

Ghungli Vs. Puran

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Court : Delhi

Decided On : Jun-10-1970

Reported in : 6(1970)DLT433

Judge : Hardayal Hardy, J.

Acts : Himachal Pradesh Abolition of Big Landed Estate and Land Reform Act, 1953 - Sections 11(2); Hindu Adoption and Maintenance Act, 1956 - Sections 20

Appeal No. : Regular Second Appeal No. 53 of 1968

Appellant : Ghungli

Respondent : Puran

Advocate for Pet/Ap. : K.C. Sood,; Chabildas and; Dharam Pal Sood, Advs

Judgement :

Hardayal Hardy, J.

(1) This second appeal from the,' order of the learned District Judge, Mandi, raises the question of interpretation of section 11(2) of the Himachal Pradesh Abolition of Big Landed Estate's and Land Reforms Act (15 of 1954), hereafter referred to as the Abolition Act. Incidentally it also raises the question of impact of section 20 of the Hindu Adoptions and Maintenance Act (78 of 1956), hereafter referred to as the Maintenance Act. on the construction of section 11(2) of the Abolition Act.

(2) The appellant is a widow. She was not so when respondent Puran had applied under sub-section (1) of section 11 for conferment of proprietary rights of the land in dispute on him and his application was allowed by the Compensation Officer, as her husband Gangu was then alive. Gangu died during the pendency of her appeal and as such she claims that she became entitled to invoke the aid of sub-section (2) of section 11 of the Abolition Act to defeat the respondent's rights. It is common ground that if subsection (2) of section 11 does not apply the appellant cannot succeed and the order made by the Compensation Officer which was affirmed, on appeal, by the learned District Judge granting proprietary rights of land in Khasra Nos. 693, 691 and 698/1, measuring 4-2-19 Bighas situate in village Dhemghi, Tehsil Sadar Mandi to the respondent on payment by him of Rs. 162.00 as compensation to the appellant, has to be upheld.

(3) It is also common ground that besides the land in dispute of which the respondent has been held to be a tenant, the appellant owns 9-12-8 Bighas of land (vide Ex. P.B) in village Dauhandi, one-half share in 7-5-9 Bighas of land in village Kheuri (vide Ex. P.C) and 2-6-6 Bighas of land in village Ragarh (vide Ex.P.D) on account of share of her deceased mother. She also owns 13-4-14 Bighas of land in the same village (vide Ex.PF) with Garib Das and others as non-occupancy tenants. Exhibit P.F. also shows that in village Rigarh she is in possession of 10-11-5 Bighas of land one-half of which is in her self cultivation. She also has 1/6th share in 8-11-14 Bighas of land which she has inherited from her husband (vide Ex.PA). The total area of land which is under her self cultivation is thus 9-05 Bighas while the remaining land measuring 26-9-17 Bighas is with tenants for which a sum of Rs. 23-28 is being received by her as lagan (vide Exhibits P.B, P.C, and P.D). It may be mentioned here that the above figures are in accordance with the documents Exs. Pa, Pb, Pc, Pd and Pf which are on record. These figures also tally with those mentioned in the order of the Compensation Officer. The figures given in the order of the learned District Judge, therefore, do not appear to be correct.

(4) There is, however, no finding by the Compensation Officer or by the District Judge as to what is the total produce from the land which is in the cultivating possession of the appellant. The Compensation Officer and the District Judge

have, however, both held 8HCD/70 that the appellant has five sons of whom four are in service. One is in the Police force while the second is a baildar in the Colony. The third son is serving with a Transport Company and the fourth is employed in the Department of Industries. The fifth son is said to be a minor and is studying in a school.

(5) On these facts it has been held that the appellant is not entitled to the benefit of sub-section (2) of section 11 of the Abolition Act. The appellant is aggrieved by the decision and has come up in appeal to this Court under section 104 of the Abolition Act.

(6) In order to appreciate the question which arises for consideration it is necessary to set out sub-section (2) of section 11 of the Abolition Act which alone is relevant for the purpose. The subsection reads:-

'NOTHING contained in sub-section (1) shall apply to a landlord, if he has no other means of livelihood and is a minor, widow or a person suffering from physical or mental disability incapable of earning his livelihood. In the case of a minor, sub-section (1) shall not apply during his minority and in other cases for his life time.'

(7) The plain meaning of the above provision is that its benefit extends only to a landlord who is firstly a minor or a widow and has secondly no other means of livelihood. It also extends to any other person who is a landlord but is suffering from physical or mental disability and is incapable of earning his livelihood. The duration of the benefit in the case of a minor is restricted to the period of minority while in the case of a widow or a person suffering from physical or mental disability the benefit enures for the life time of the widow or the person afflicted by physical or mental infirmity. In the present case we are concerned with a widow and, therefore, in order to succeed all she has to establish is that she has no other means of livelihood. It follows that in considering her 'other means of livelihood' the property in dispute has to be excluded from consideration. The expression 'means of livelihood' has not been defined in the Abolition Act nor perhaps in any other enactment. The meaning of the expression was discussed by my learned brother Om Prakash J., in a case decided by him as Judicial Commissioner, Himachal Pradesh. The judgment is reported as Mohan Lal v. Mohun Ram and although the

full judgment of the Supreme Court is not before me, a brief excerpt from the judgment as reproduced in 1970 Supreme Court Notes (175B) shows that the decision has since been affirmed by the Supreme Court in Civil Appeal No. 2312 of 1966 decided by Shelat and Mitter JJ. on 7-4-1970. The case related to a claim under section 11(2) preferred by a minor but it is contended by the learned counsel for the respondent that the ratio of the decision applies equally to the present case. Dealing with the meaning of the word 'means' my learned brother observed:-

'The word 'means' has not been defined in the Abolition Act or, perhaps, in any other enactment. The Dictionary meaning of the word 'means' is 'resources', vide Webster's New International Dictionary. There can be no yard stick or fixed principles, applicable to all cases, for ascertaining what will constitute the resources of the minor. Every case will have to be decided on its own facts and circumstances. Tangible property will no doubt constitute resources of the minor. But the statutory right of the minor, under section 20 Hindu Adoptions and Maintenance Act, to be maintained by the father, cannot, invariably, be regarded as the means of the minor. It is not difficult to visualize a case where a father refuses, or neglects, to maintain his minor child. It will be unjust and inequitable, in such a case, to regard the legal right of the minor to be maintained as his means. But in a case where a minor is being actually maintained by his father. his statutory right to be maintained may be taken into consideration, when ascertaining his means. The property of the father cannot be regarded as the means of the minor. It has, however, to be taken into account, in a case where the legal right of the minor to be maintained constitutes his means.'

(8) While interpreting the expression 'means' of livelihood' in contradistinction to the expression 'means of maintenance' my learned brother observed:-

'It is, also, to be noted that the words used in subsection (2) are 'means of livelihood' and not 'means of maintenance.' The word 'maintenance' is a term of wider connotation than livelihood. Maintenance includes food, clothing and other reasonable wants. Livelihood covers only food, adequate for sustaining life.'

(9) I must confess that I find it a little difficult to agree with my learned brother when he says that while maintenance includes food, clothing and other reasonable wants, livelihood covers only food adequate for sustaining life. To my mind, whatever is necessary for maintenance is also necessary for livelihood. The biblical saying that man does not live by bread alone though uttered in a different context represents an universal truth. Life on this planet is not sustained by food alone. Raiment and shelter, and provision for medical attendance and treatment are as necessary for sustaining and preserving human life as food. As they say, to live is not just to exist. While it is true that the means of livelihood will not take in provision for comforts that are far beyond the ordinary, they can by no stretch of imagination exclude what may be regarded as reasonable wants of life. I, therefore, cannot endorse my learned brother's view of the expression 'means of livelihood' as embracing a provision for food only. For the purpose of computing the money value of the income which the appellant thus derives from her land regard will have to be shown to what is required for her reasonable wants to make life worth living for her.

(10) In this connection, it will not be out of place to refer to the definition of the word 'maintenance' in section 3(b) of the Maintenance Act. According to that definition, maintenance includes in all cases provision for food, clothing, residence, education and medical attendance and treatment and in the case of an unmarried daughter, also the reasonable expenses of and incidental to her marriage. While interpreting the expression 'means of livelihood' it may perhaps not be necessary to go so far nor is it always safe to interpret an expression used in one Act by comparison with a different though cognate expression as used and defined in another Act even though there may be some similarity between the object underlying the two Acts. In the present case that similarity of object too may not be there. But that apart, as a matter of pure construction, I am not at all prepared to hold that the expression 'means of livelihood' covers a provision for food only and nothing else

(11) I find some support for my view, though the support is not very explicit, in a decision of this Court in *Balka v. Lahasnu* (MSA No. 3 of 1967) decided on 28-12-1967 by a Division Bench consisting of 1. D. Dua CJ. (as his Lordship then was)

and T.V.R. Tatachari J. The learned Judges in that case were concerned with the question whether for the purpose of application of sub-section (2) of section 11 to a case, the means of livelihood of the widow alone were to be taken into account and not of her minor daughters. I.D. Dua CJ. who spoke for the Bench observed :-

'SHRISood has next contended that the means of livelihood of the widow alone are to be taken into account and not of the minor daughters because it is the widow who is the owner and not her minor daughters. Here again we are unable to agree. The means of livelihood as contemplated by section 11(2) must, in the present case, include the means of livelihood of the widow as well as of her minor daughters whom, both according to law and our social conditions, she is bound to maintain and to see that they are properly settled in life. To adopt the construction suggested would squeeze life blood out of this beneficent provision for securing to the widow appropriate means of livelihood in this Republic.'

(12) If what is envisaged by means of livelihood is means of providing food alone for the widow it is apparent that there cannot be any question of her maintaining her minor daughters and seeing to it that they are properly settled in life.

(13) I am, however, in complete agreement with my learned brother that the word 'means' is synonymous with 'resources' and that there are no common denominator or fixed principles applicable to all cases for ascertaining what will constitute the resources of a minor (in the present case a widow). Every case has to be decided on its own facts and circumstances. In the case of Balku v. Lahasnu to which a reference has already been made the total land owned by the widow measured about 88-5-5 Bighas including 5-10-17 Bighas regarding which the ownership rights were being claimed by four tenants. She was in cultivating possession of 41-17-13 Bighas out of the produce of which, one Durga was taking his share because presumably he was the actual cultivator of the land with his own hands. The remaining 46-7-12 Bighas were in possession of different tenants. The widow was found by the Compensation Officer and the District Judge to get profit out of an area of about 20 Bighas only which were in her self- possession. Her income from the land was assessed by the Compensation Officer, with whom the District Judge agreed, at Rs. 100.00 per mensem. This was considered barely

sufficient for the needs of the widow and her two minor daughters and it was held that the widow was entitled to the benefit of section 11(2) of the Abolition Act.

(14) The total land which is in the self-possession of the appellant who has only one minor son to support measures 9-0-5 Bighas only while her income from lagan is Rs. 23-28 per annum. It is true that neither the Compensation Officer nor the learned District Judge has assessed the income from that land which they should have done; but considering the area of the land it is reasonable to assume that her income could not be much. The Compensation Officer and the learned District Judge have, however, taken into account the fact that four of appellant's sons who are gainfully employed are there to support her. There is no positive finding on record that her sons are actually supporting her nor is there any discussion in the judgments of the Compensation Officer and the learned District Judge about the liability of the sons to maintain their widowed mother under the provisions of the maintenance Act.

(15) In the judgment of the Compensation Officer, however, it is mentioned that the sons and the mother are living jointly and that circumstance has also been taken into account by him in coming to the conclusion that the appellant has other means of livelihood besides the land in dispute. This circumstance has not been adverted to by the learned District Judge but assuming that the appellant is living jointly with her sons, the question still remains whether the appellant is actually being maintained by them and also whether in the absence of any joint property there is an obligation on the sons to maintain her and that question obviously resolves itself to the right of a widow to receive maintenance from her sons under section 20 of the Maintenance Act, to which I shall presently refer.

(16) The contention urged by the learned counsel for the appellant is that for the purpose of sub-section (2) of section 11 of the Abolition Act the right of a widow to receive maintenance from her sons under section 20 of the Maintenance Act, cannot be taken into account.

(17) The contention is stated in such wide terms would obviously amount to flying in the face of what was held in the case of Mohan Lal v. Mohun Ram which as I have already said has since been approved by the Supreme Court and must,

therefore, be rejected. The case of Mohan Lal v. Mohun Ram was, however, the case of a minor son which stands on a different footing. The section reads :-

'20. (1) Subject to the provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents. (2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as child is a minor. (3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or property. Explanationn.-In this section 'parent' includes a childless step-mother.'

(18) It is apparent that while the obligation of a Hindu male or female to maintain the minor son or daughter is not conditioned upon the minor having any property of its own the obligation to maintain aged or infirm parents and an unmarried daughter extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or property. The reference to unmarried daughter in sub-section (3) is evidently to a daughter who is no longer a minor and is a concession to the weaker sex for no such right to claim maintenance from his parents can be put forward by a son who is not a minor.

(19) It follows that the appellant's right to claim maintenance under section 20 being subject to her being unable to maintain herself out other own earnings or property, the circumstance that her sons are gainfully employed could in law be taken into account for the purpose of sub-section (2) of section li of the Abolition Act, only if it was found that her own earnings and property were not sufficient for her maintenance.

(20) But even though the appellant may have a statutory right in the present case to be maintained by her sons, the question is still one of fact whether she is being actually maintained by them. . For that, the record furnishes no satisfactory proof and all there is to it is a bald statement in the judgment of the Compensation Officer that the appellant is living jointly with her sons. In the absence of any proof, it is difficult to treat the statutory right of the appellant under section 20 of the

Maintenance Act to be maintained by her sons as her means of livelihood. What would happen if the sons have their own wives and children to look after and they refuse or neglect to maintain her on the pretext that their earnings are not sufficient for the needs of their own families. Could it be held in such a case that her legal right to be maintained should be treated as her means of livelihood. For my part, I should be extremely loath to deprive the appellant of the land in dispute which when added to her other land may yet enable her to eke some livelihood out of it rather than to leave her to the vagarious hope of receiving maintenance from her sons and on their failure to do so to proceed against them in a Court of law. I am, therefore, not prepared to hold that in a case where a Hindu widow's right to receive maintenance for herself is itself conditional upon her not being able to maintain herself out of her own earnings or property she should be divested under sub-section (1) of section 11 of the Abolition Act of her property with which she may be able to maintain herself and left to look to her sons to maintain her under section 20 of the Maintenance Act. To put such a construction on sub-section (2) of section 11 would, in my opinion, be not only against the intention of the statute but also against the letter of the law.

(21) My conclusion, therefore, is that on the facts of this case it cannot be held that the appellant has other means of livelihood within the meaning of that expression as used in sub-section (2) of section 11 of the Abolition Act when read in conjunction with section 20 of the Maintenance Act. Her appeal is, therefore, allowed and the order of the learned District Judge affirming the order of the Compensation Officer is set aside and the respondent's application under section 11 (1) of the Abolition Act is dismissed. But in the circumstances of this case, there will be no order as to costs.