

Savitri Devi Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Sep-10-2008

Judge : V.N. Sinha, J.

Appellant : Savitri Devi

Respondent : The State of Bihar and ors.

Judgement :

V.N. Sinha, J.

1. Heard learned Counsel for the petitioner, State as also private Respondent No. 5.

2. Petitioner is aggrieved by the orders dated 24.11.2000, Annexure-2, passed by the Deputy Collector, Land Reforms, Sasaram in Mutation Appeal No. 83 of. 2000-01, whereunder learned Deputy Collector, Land Reforms, Sasaram set aside the order dated 3.12.1999, Annexure-1, passed by the Circle Officer, Kargahar mutating the lands in question in favour of the petitioner. She is further aggrieved by the order dated 25.5.2001, Annexure-3, passed by the Collector, Rohtas in Mutation Revision Case No. 68 of 2000, Annexure-3, whereunder he affirmed the appellate order dated 24.11.2000, Annexure-2. Petitioner is the donee of the lands in question vide registered gift deed dated 29.5.1998 executed by Nainbas Kuer, wife of Bilatu, Pathak. The lands in question were recorded in the Khatiyani in the name of the father-in-law of Nainbas Kuer, Satya Narain Pathak who had three

sons, namely, Hari Narain Pathak, Bilatu Pathak and Sheo Shankar Pathak. It is her further case that after the death of her father-in-law, Satya Narain Pathak, there was partition between his three sons. After partition between the sons of Satya Narain Pathak, Bilatu Pathak died issueless leaving behind his wife, Nainbas Kuer. Nainbas Kuer inherited the entire estate of her husband. Later, Nainbas Kuer became old and out of her love and affection for the petitioner as also in recognition of the services rendered by her, executed gift deed dated 29.5.1998 as also put the petitioner in possession of the lands in question.

3. On the basis of the gift deed, petitioner-donee applied for mutation, which was allowed by the Circle Officer, Kargahar under orders dated 3.12.1999, Annexure-1. Aforesaid order dated 3.12.1999, Annexure-1 was challenged by Respondent No. 5, son of the recorded tenant on two grounds, (1) that mutation in favour of the petitioner for the lands in question on the basis of gift deed could not have been allowed without notice to the other heirs of the recorded tenant, (2) Nainbas Kuer, wife of the other brother, Bilatu Pathak had no right to execute such deed of gift as there was no partition between Hari Narain Pathak, Bilatu Pathak and Sheo Shankar Pathak and she never came in exclusive possession of the lands in question. Appreciating aforesaid contention, order dated 3.12.1999, Annexure-1 was set aside in appeal under orders dated 24.11.2000, Annexure-2. Petitioner thereafter assailed the appellate order dated 24.11.2000, Annexure-2 by filing Mutation Revision Case No. 68 of 2000, which was also dismissed under orders dated 25.5.2001, Annexure-3 with reference to the provisions contained in Article 258 of the Mullah Hindu Law and on that basis it was held that Nainbas Kuer had no authority to execute the deed of gift as there was no partition between the two brothers and her husband.

4. By filing the present writ application, petitioner has assailed the appellate order dated 24.11.2000, Annexure-2 and the revisional order dated 25.5.2001, Annexure-3 and has submitted that Satya Narain Pathak, the recorded tenant died sometime in the year 1980, whereafter there was partition between his three sons, Hari Narain Pathak, Bilatu Pathak and Sheo Shankar Pathak, Respondent No. 5. After partition between the three brothers, each of them came in separate possession of their share. Bilatu Pathak died issueless leaving behind his wife and

the estate of Bilatu Pathak devolved up on his wife, Nainbas Kuer, the doner. It is further submitted that Nainbas Kuer became old and out of her love and affection as also in recognition of the services rendered by the petitioner, who happens to be the daughter-in-law of, Hari Narain Pathak, executed the deed of gift in her favour as also put her in possession of the lands in question. In this connection, it is pointed out that after the death of Bilatu Pathak, his estate was inherited and possessed by Nainbas Kuer, she was competent to execute the deed of gift in favour of the petitioner. In support of such contention, reliance has been placed on Section 14 of the Hindu Succession Act (hereinafter referred to as the Act) as also the judgment of the Hon'ble Supreme Court in the case of Sukh Ram and Anr. v. Gauri Shankar and Anr. reported in : [1968]1SCR476 . Learned Counsel further contended that in view of the provisions contained in Section 14 of the Act, Article 258 of the Mullah Hindu Law has no application to the facts of the case in hand.

5. Counsel for the private Respondent No. 5 has opposed the submission made on behalf of the petitioner with reference to the judgment of the Hon'ble Supreme Court in the case of Thamma Venkata Subbamma (dead) by L.R. Yrs. Thamma Tattamma and Ors. reported in : [1987]168ITR760(SC) and in the case of Kalawatibai v. Soiryabai and Ors. reported in : [1991]2SCR599 and submitted that Section 14 of the Act has no application to the facts of the case in hand as there was no partition in the joint family and widow Nainbas Kuer never came in actual possession of the lands in question after the death of her husband and the contents of the deed of gift that doner was in possession of the lands in question, is not correct and had the Circle Officer issued notice to the private Respondent No. 5, then by leading evidence, he would have established before him that there was no partition between the sons of Satya Narain Pathak and unless the factum of partition between the brothers is proved, it is difficult for anybody to conclude that Nainbas Kuer ever came in exclusive possession of the lands in question.

6. Having heard counsel for the parties and having perused the pleadings filed by them as also the three impugned orders dated 3.12.1999, 24.11.2000 and 25.5.2001, Annexures-1,2 and 3, I am of the view that in the present case, the rights of the doner, Nainbas Kuer has to be considered in the light of the provisions contained in proviso to Sections 6, 8 of the Act, which enables a widow

to inherit and possess the estate of her husband after his death and in the opinion of this Court if there was partition between the three sons of Satya Narain Pathak, the recorded tenant then Nainbas Kuer, the widow of Bilatu Pathak shall, by virtue of the provisions contained in proviso to Sections 6 and 8 of the Act, succeed and possess the estate of her husband and was competent to execute the gift deed and put the donee in possession.

7. The original order mutating the lands in question on the basis of the deed of gift dated 29.5.1998 was passed without notice to the Respondent No. 5, impugned orders dated 3.12.1999, 24.11.2000 and 25.5.2001, as contained in Annexures-1,2 and 3 to this application are set aside and petitioner and private Respondent No. 5 are directed to appear before the Circle Officer, Kargahar on 6.11.2008 when the learned Circle Officer shall permit the parties to lead evidence, if they so desired and pass appropriate orders in the light of the observations made above in paragraph 5.

8. This writ application is, accordingly, disposed of.

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