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Court : Jharkhand

Decided On : Feb-21-2003

Reported in : [2003(2)JCR539(Jhr)]

Judge : R.K. Merathia, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : CWJC No. 4356 of 2000

Appellant : Most. Parbati Devi and anr.

Respondent : State of Jharkhand and ors.

Advocate for Def. : P.K. Modi, G.P-1 and; Sunil Kumar, Adv. for respondent Nos. 3 and 4

Advocate for Pet/Ap. : S.K. Sharma and; Krishna Kumar Mishra, Advs.

Judgement :

ORDER

R.K. Merathia, J.

1. Heard learned counsel appearing on behalf of the petitioners. Mr. Pradip Modi appearing on behalf of the State and Mr. Sunil Kumar appearing on behalf of the Respondents No. 3 and 4 (hereinafter referred as the private respondents).

2. The petitioners have challenged the order dated 24.7.2000 (Annexure 4) passed by the Commissioner, South Chota Nagpur, Ranchi in Gumla Permission Appeal No. 288/97 disposing of the revision application filed on behalf of the Respondents No. 3 and 4. In the said order Commissioner has held that the deed of gift made by the petitioner No. 1 in favour of petitioners No. 2, 3 and 4 was against the customary law and the same was executed in hurry without waiting for the statutory, period prescribed for filing revision and the result of such revision. Thus he directed the revenue authorities not to recognize the deed of gift in question. He further annulled the order of mutation based on the said deed of gift and observed that the writ petitioners will be entitled to use the land of her share till her death.

3. Learned counsel for the petitioners submitted that the said impugned order is wrong. It is submitted that the Respondents No. 3 and 4 took the point regarding the customary law of the parties for the first time before the revisional Court. It is further submitted that the petitioners are no longer members of Scheduled Tribe and they are Hinduised and thus guided by Hindu Succession Act and not the local customary law of Scheduled Tribes and she is entitled to gift the properties, which she got under partition, to her daughters.

4. It is further submitted that it was not necessary for the petitioners to wait for the statutory period prescribed for revision and the order which may be passed by the revisional authority, if any, before executing the deed of gift. It is further submitted that similarly the order directing the revenue authorities not to recognize deed of gift and annulled the mutation based on the said deed of gift is wholly without jurisdiction.

5. Learned counsel for the State and the private respondents argued that in the facts and circumstances of this case, the proper course for the petitioners was to move the Civil Court of competent jurisdiction for appropriate reliefs and in the writ petition under Article 226 of the [Constitution of India](#), the disputed question of fact cannot be gone into. It was further submitted that no materials were brought on record by the petitioners before the revenue authorities, to support the case of partition and non-application of the customary law.

6. The petitioner's case in short is that she is a member of Scheduled Tribe (by caste Kherwar). Petitioner No. 1 filed a Permission Case No. 69/96 before the Land Reforms. Deputy Collector, Gumla seeking permission to transfer the land in question by way of gift to her daughters (petitioners No. 2, 3 and 4) on the ground that she is an old ailing lady being looked after by her daughters. The said petition was rejected by order dated 18.12.1996 (this order is not on the record in this writ petition). The petitioner No. 1 against the said order filed an appeal before the Additional Collector. Gumla being Appeal No. 7/1996-97. The appellate authority allowed the appeal by holding that partition has already taken place between the sons of original tenant, and the petitioner No. 1 is in cultivating possession. It finally held that the petitioner No. 1 has got exclusive right, title and interest and therefore she is entitled to transfer the land as (sic), filed a revision against this order being Gumla Permission appeal No. 288/97 before the Commissioner, which was, ultimately allowed by the impugned order dated 24.7.2000.

7. The private respondents have claimed that the lands in question are joint family properties of the parties and there has been no partition between them. However, for the sake of convenience, the parties are possessing the lands separately. The parties are members of Scheduled Tribes and they are governed by their local customary law, in the matter of inheritance and succession, under which the females have limited right over the landed properties i.e. maintenance till their life time and the unmarried daughters have right of maintenance till their marriage.

8. It may also be noted here, to complete the facts that after the aforesaid order dated 11.7.97. passed by the appellate authority, in favour of the petitioner No. 1, she executed deeds of gift on or about 24.7.97 and on that basis mutation was allowed in favour of the petitioners No, 2, 3 and 4 by the Circle Officer vide Mutation Case No. 45/1998-99 against which the private respondents preferred appeal before LRDC Gumla being Mutation Appeal No. 81/1998-99. The said mutation appeal was rejected upholding the orders of Circle Officer for mutation but subject to the final decision which may be given in the aforesaid Gumla Permission Appeal No. 288/97.

9. From the facts and circumstances stated above, it is clear that there is dispute with regard to partition and also with regard to validity of the deeds of gift in view of the local customary law of the Scheduled Tribes. Whether partition has taken place or not is a question of fact which can be ascertained only on the basis of the materials/evidences which may be brought on record by the parties. Similarly the question whether the petitioner will be guided by the local customary law of the Scheduled Tribes or by Hindu Succession Act is also a disputed question of fact, which can only be decided on the basis of the materials/ evidenced which may be brought on record by the parties.

10. The point regarding customary law was raised before the Commissioner for the first time, by the private respondents. The petitioners also did not bring on record any materials/evidences, in support of her claims that the customary law are not applicable to her. The Commissioner therefore had no occasion to deal with this question of custom properly. Therefore, the question whether the deed of gift is against customary law requires fresh consideration.

11. It is not necessary to deal with the other infirmities in the order of the Commissioner, as pointed out by the petitioner, as the matter is being remanded for fresh consideration.

12. After considering the facts and circumstances stated above. I am of the view that instead of driving the parties to the Civil Courts, for the present it will be proper that the parties be given opportunity to bring on record materials in support of their respective claims, as this Court is not in a position to decide the disputed question of fact regarding partition and applicability of customary law. The order of Revisional Authority dated 24.7.2000 passed Gumla Permission Appeal No. 288/97 is set aside and the matter is remanded to the Commissioner for fresh consideration as per the law. The parties are at liberty to bring on record materials/evidences in support of their cases. The Commissioner may also order for enquiry if he thinks fit. The parties are directed to appear before the Commissioner on 25.3.2003 when he will fix a date of hearing and then he will try to dispose of the revision expeditiously.

In the result the writ petition is disposed of with the aforesaid observations and directions.

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