). According to the respondents, their mother had become a pakka tenant after the death of their father under the provisions of the Madhya Bharat Land Revenue and Tenancy Act (hereinafter to be referred as the 'Tenancy Act'), but as she remarried in the year 1958, she forfeited the right of pakka tenant and as such she could not have transferred the lands through the registered sale deed in favour of the appellant on November 12, 1960. The transfer was questioned by the respondents saying that under the provisions of the Tenancy Act after the remarriage, their mother forfeited her right over the lands in question, and as such lands devolved on the respondents.

The trial Court decreed the suit holding that the mother of the respondents had no right, title or interest over the lands in question after she remarried in view of the provisions of the Tenancy Act. That finding was affirmed by the Court of appeal and by the High Court by dismissal of the second appeal filed on behalf of the appellant. According to the appellant, as respondents No.3, the mother

of the respondents, after coming into force of the Succession Act had become the absolute owner in respect of the property in her possession, she could have conveyed a valid title to the appellant by the sale deed aforesaid.

Section of the Succession Act is as follows:

"4. Overriding effect of Act -

(1) Save as otherwise expressly provided in this Act -

(a) any text, rule or interpretation of Hindu law or any custom or usage of that law in force immediately before the effect with respect to any matter 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.

(2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the providing 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 rights in respect of such holdings."

On a plain reading sub-section (1) gives the provisions of Succession Act an overriding effect. But subsection (2) of Section 4 is in the nature of proviso i.e., exception to sub-section (1). It clearly says that nothing contained in the said Act shall deem to affect the provisions of any law for the time being in force;

i) providing for the prevention of fragmentation of agricultural holding;

ii) for fixation of ceiling;

iii) for devolution of tenancy rights in respect of such holdings;

According to the respondents because of sub-section (2) of Section 4 of the Succession Act the provisions of Succession Act shall not have overriding effect over the provisions of the Tenancy Act. Under the provisions of the Tenancy Act, because of Section 83 read with Section 82 after the remarriage the right of a pakka tenant which had devolved on the mother of the respondents devolved on the heirs of Khuman Singh i.e. the respondent.

Section 83 provides:

"83. Succession in the case of a woman holding an interest as a widow, mother, daughter etc.

(1) When a pakka tenant who has inherited an interest in any holding as a widow, mother, step-mother, father's mother, unmarried daughter or unmarried sister or father's father's mother dies or marries, her rights in the holding shall devolve upon the nearest surviving heir (such heir being ascertained in accordance with the

provisions of Section 82) of the last male pakka tenant.

(2) Nothing in sub-section (1) shall apply to a person succeeding to an interest in any holding under the provisions of Section 84"

(emphasis supplied)

In view of Section 83 whenever a widow has inherited a right of a pakka tenant, as in the present case the mother of the respondents, if remarries then her right in the holding shall devolve upon the nearest surviving heir of the last male pakka tenant. Section 82 of the Tenancy Act prescribes the mode of devolution of the right when a male pakka tenant dies but in view of Section 83 itself which refers to the said Section 82, for the purpose of devolution of the interest in the event a widow remarries, Section 82 shall also be applicable in a case where the widow remarries. From the classes of heirs indicated in Section 82, married daughters have been described as Class III heirs.

It is an admitted position that in the present case, there is no Class I or Class II heirs. As such, after the remarriage of the mother, because of Section 83 read with Section 82, the right of pakka tenancy shall be deemed to have devolved on the heirs of Khuman Singh i.e. the respondent.

Learned counsel appearing for the appellant could not contest the position that in view of Section 82 and 83 of the Tenancy Act and because of the remarriage of the mother of respondents, the right of pakka tenancy which the mother of the respondents had inherited, devolved on the respondents. He, however, contended that sub-section (2) of Section 4 of Succession Act shall not cover such devolution because the right of pakka tenant over the concerned land is not a tenancy right within the meaning of sub-section (2) of Section 4. According to the learned counsel for the appellant, a pakka tenant is a 'Bhumiswami'. However, Mr. Shukla, learned counsel appearing for the appellant, very fairly pointed out that this situation will be with effect from coming into force of the Madhya Pradesh Land Revenue Code of 1959. Any provision which was enacted after the remarriage of the mother of the respondents in the year 1958 shall not govern this case. Admittedly the mother of the respondents remarried in the year 1958, before coming into force of Madhya Pradesh Land Revenue Code. On that date it will be deemed that she was a pakka tenant of the lands which are the subject matter in dispute. The question of devolution of such right shall be governed by the provisions of the Tenancy Act aforesaid.

By mere reference to Section 54 (vii) which defines a pakka tenant. Section 63 which requires a pakka tenant to pay rent, and Section 64, 65, 66(3) and 79 it shall be apparent that a pakka tenant is also a tenant. He holds the land in question on the statutory terms and conditions prescribed in the aforesaid Tenancy Act. In this background after the death of the, male holder, Khuman Singh his pakka tenancy right in the lands in question devolved on the mother of the respondents. The same will be the position when the mother of the respondents remarried. Because of Section 82 it shall be deemed that the pakka tenancy right of the mother of the respondents devolved on the respondents. Once it is held that the devolution of tenancy right in respect of the holdings in question took place in the year 1958 on the respondents than their mother (Respondent No.3) could not have executed the registered

sale deed in favour of the appellant on November 12, 1960.

Because of sub-section (2) of Section 4 of the Succession Act the provisions of Tenancy Act referred to above shall not be deemed to have been eclipsed or obliterated by the overriding effect of Succession Act. According to us, the trial court, the court of appeal and the High Court rightly came to the conclusion that in the year 1960 the respondent No.3, the mother of the respondents had no right, title or interest over the properties in question. Accordingly, the appeal fails and it is dismissed. No costs.

JUDIS