

CASE NO.:
Special Leave Petition (civil) 11069 of 1998

PETITIONER:
MOOL CHAND

Vs.

RESPONDENT:
KEDAR (DECEASED) BY LRS. & ORS. ..

DATE OF JUDGMENT: 28/01/2000

BENCH:
A.P.Misra, M.J.Rao

JUDGMENT:

J U D G E M E N T

MISRA, J.
L.....I.....T.....T.....T.....T.....T.....T...J

Leave granted.

The short question which arises for our consideration is, whether on the facts and circumstances of the case inheritance, when female Hindu Bhumidhar dies, the situation would be governed by Section 172(2)(a)(ii) or Section 172(2)(a)(i) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the U.P.Z.A. Act). The appellants case is, even if Section 172(2) applies, as held both by the Appellate Court and the High Court, Section 172(2)(a)(ii) would apply, as Smt. Kaushalya Devi (deceased wife of the Appellant) inherited the self acquired property from her father, before the date of vesting under the aforesaid Act. Submission is, Smt. Kaushalya Devi, as aforesaid inherited the said property from her father and became absolute owner and not limited owner for life. Thus, on her death Section 172(a)(ii) would apply, hence devolution would be governed by Section 174, under which the property would devolve on the appellant who is the husband of the deceased.

In order to appreciate the controversy, we hereby give short essential facts. The present appeal confines its dispute to Khata Nos. 31 and 35 of Village Vishunpur, Phulvaria, Pargana Haveli, Tehsil Pharenda, District Maharajganj in District Gorakhpur, U.P. Musai was the father of Smt. Kaushalya Devi who acquired this property. He died in the year 1944 when his daughter Smt. Kaushalya Devi inherited this property. She was later married to the appellant. She had 2/5th share each in the said two Khatas along with other recorded co-tenure-holders who are respondents before us. On the date of vesting, under U.P.Z.A. Act, Smt. Kaushalya Devi became co-bhumidhar along with the aforesaid other co-tenure-holders. However, she died in the year 1953. Thereafter appellant got his name mutated vide order dated 14.12.54.

During consolidation of holdings proceedings the appellant claimed his right as tenure holder in place of Smt. Kaushalya Devi, to the extent of 2/5th share in the said two Khatas and exclusive right in respect of Khata No. 37 to which we are not concerned in the present case. The contesting respondents opposed this and claimed their right, being co-sharer under Section 175 of the said Act as Smt. Kaushalya Devi died leaving no heirs. For ready reference Section 175 is quoted hereunder:-

Section 175

Passing of interest by survivorship: In the case of a co- widow, or a co-tenure-holder, who dies leaving no heir entitled to succeed under the provisions of this Act, the interest in such holding shall pass by survivorship.

The Consolidation Officer accepted the claim of the appellant and dismissed the objection of the contesting respondents. Being aggrieved, the respondents filed an appeal before the Assistant Settlement Officer Consolidation. The Appellate Authority held that the respondents being co-tenants were entitled to inherit the share of Smt. Kaushalya Devi under Section 175 of U.P. Zamindari Abolition and Land Reforms Act, 1950. The Appellant preferred revision before the Deputy Director Consolidation. The Revisionary Authority applying Section 14 of the Hindu Succession Act, 1956 held that Smt. Kaushalya Devi became full owner of the properties and hence after her death her husband, namely, appellant inherits the property. This order was challenged by the respondent before the High Court through a writ petition, which was dismissed but their special leave was allowed by which the case was remanded back to the Deputy Director Consolidation. After remand this Revision Authority applying Section 175 held that respondents being co-tenure-holder would be entitled to inherit Khata Nos. 31 and 35. Thereafter the appellant filed writ petition before the High Court which was disposed of by means of the impugned order. The High Court confirmed the finding of the Revisionary Authority and dismissed the petition of the appellant. Being aggrieved, the appellant has raised the aforesaid question for consideration.

It is not in dispute that the disputed property belonged to the father of Smt. Kaushalya Devi. He died prior to the aforesaid U.P.Z.A Act, i.e., in 1944 and Smt. Kaushalya Devi died after coming into force of the said Act, in the year 1953. It is also not in dispute that this disputed land was sir and khudkast of the father of Smt. Kaushalya Devi. By virtue of Section 4 of the said Act, all such estates situate in Uttar Pradesh vested in the State. Consequently, by virtue of Section 6 all rights, title and interest of all the intermediaries ceased and vested in the State of Uttar Pradesh free from all encumbrances. Under Section 18, all rights of the intermediaries in possession of land as sir or khudkasht, immediately preceding the date of vesting, are deemed to be settled by the State Government with such intermediaries who hold such land and retain possession subject to the provisions of the said Act as a Bhumidhar. The first question for consideration is, whether Smt. Kaushalya Devi had life estate or absolute right in her Bhumidhari land under her personal law.

It is also relevant to refer, that Smt. Kaushalya

Devi died prior to the coming into force the Hindu Succession Act, 1956 and Section 14 will not apply. Under the customary Hindu Law, a female Hindu including daughter, as in the present case, inheriting from a male, will own property only as a limited owner, as this case is not governed by Bombay School. Mulla Hindu Law, Seventeenth Edition 9at page 238) states:-

SUCCESSION OF PROPERTY INHERITED BY FAMALES: 168. Property inherited by females from males in territories other than the Bombay State (1) According to the Bengal school, the only females who can inherit the property of a male are (1) the widow, (2) daughter, (3) mother, (4) fathers mother, and (5) fathers fathers mother.

(4) According to the Bengal, Benares, Mithila and Madras schools, every female, whether she be a widow, daughter, mother, fathers mother or fathers fathers mother, who succeeds as heir to the property of a male, takes only a limited estate in the property inherited by her, and at her death the property passes not to her heir, but to the next heir of the male from whom she inherited it.

The next question which arises for our consideration is, whether after her death, the property would go to her husband or to the co-share-holders by survivorship. The appellant relies on Section 172(2)(a)(ii) while respondents rely on Section 172(2)(a)(i). For ready reference the said two sub-sections are quoted below:-

Section 172: Succession in the case of a woman holding an interest inherited as a widow, mother, daughter, etc.

(2)

(a)

(i) she was in accordance with the personal law applicable to her entitled to a life estate only in the holding, the holding shall devolve upon the nearest surviving heir (such heir being ascertained in accordance with the provisions of Section 171) of the last male intermediary or tenant aforesaid; and if

(ii) she was in accordance with the personal law applicable to her entitled to the holding absolutely the holding shall devolve in accordance with the table mentioned in Section 174.

[Emphasis supplied]

Smt. Kaushalya Devi being the daughter of Musai, after his death inherited his property and after coming into force, U.P.Z.A. Act, became Bhumidhar. When she died the devolution would be governed by sub- Section (a) of Section 172(2). This sub-Section (a) is further split into two clauses, clause (i), under which, if under the personal law she had only life estate then her property would devolve upon the nearest surviving heir in accordance with the provisions of Section 171. On the other hand if it falls under clause (ii) then if under the personal law she held property absolutely, the devolution would be governed by the

Table mentioned in Section 174.

Learned counsel for the appellant submits that Smt. Kaushalya Devi inherited the exclusive estate of her father as absolute owner, hence the devolution would be governed by clause (ii) of the aforesaid section. It is also not in dispute that in case the devolution is governed by (ii) the appellant would succeed but if it is governed by (i) it would go to the contesting respondents. Learned counsel for the appellant also placed strong reliance in Ramji Dixit (dead) by his L.Rs. and Anr. Vs. Bhirgunath and Ors., AIR 1968 SC 1058. In this case widow gave a gift of her bhumidhar share to the respondent, which was challenged by the revisioners of her deceased husband Raj Kishore, on the ground that she had only life estate in it, hence had no right to gift and thus such transfer was illegal. This submission was rejected by this Court and it was held that there is nothing in the Act which restricts female Bhumidhari right to be for life only. In this Ramji Dixit (supra), one Raj Kishore possessed the land as sir khudkasht and on his death in 1923 it devolved upon his widow Sanwari. On coming into force of the U.P.Z.A. Act, she acquired the status of a Bhumidhar. Thereafter, on December 18, 1952 she made the disputed gift in favour of respondents. Finally she died in 1954. The revisioners of Raj Kishore challenged this gift by filing a suit on the ground that Hindu Widow even in the bhumidhari land had limited right hence she was incompetent to create an interest to the transferee by gift, which was to inure beyond her life time. In other words, a female bhumidhar, holding land under the U.P.Z.A. Act had no absolute right in such land. This submission was rejected by this Court. It was held that there was nothing in the Act which either put any embargo on a female bhumidhar to transfer her holding nor any residuary interest remained in such land in any other person. The right of a female Bhumidhar was held to be absolute. With reference to Section 152, which is a right of a bhumidhar to transfer, the court held that there was no limitation under it. Thus transfer by a female Bhumidhar by way of gift of her bhumidhari right was held valid. The court held:

There is nothing in the Act which indicates that when a female who inherits the rights of a bhumidhar, under Section 171 or Section 172 or Section 172A, any residuary interest remains vested in any other person. Under the Act she is the owner of the property: the entire estate is vested in her. It is a fundamental rule of our jurisprudence that an estate does not remain in abeyance. If it was intended by the Legislature that the interest inherited by a female mentioned in Section 171 was to be a life-interest, there would be some indication that the reversionary or residuary interest remains vested in another person designated for that purpose. But a search in that behalf in the Act is fruitless.

On the careful review of the provisions of the Act, we are unable to hold that it was intended by the Legislature to enact by implication that the holding inherited by a female heir belonging to one of the classes of female heirs in Section 171 is not (sic) held as a life- estate.

Learned counsel for appellant relied on this decision to submit that the right of a female Bhumidhar being

absolute and unfettered, Section 172 (2)(a)(ii) would apply. This submission is misconceived. This decision only considered, whether a female Bhumidhar had any absolute right to transfer her holding or not? It was while making this scrutiny, it was held that she had an unrestricted right to transfer. This case was not considering the question of inheritance after her death. The former dealt with her right to transfer, during her life time while the present case is concerned with the succession of her Bhumidhari right after her death. Thus this case renders no help to the appellant. Thus the question for our consideration is, when a female Bhumidhar dies, how her property would devolve? Considering such inheritance under Section 172 (2)(a), first it has to be ascertained what would be her legal right under the personal law. Both sub-sections of Sections 172 (2)(a), viz., (i) and (ii) speak about the personal law. This personal law may be different to different classes of females, viz., Hindu, Muslim, Christians or Sikh, and even among Hindu females the personal law would differ in accordance with the Bengal, Banaras, Mithila, Bombay or Madras School. Varying consequences will ensue in terms of their right under it. Thus after applying the personal law to such female Bhumidhar, it has to be ascertained whether she could have hold the property as limited estate or absolute estate.

The decision of Gulab Devi (Smt.) Vs. Dy. Director of Consolidation and Ors. 1996 (11) SCC 591, has no application to the present case. The distinguishing features as drawn by the said decision itself reveals that it has no application: Section 172 provides succession in the case of a woman holding an interest inherited as a widow, mother, daughter etc. This provisions applies to the case of a tenure-holder who dies after the date of vesting having obtained the estate before the date of vesting while the Abolition Act was in force. Since, instantly the estate had vested in the two sisters prior to coming into force of the Abolition Act and sequently before the date of vesting, Section 172, therefore, was out of applicability.

However, in the present case, Section 172 (2) squarely applies as female Bhumidhar died after coming into force of the aforesaid U.P.Z.A. Act.

Thus in this background the question is, whether Section 172(2)(a)(ii) or 172(2)(a)(i) is applicable. The distinction between the two clauses are that under (i) inheritance would be governed by Section 171, if under the personal law she was entitled to a life estate. If on the other hand, under the personal law if she was entitled to hold such estate absolutely, then inheritance would be governed by the Table under Section 174. The Legislature clearly spells out its intent. So to find the channel of inheritance, one has to go to the personal law applicable to her and then to steer to the provisions to find whether she would have held the property as limited or absolute owner before applying sub-clause (i) or (ii). So, first it has to be examined, what would have been her right to such estate under her personal law. This right has not to be seen either under Tenancy Law, U.P.Z.A. Act or any other statutory or other law but has to be seen only under her Personal Law. The legal position, so far as personal law viz. Hindu Law, of a female inheriting property from a male

is what we have quoted above from Mullas Hindu Law. As already stated any female including the daughter, as in the present case, when she inherits the property from male gets only life estate in as much as the case is not governed by the Bombay School. In view of this legal position, Section 172(2)(a)(i) would apply, and not sub-clause (ii). May be, after coming into force of the Hindu Succession Act of 1956, within the ambit of Section 14, limited estate of Hindu female is converted into absolute estate. In such cases, inheritance would be governed by the Table under Section 174 in view of Section 172(2)(a)(ii). But in the present case she died before the aforesaid Act of 1956.

It may look paradoxical that female Bhumidar having absolute right to transfer, but for the purposes of inheritance, one has to traverse to her personal law to find, whether she would have held this property as limited or absolute owner, and if she had limited right then in spite of her absolute right under U.P.Z.A. Act, it had to follow different course to be governed by Section 172(2)(a)(i). But this is what legislature intends. That is why law of inheritance varies for different properties under different statute for the same person.

In view of our aforesaid finding, that Smt. Kaushalya Devi held the land inherited from her father, under the personal law as limited estate, after her death such bhumidhari land would be governed by clause (i) of Section 172(2)(a) of U.P.Z.A. Act. Thus for inheritance Section 171 would apply under which husband is not a heir. In view of this the appellant claim cannot succeed. The courts below rightly held that the property would go to the concerned respondents by survivorship by virtue of Section 175 as they were co-tenure holder.

So, we do not find any merit in this appeal. Accordingly, it is dismissed. Costs on the parties.