

Parkash Kaur Vs. Udham Kaur

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Court : Mumbai

Decided On : Dec-11-1946

Reported in : (1947)49BOMLR264

Judge : Patrick Spens, Kt., C.J., Zafrulla Khan and Kania, JJ.

Appellant : Parkash Kaur

Respondent : Udham Kaur

Disposition : Appeal dismissed

Judgement :

Zafrulla Khan, J.

1. One Harnam Singh, who was in possession of a certain area of agricultural land in the Punjab, as a mortgagee, died leaving him surviving a widow and a pre-deceased son's widow. After his death the mortgage was redeemed, the entire amount of the mortgage money being paid to the widow. The pre-deceased son's widow thereafter instituted a suit to recover one half share of the mortgage money from the widow, or in the alternative from the legal representatives of the mortgagor, basing her claim on Section 3 of the Hindu Women's Rights to Property Act, 1937. On a reference to this Court in *In re The Hindu Women's Rights to Property Act* the Court delivered the opinion that the Act did not operate to regulate succession to agricultural land in the Governors' Provinces. The question

that arose for decision in this case was whether the mortgagee rights held by Harnam Singh were or were not agricultural land. A division bench of the Lahore High Court, before whom the case eventually came on Letters Patent Appeal, answered the question in the affirmative and dismissed the suit, but gave a certificate under Section 205 (1) of the Constitution Act. The plaintiff has now come up on appeal before us.

2. Entry 7 of List III of the seventh schedule to the Constitution Act (Concurrent Legislative List) comprises wills, intestacy, and succession, save as regards agricultural land. The devolution of agricultural land is thus a purely provincial subject by virtue of Entry 21 of List II (Provincial. List) which runs as follows:-

Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; transfer, alienation and devolution of agricultural land;-

The expression 'agricultural land' is not defined in the Constitution Act, but in our judgment the language employed in this Entry leaves, no room for doubt that agricultural land must be deemed to include rights in or over agricultural land. Any other construction would give rise to serious anomalies.

3. Faced with this difficulty counsel for the appellant was forced to contend that the agricultural land covered by the mortgage was held by Harnam Singh only as security for the mortgage money, the advance of which by him to the mortgagor constituted a debt distinct and severable from the security. It was argued that the plaintiff was only seeking to recover her share of the debt due to Harnam Singh the whole of which had been repaid to the widow and which was property (other than agricultural land) left by Harnam Singh within the meaning of Section 3 of the Hindu Women's Rights to Property Act and that she was not concerned with the security for the debt. This contention is based upon a misconception of the nature of the kind of mortgage held by Harnam Singh. He had, no doubt, advanced a sum of money to the mortgagor, but all that he had obtained in return was possession of a certain area of agricultural land and the right to maintain that possession, to receive the rents and profits arising from the land and to exercise over and in respect of it all the other rights of user that the mortgagor was entitled to exercise

till such time as the amount of the mortgage money was repaid to him. In the judgments of the Courts below the transaction is described as a usufructuary mortgage. It is not contended, however, that its nature is otherwise than as described above. Under the law regulating such mortgages in the Punjab Harnam Singh had no right to institute a suit to recover the amount of the loan or to enforce the mortgage by bringing the mortgaged property to sale.

4. Our attention was drawn to *Imperial Bank of India v. Bengal National Bank* 33 Bom. L.R. 1338, where their Lordships of the Privy Council held that a debt secured upon immoveable property may be transferred apart from the security. The kind of debt and security that their Lordships were called upon to deal with in that case were very different from the kind of mortgage that is the subject-matter of controversy before us. That was a case of an ordinary loan secured upon immoveable property where the creditor would have been entitled, in the words of their Lordships, 'to take a judgment for the debt without having recourse to his security'. In the present case Harnam Singh had no right to recover the amount of the mortgage money by suit at all. His interest at the time of his death was only that of a mortgagee in possession entitled to receive the rents and profits of the property till the mortgage money was repaid and was in our judgment a right in or over agricultural land comprised within Entry 21 of List II.

5. We agree with the learned Judges of the High Court in holding that the property in dispute is agricultural land within the meaning of Entry 21 of List II and that succession to it is not regulated by the Hindu Women's Rights to Property Act. The suit was rightly dismissed by the High Court.

6. The appeal is dismissed with costs.