

Ram Pratap and 3 ors. Vs. State of Rajasthan and 50 ors.

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Court : Rajasthan

Decided On : Oct-28-1988

Reported in : 1(1989)WLN(Rev)114

Judge : J.S. Verma, C.J. and; Farooq Hasan, J.

Appeal No. : D.B. Civil Writ Petition No. 102 of 1978

Appellant : Ram Pratap and 3 ors.

Respondent : State of Rajasthan and 50 ors.

Disposition : Petition allowed

Judgement :

Farooq Hasan, J.

1. The facts, simple enough as they are, have been complicated by the voluminous record built up by the petitioners. Shorn of all unnecessary detail, the relevant facts are these. The petitioners, (Ram Pratap, Kewal Chand, Padam Kumar and Mahaveer Prasad), claimed themselves as Khatedar tenants of the land situated in villages Gamach (308 Bighas 9 Biswas) and Bhawanipura (46 Bighas 10 Biswas) on the ground that they had succeeded over the land inherited by Dhanna and Laxmi Narain on the death of one, Shri Onkar. According to the petitioners, on the death of Dhannalal, the parties partitioned co-parcenary joint

family property and the mutation was attested before 1-4-1966 by giving effect also to the Jamabandi of S.Ys. 2020 to 2023. In ceiling proceedings initiated against the petitioners for their lands, the order were passed by the respondents Nos. 2 to 4 which are being challenged through this writ petition praying therein for setting aside the orders dated 17-11-1976 (Aux. D) of the Board of Revenue (respondent No. 2); dated 25-8-1977 (Anx. E) along with (Anx. B) dated 9-6-1975 of the Revenue Appellate Authority (respondent No. 3), and dated 29-1-1972 (Anx, A) of the Assistant Collector (Ceiling) Bundi (respondent No. 4).

2. The Asstt. Collector (respondent No. 4) while deciding the ceiling proceedings admitted the fact of partition but, declared 96 Bighas 14 Biswas of land as surplus one with the petitioners-against which the petitioners filed appeal which was dismissed by the Revenue Appellate Authority and then the petitioners filed revision petition before the Board of Revenue but without any success.

3. We have heard the learned counsel for the parties.

4. Manifold contention on behalf of the petitioners by Shri S.N. Pareek, learned counsel, is that, the land comprising of Khasra Nos. 189 and 225 measuring 25 Bighas 14 Biswas, was given to Smt. Sushila d/o Rampratap by Dhanna which was mutated in her name which was recorded and entered in the Jamabandi of S.Y. 2018 i.e. prior to 1-4-1966-but the same was calculated with the land of the petitioners while determining the ceiling area which. could not have been calculated; that the land in dispute being joint Hindu family property apart from ancestral in the hands of the petitioners, the revenue courts fell in error in calculating the share of Paras Chand, Ajit Kumar and Rakesh Kumar sons of Ram Pratap with the share of Rampratap treating them as minor while upholding the fact of partition; and that the revenue authorities fell in error in holding that the whole of the lands in the hands of the petitioners was irrigated one but, the ceiling area of the petitioners was not determined as per the soil classification mentioned in the revenue records.

5. On the other hand, learned Government Advocate though supported the orders of the Revenue Courts but failed to dispute the fact of gift in favour of Smt. Sushila Devi, apart from controverting the submissions of the petitioners.

6. We have given thoughtful consideration to the rival contention of the parties, and perused the entire record placed in this writ petition.

7. As already stated, apparently from the record, on the death of Onkar predecessor of the petitioners, the land was inherited by Dhanna and Laxmi Narain and they had succeeded 308 Bighas 9 Biswas in village Gamach and 46 Bighas 10 Biswas in village (Bundi Bhawanipura District), and after the death of Dhannalal partition of co-parcenary property of joint Hindu family took place-mutation of which was attested prior to 1-4-1966 giving effect also is the relevant Jamabandis before the appointed date (1-4-1966). In this view of the matter, the petitioners were holding the land according to their shares recorded in the revenue records

8. Undisputedly, out of the land inherited by Dhannalal and Laxmi Narain, 25 Bighas 14 Biswas Khasra Nos. 189 and 225 were given to Smt. Sushila d/o Ram Pratap by Dhannalal which was recorded in Khatedari of Smt. Sushila in the Jamabandi of S.Y. 2018-much prior to 1-4-1966. In this view of the matter, in our opinion, the learned revenue authorities, therefore, committed an error of law in clubbing this land with that of the petitioners while determining the ceiling area. Thus, viewed, we hold that the land recorded in the name of Smt. Sushila Devi was to be excluded and not to be clubbed while determining the ceiling area of the petitioners. Hence the same be excluded while determining the surplus land.

9. Further, apparent from the record, throughout the petitioners have been pleading the that properly in question has been ancestral and was partitioned, of which repective entries were made in the revenue record by preparing the Jamabandis which shown the name of the petitioners being recorded even before 1-4-1966. And, it is settled principle that co-parceners are entitled to a right in the whole of the property and the co-sharers and co-tenants have a right to joint enjoyment of their joint property. It is true that partition of joint Hindu family property cannot be regarded as transfer for the simple reason that every coparcener has an antecedent right and title to the entire co-parcenary property though the extent of his right is not determined untile partition takes place. Partition under the Hindu Law puts an end to the unity and continuity of the

ownership between the co-parceners. Thus, it is correct to say that no transfer of property takes place when a partition of the property is effected. By partition the individual co-parceners simply gets his share and the becomes exclusively entitled to his share, the title and possession of his share from the date of partition vests in him. Thus, it can be held that the property possessed and held by the petitioners was held by them in their own right being co-parceners and the same could not have been clubbed together with while determining the ceiling area of the petitioners.

10. The second serious error rightly pointed out by Shri S.N. Pareek on behalf of the petitioners, which has crept into the judgment of the courts-below is shutting their eyes to the question whether whole of the land of the petitioners have been wrongly treated as 'command land' in contravention of the provisions of Rule 19 of the Ceiling Rules & section 30C of the Act. And, the learned revenue authorities have obsessed by not arriving at a finding as to on what basis, whole of the land of the petitioners has been treated as 'Nahari' in the revenue record, where as apparently from the record, it is not so, but it is recorded as Mal-I and Mal-II. More over, the ceiling area is to be computed by converting ordinary acres into standard acres of land in accordance with and in a manner laid down under Rule 19 of the ceiling Rules. Further, standard acres are to be arrived at on the basis of assessment circles and crops formed and deemed to have been formed Under Section 149 of the Land Revenue Act. The classification of land was to be taken as it existed on 1-4-1966 or as existed on 24-2-1958 because, the declaration are to be verified under Rule 12 in accordance with Jamabandis.

11. That takes us to the Rajasthan Tenancy (Fixation of Ceiling on Land) (Government) Rules, 1963 (for short, 'the Rules of 1963,') framed by the State Government in exercise of its powers Under Section 257 of the Rajasthan Tenancy Act, 1955 (for short, 'the Act) which requires to be construed in the present case. In the first place, let us look at Section 30-C of Chapter III-B of the Old Ceiling Law. Under Section 30-C of the Old Ceiling Law, the ceiling area for a family consisting of 5 or less then 5 persons shall be 30 standard acres which are to be calculated as per soil classification of agricultural land and for determining the ceiling area in terms of standard acres, as defined in explanation to Section

30-C of the Old Ceiling Law. According to Index of Annexure I under rule 19 of the Rules, 1963, each district has been considered as a unit and each assessment circle or group as a sub-unit.

12. The standard acres were to be computed on the basis of soil class of land as it existed on the date of the framing of the Rules and the standard acres were to be computed on the basis of soil class of land as recorded in the revenue records existed on the appointed date. i.e. 1-4-1966, and an inquiry is to be made on the said basis in view of the provisions of Rule 12 of the Ceiling Rules.

13. Taking the aid of the aforesaid propositions, the learned counsel for the petitioner submitted that as per the Jamabandi of S.Ys. 2020-23 i.e. corresponding to the years 1963-66, the petitioners along with Paras Chand, Ajit Kumar & Rakesh Kumar s/o Ram Pratap were having 290 Bighas and 7 Biswas of land in their Khatedari according to their mutual partition-decree of which has also been passed on 15-7-70-which partition & decree have been recognised by the Assistant Collector (Ceiling) Bundi in his order dated 29-1-1972. Out of the aforesaid total land in the hands of the Assessee, 81 Bighas 13 Biswas of land is recorded as Mal-IA, 172 Bighas, 14 Biswas as and 32 Bighas, 6 Biswas as Mal-II; and the remaining land is recorded as Gair-mumkin'. Learned counsel, therefore, submitted that the aforesaid land recorded as Mal-IA, under the aforesaid soil classification shall be calculated on the basis of Item No. 4 in the Index of Annexure 1 under Rule 19 of the Rules, 1963. Under the rule, each district has been considered as Unit and each assessment circle or group as sub-unit.

14. In the aforesaid Index, calculation of various kinds of agricultural land in different districts have been given. In Part I of the said Index, descriptive table for the purpose of calculation is given for the Bundi district and it also contained the names of Tehsil and village lying in Group I and II; and according to this Part, only such village which falls in Chambal project area and where the agricultural land is 'Nahri' of any class, will fall in Item No. 1 and if the village where such land is situated is of Group 1, 30 standard acres of land will be equal to 24 acres and if they are situated in Group II then 33 standard acres will be equal to 30 acres and if the land is not of this category then calculation will be made according to the Items

mentioned in the said Index.

15. Learned counsel then contended that as per soil classification mentioned above, Mal-IA Land shall be calculated under Item No. 4 and Mal-I & Mal-II land shall be calculated under Item Nos. 9 & 10 respectively of this Index. In Item No. 4, 80 bighas of land has been made equivalent to 30 standard acres. Similarly, 200 Bighas of land of Item No 9 shall be equivalent to 30 standard acres and the land of the nature defined at Item No. 10 shall be 240 Bighas equivalent to 30 standard acres. If the total land in the hands of the Assessee is calculated in the aforesaid manner then the same comes about 70 standard acres.

16. The Assistant Collector (Ceiling) in his order dated 29-1-1972 recognised 4 separate units of the assessee which is as follows:

(1) Laxmi Narain with his adopted son Kewal Chand;

(2) Padam Kumar s/o Ram Pratap who has been held to be Major at the relevant date;

(3) Mabavir Prasad who has also been held to be Major and was having a separate Unit at the relevant date;

(4) Ram Pratap s/o Dbanna, Paraschand, Ajit Kumar and Rakesh Kumar sons of Ram Pratap.

So, if the aforesaid land is divided in four units according to the partition affected in between the parties, no surplus land appears to be left in the hands of the assessee.

17. Learned counsel for the petitioner during the course of arguments, referred the Entries of Jamabandies of S.Ys. 2020-23 wherein total number of land as per soil classification was given and according to that Entry, 81 Bighas 18 Biswas of land has been shown as Mal, IA and 32 Bighas 6 Biswas as Mal-II, and 172 Bighas]4 Biswas of land as Mal-I; and the remaining land has been shown as 'Gair-Murokin' which is not to be calculated while computing ceiling area of the assessee.

18. In view of the aforesaid entries, the contention of the learned counsel for the petitioner, as said above, is tenable and if the calculation is made according to the submission of the learned counsel for the petitioner, we also find that no surplus land appears to be available in the hands of the assesses and in this view of the matter, prima facie it appears that the Assistant Collector (Ceiling) (respondent No. 4) committed an error in determining the surplus land but, to be more precise for proper adjudication of litigation, we would like that the Assistant Collector should determine the ceiling area with advertence to the above strictly in accordance with the Entries in the Jama-bandies of S.Ys. 2020-23 in respect of the soil classification. What emerges from the above deduction made by us, is that the calculation is to be made in accordance with the scale stated above and it will be of no importance if the land in question is situated in Chambal Project Area.

19. Now, let us look at section 5 of the Rajasthan Irrigation & Drainage Act, 1954 which envisages that a notification has to be issued by the State Government for declaration that the water of any river or stream flowing in a natural channel, or of any lake or other natural collection of still water should be applied or used by the State Government for the purpose of any existing or projected irrigation or drainage work. For that purpose, a particular date is to be mentioned in the notification which should not be earlier than 3 months from the date thereof. But, in the present case admittedly no such notification has yet been issued. This is also a circumstance in favour of the petitioner to calculate their land as per soil classification mentioned in the annual register. In view of the aforesaid observation, we are of the opinion that the Assistant Collector (Ceiling) (respondent No. 4) committed error in determining the surplus land in the hands of the petitioners and in the facts and circumstances of the case, it will be just to give direction to the Assistant Collector (Ceiling) Bundi or any other authority having jurisdiction in regard to determining the ceiling area of the petitioners afresh after calculating the same on the basis of soil classification mentioned in the annual register on the date i.e. 1-4-1966, with advertence to the above.

20. Last plank of serious error which has crept into the judgment of the courts-below is that in the present case, the land in Khatedari of minor sons of Ram Pratap which they succeeded after partition and which was ancestral property in

their hand, has been clubbed with the land of Ram Pratap while determining the ceiling limit merely on the ground that at the relevant time, four sons of Ram Pratap were minor. In our opinion, such basis for drawing a conclusion by the revenue authorities is fallacious and the finding is based on an entirely wrong view of law in disregard of the law enunciated in a catena of decisions because, only that child, whether minor or major, can be treated as member of the family who is dependent. This turns upon the interpretation of the word, 'dependent' appearing in section 30-B of the Rajasthan Tenancy Act. A child below 18 years of age by very reason of his or her age and relationship may or may not seek support and maintenance from his or her parents. Legislature by using the word, 'dependent', also meant to include or major child who is unable to look after himself or support himself because of imbecility, deformity or other handicap or any other reason whether a child is member of the family or not. One need not be concerned with the question, whether child is a minor or major for in either case according to the definition, he would be a member of the family if he is dependent on his parents.

21. A similar view which we have expressed above, was taken by us in Jugal Kishore and Ors v. SDO, Baran and Ors. DB Civil Writ Petition No. 792/1976 decided on 19-7-1988.

22. In these circumstances, merely because Ajit Kumar, Rakesh Kumar and Paras Chand being minors at the relevant time, they cannot be held to be member of the family unless a definite finding is there that they were dependent to the petitioner No. 1, Ram Pratap, and in the absence of that, the land in Khatedari of minor sons of Ram Pratap could not have been clubbed with that of Ram Pratap while determining the ceiling limit.

23. As already pointed out, the subordinate revenue authorities did not at all decide the foreboded questions while deciding the ceiling matter of the petitioners. Under the circumstances, the finding recorded by the revenue courts and authorities must be unhesitatingly set aside. However, in view of fettered jurisdiction of this Court under Article 226 of the Constitution, there is no option left before us except to remand the case to the Assistant Collector (Ceiling) Bundi to decide the matter afresh as that we cannot do under Article 226 of the Constitution

of India.

24. In the result, this writ petition is allowed, and we set aside the impugned orders Annxs. D, E, B & A, referred to above in earlier part of this judgment and the Assistant Collector (Ceiling) Bundi or any other Officers having jurisdiction in the matter now a days, is directed to dispose of and decide the matter afresh with advertance to the above observations made in this judgment, with expedition preferably within the out side limit of six months in order to avoid any further delay in justice.

25. No order as to costs.

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