SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Saila Bala Dasi Vs. Saila Bala Dasi

Saila Bala Dasi Vs. Saila Bala Dasi

SooperKanoon Citation : sooperkanoon.com/851130

Court : Kolkata

Decided On : Apr-29-1960

Reported in : AIR1961Cal26,64CWN605

Judge : B.K. Guha, ;P.N. Mookerjee and ;B.N. Banerjee, JJ.

Acts : Hindu Succession Act, 1956 - Section 14, 14(1) and 14(2); ;Land Acquisition Act - Section 32

Appeal No. : Civil Revn. Case No. 3229 of 1957

Appellant : Saila Bala Dasi

Respondent : Saila Bala Dasi

Advocate for Def. : Sudhansu Kumar Sen and ;Khagendra Nath Bose, Advs.

Advocate for Pet/Ap. : Rajendra Bh. Bakshi, ;Sushanta Kumar Sen and ;Sailendra nath Roychaudhury, Advs.

Judgement :

Banerjee, J.

1. This is reference made to a Special Division Bench, under the second proviso to Rule 1, Chapter II of the High Court Appellate Side Rules. The questions of law referred for determination are:-

(a) Whether the compensation awarded in respect of property in the possession of a widow, who had not, at the date of the acquisition absolute interest therein and kept under the provisions of the Land Acquisition Act with the Land Acquisition Court of the President of the Improvement Tribunal is property 'possessed' by a female Hindu, withinthe meaning of Section 14(1) of the Hindu Succession Act 1956?

(b) Whether this money is property acquired by the widow under a decree or an award prescribing a restricted estate therein, within the meaning of Section 14(2) of the Act?

K. C, Das Gupta and Law JJ., who recommended the reference of the two questions, to a Special Division Bench, observed that such a reference wasnecessary

'In view of the great importance of these questions and the fact that the decision is bound to affect the interests of innumerable persons in money lying in deposit with the Land Acquisition authorities on the date, when the Hindu Succession Act, 1956 , came into force'.

Section 14 of the Hindu Succession Act, 1956, referred to above, is hereinbelow set out:-

'Section 14(1). Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act shall be held by her as full owner thereof and not as a limited owner.

Explanation -- In this Sub-section 'property' includes both movable and immovable property acquired by a female Hindu by inheritance or devise or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhan immediately before the commencement of this Act.

(2) Nothing contained in Sub-section (I) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a Civil Court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe, a restricted estate in such property.'

I need refer to the facts of the case briefly so as to understand how this reference came to be made.

2. Promises No. 39 Chandni Chawk Street originally belonged to One Dashmoni Dasi. She died leaving two daughters Shyamasundari and Tripura Sundari. Under the last will and testament of Dashmoni. Shyama Sundari was bequeathed a ten annas share and Trinura Sundari a six annas share in the aforesaid premises, subject to certain charges as to Deva-Sheba, Tripura Sundari died, in or about the year 1888. leaving two sons Copal Chandra and Beni Madhab, who succeeded her, each having a three annas share in the property. Gopal died in the vear 1891 and was succeeded by his two sons Bepin Chandra and Narendra Nath. Bepin married twice. His first wife predeceased him, leaving two daughters, Sailabala (the petitioner) and Mrinalini, now dead. Bepin himself died in the year 1913, his second wife (the opposite party) surviving him. On the death of Bepin, she inherited, in the right of a Hindu widow, an one anna six pies share in the premises, to which Bepin was entitled.

3. The aforesaid premises was acquired under the Land Acquisition Act, and a sum of Rs. 1,55,250/- was awarded, on 20-2-1937, as compensation by the Land Acquisition Collector.

4. There being a dispute both over the valuation of the acquired premises and the apportionmentof the amount of compensation, a reference was made to the President of the Calcutta Improvement Tribunal.

5. The dispute as to apportionment of the compensation money, which was long and Protracted, was ultimately settled and the opposite party, as the widow of Bepin, was awarded Rs. 8425-7-5, as compensation due in her share.

6 Since the opposite party had a Hindu widow's interest in the acquired property, the President of the Improvement Tribunal exercised his power under Section 32 of the Land Acquisition Act and invested the money in Government securities, with a direction for payment of the interest arising from such investment to the said opposite party.

7. After the Hindu Succession Act, 1956, had come into operation, the opposite party filed an application before the President of the Improvement Tribunal for withdrawal of the sum of Rs. 8425-7-5, lying invested in Government Securities to her credit. The application was opposed by her step-daughter, the present petitioner, principally on the grounds that Section 14(1) of the Hindu Succession Act in terms did not apply to the compensation money as invested or alternatively Section 14(2) of the said Act was a bar to the relief claimed by the applicant.

8. The President of the Calcutta Improvement Tribunal overruled the objection and passed the following order:

'The petitioner is found entitled to withdraw the money lying invested to her credit as she has become absolute owner thereof. Write a letter to the Manager, Reserve Bank of India for selling the G. P. Notes and sending the sale proceeds to this Court. The amount, when received, will be paid out to the petitioner on her application.'

9. The petitioner moved against the aforesaid order in this Court and obtained a Rule. When the rule came up for hearing before K. C. Das Gupta and Law JJ., their Lordships recommended a reference of the two points of law, hereinbefore stated, to a Special Division Bench.

10. Mr. Rajendra Bhusan Bakshi, the learned Advocate for the petitioner, contended that the words 'any property possessed by a female Hindu' in Section 14(1) of the Hindu Succession Act, 1956, were referable only to property directly possessed by a female Hindu on the date of the commencement of the Act. As on that date, Mr. Bakshi contended, the compensation money was not in possession of the Hindu female, namely, the opposite party, but did lie invested in Government Securities either in possession of the President of the Improvement

Tribunal or of the Reserve Bank of India, Section 14(1) of the Hindu Succession Act, would not be attracted in the facts of the instant case. Mr. Bakshi argued, in the next place, that by the order made in the apportionment case read with the order Passed under S. 32 of the Land Acquisition Act, there was prescribed a restricted estate, within the meaning of Section 14(2) of the Hindu Succession Act, in the compensation money awarded to the opposite party. Under Section 14(2) of the Hindu Succession Act, Mr. Bakshi argued, nothing contained in Sub-section (1) of' S. 14 shall apply to such compensation money and the opposite party shall not be entitled to full ownership over such money.

11. I need state at the outset that Mr. Bakshi did not dispute that money paid as compensation for land acquired under the Land Acquisition Act, remained impressed with the character of real estate. He did not also dispute the correctness of the legal proposition, laid down by Mookerjee and Carnduff JJ. in Mrinalini Dasi v. Abinash Chandra, 14 Gal WN 1024, that until the money, awarded as compensation to a limited owner, passed into the hands of person or persons absolutely entitled thereto there was a constructive reconversion thereof into land, during the period it did lie invested in Government Securities. He proceeded on the basis that such compensation money was notionally real property.

12. What he contended was that the compere sation money, although property, was not possessed by the opposite party on the material date, namely, when the Hindu Succession Act, 1956, came into operation.

13. This makes it necessary for me to examine the conception of possession in Jurisprudence and as used in the Act.

14. 'In the whole range of legal theory', observed Salmond in his book on Jurisprudence, 'there is no conception more difficult than that of possession'. The difficulty is due to the dual conception of possession, as possession in fact and as possession in law. By permutation and combination of the two conceptions, three classifications of possession may be made (j) possession in fact and in law; (ii) possession in fact but not in law, (iii) possession in law but not in fact. Illustrative of the first classification of possession is a house in the direct possession of its lawful

owner. Illustrative of the second classification of possession is a house in the possession or the custody of a servant or an agent, on behalf of the master or the principal who is the lawful owner, or in wrongful possession of a trespasser. Illustrative of the third classification of possession is a house in possession of one out of several co-sharers. So far as the third classification of possession is concerned, says Salmond,

'the law attributes the advantages and the results of possession to some one, who as a matter of fact does not possess. The possession thus fictitiously attributed to him is by English lawyers termed 'constructive'.

15. The word 'possession' in Section 14(1) of the Hindu Succession Act, must be taken to have been used in the widest possible sense.

16. This interpretation of the word 'possession', in Section 14(1) of the Hindu Succession Act, was at first given by P. N. Mookerjee J. in his separata judgment in Gosta Behari Bera v. Haridas Samanta, : AIR1957 Cal557 . Observed His Lordship;-

'The opening words 'any property possessed by a female Hindu' obviously mean that, to come within the purview of the section, the property must be in the possession of the female concerned at the data of commencement of the Act. They clearly contemplate the female's possession when the Act came into force. That possession might have been either actual or constructive or in any form, recognised by Jaw but, unless the female Hindu, whose limited estate in the disputed property is claimed to have been transformed into absolute estate under thisparticular section, was at least in such possession, taking the word 'possession' in its widest connotation, when the Act came into force, the section I would not apply'.

17. The foregoing observations by his Lordship were approved by the Supreme Court in thecase of Kotturuswami v. Veeravva, : AIR 1959 SC577 . Imam J. who delivered the judgment observed:-

'In the case before us, the essential questionfor consideration is as to how the words 'any propertypossessed by a female Hindu, whether acquired before or after commencement of this Act' in Section 14 otthe Act should be interpreted. Section 14 refers to property which was acquired before or after the commencement of the Act and that such property shouldbe possessed by a female Hindu. Reference to Property acquired before the commencement of theAct certainly makes the provision of the Section retrospective, but even in such a case the property mustbe possessed by a female Hindu at the time the Actcame into force in order to make the provisions ofthe section applicable.

* * * * *

on behalf of the respondent it was urged that the words 'possessed by' had a wider meaning than actual physical possession, although physical possession may be included in the expression. In the case of Venkayamma v. Veerayya, (S) AIR 1957 Andh Pra 280, Vishwanath Sastri J., with whom Satyanarayan Raju J., agreed, expressed the opinion that the word 'possessed' in Section 14 refers to possession on the date when the Act came into force. Of course possession referred to in Section 14 need not be actual physical possession or personal occupation of the property by 'the Hindu female but may be possession in law. The possession of a licensee, lessee or mortgagee from the female owner or the possession of a guardian or trustee or an agent of the female owner would be her possession for the purpose of Section 14. The word 'possession' is used in Section 14 in a broad sense and in the context of possession means 'the state of owning or having in one's hand or power'. It includes 'possession by receipt of rents and profits.' The learned Judges expressed the view that even if a trespasser were in possession of the land belonging to a female owner, it might conceivably be regarded as being in possession of the female owner, provided the trespasser had not perfected his title. We do not think that it is necessary for us to go to the extent to which the learned Judges went. It is suffcient to say that 'possessed' in Section 14, is used in a broad sense and in the context means the state of owning or having in one's hand or power. ln the case of Gosta Behari v. Haridas Samanta, : AIR1957 Cal557 P. N. Mookerjee J. expressed the opinion as to the meaning of the words 'any property possessed by a female Hindu' in the following words:

'The opening words 'any property possessed by a female Hindu', obviously mean that to come within the purview of the Section the property must be in the possession of the female concerned at the date of the commencement of the Act. They clearly contemplate, the Female's possession when the Act cams into force. That possession might have been either actual or constructive or in any form recognised by law, but unless the female Hindu whose limited estate in the disputed property is claimed to have been transformed into absolute estate under this particular Section, was at least in such possession, taking the word 'possession, in its widest connotation, when the Act came into force, the section would not apply.' In our opinion, the view expressed above is the correct view as to how the words 'any property Possessed by a female Hindu should be interpreted'.

18. On the question whether possession by a trespasser, who has not perfected his title by adverse possession, would amount to possession by a female Hindu within the meaning of Section 14 of the Hindu Succession Act, there is difference of opinion between the Andhra Pradesh High Court decision ((S) AIR 1957 Andh Pra 280), referred to in judgment of the Supreme Court : AIR 1959 SC577 and an Orissa High Court decision reported in : AIR1958 Ori75 , Sansir Patelin v. Satyabati Naikani. In the Orissa decision Mohapatra J. (Das J. concurring with him) observed as follows:-

'We respectfully agree with the observations made by their Lordships of the Andhra High Court excepting one point, Viswanatha Sastri, J., while giving a wider meaning to the word 'possessed' had made an observation that it might also include the possession of a trespasser. In my opinion it is putting too wide a meaning. A trespasser's possession can never be taken to be a possession in any mode of the rightful owner as his possession is completely adverse to the interest of the rightful owner.'

The Supreme Court, in the decision reported in : AIR 1959 SC577 , did not feel itself called upon to pronounce its opinion on this aspect of the matter. It is not necessary for me also to express my views on the effect of trespasser's possession, because no such question is involved in the reference made to us.

19. The view expressed by P. N. Mookerjee J. in : AIR1957 Cal557 , I notice, was followed by Ramaswami J. in Arumuga Gounder v. Nachimuthu Pillai, AIR 1958 Mad 459, by Mohapatra and Das JJ. in : AIR1958 Ori75 and by Mullick J. in Krishna Dasi v. Akhil Chandra, : AIR1958 Cal671 .

20. Keeping in view the meaning of the word 'possession' as aforesaid, I have now to see in whose possession the money invested in Government Securities remained on the material date, namely, when the Hindu Succession Act came into operation.

21. Section 52 of the Land Acquisition Act, dealing with investment of money deposited in respect of lands belonging to persons competent to alienate, is to the following effect:-

Section 32(1) 'If any money shall be deposited in Court under Sub-section (2) of the last preceding section and it appears that the land in respect whereof the same was awarded belongs to any person who had no power to alienate the same, the Court shall -

(a) order the money to be invested in the purchase of other lands to be held under the like titleand conditions of ownership as the land in respectof which such money shall have been deposited washeld, or

(b) if such purchase cannot be effected forthwith then in such Government or other approvedsecurities as the Court shall think fit;

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the came be applied

(i) in the purchased of such other lands as afore--said; or

(ii) in payment to any person or persons becoming absolutely entitled thereto.

(2) In all cases of moneys deposited to which this section applies the Court shall order the costs of the following matters, including therein all reasonable charges

and expenses incident thereto, to, be paid by the Collector, namely :

(a) the costs of such investments as aforesaid;

(b) the costs of the orders for the payment of the interest or other proceeds of the securities upon which such moneys are for the time being invested and for the payment out of Court of the principal of such moneys, and of all Proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.'

22. There is no dispute that the purchase of Government Securities under Section 32(1)(b) of the Land Acquisition Act was made in the name of the opposite party Sailabala Dasi. The physical custody of the Government Securities was with the Reserve Bank of India. The opposite party, Sailabala, was being paid the interest on the investment as made.

23. Mr. Bakshi contended that the Possession of the Government Securities, on the material date, was not that of the female Hindu, namely, the opposite party Sailabala, but was either that of the Land Acquisition Court or of the Reserve Bank of India.

24. In my opinion this contention is misconceived. Although, not in physical possession of the Government Securities herself, hers was the possession in law. She was in possession of the acquired property prior to the acquisition. But for Section 32 of the Land Acquisition Act, she would have been paid the compensation money. The object which Section 32 of the Land Acquisition Act has behind it, to quote the language of Mookerjee and Carnduff JJ. in 14 Cal WN 1024, is:-

'To put the matter in another way Section 32 makes it reasonably plain that, although an owner may be deprived of his land for the sake of public purposes, the legislature intended that the protection enjoyed by reversionary heirs when land is in the hands of limited owners should not, by reason of the acquisition alone, be completely withdrawn. This object would be defeated if upon the conversion of the land into money the limited owner was allowed to seize the fund and to deal with it

as absolute owner. If such a state of thing was tolerated the possibility would not by any means be too remote, that the ultimate owner may be deprived of the use of the fund upon the termination of the limited estate''

Under the provision of Section 32, therefore, the compensation money had either to be invested in the purchase of other lands, to be held under the like title and condition of limited ownership, or to be invested in the purchase of approved Government Securities in the name of the limited owner.

25. The limited' owner, nevertheless, remain the owner of the Government Securities. The fact that the Reserve Bank retains the custody of the Government Securities is a matter of convenience for the purpose of payment of interest and cost to the limited owner, as provided for in the said Section 32. The possession is, in law, the possession of the limited owner and the custody of the securities by the Reserve Bank is possession on behalf of the limited owner. Section 32 does not in terms say that the investment in Government Securities shall remain in possession of the Court, the Reserve Bank or anybody else. That the custody of the securities is not given in fact to the limited owner is, as I have said, for the purpose of convenience in the matter of payment of interest and cost. For proved legal necessities the limited owner may become entitled to the physical possession of the money so invested and until that time the money remains in custody of the Reserve Bank or the Court on behalf of the limited owner, who remains in constructive possession.

26. In the view that I take, I hold that the compensation money payable to a Hindu widow, lying invested under Section 32 of the Land Acquisition Act, at the date when the Hindu Succession Act, 1950 came into operation must be treated to be 'Possessed' by the female Hindu, within the meaning of Section 14(1) of the Said Act.

27. I have now to consider the second branch of the argument of Mr. Bakshi. He contended that the order, made by the President of the Calcutta Improvement Tribunal, apportioning a sum of money out of the total amount of compensation in the share of the opposite party, Sailabala, read with the order for investment of the money in Government Securities was an order of a Civil Court prescribing a

restricted estate in the property, that is to say, in the apportioned compensation money. Mr. Bakshi contended that as such the property fell within the mischief of Section 14(2) of the Hindu Succession Act and nothing contained in Section. 14(1) would apply to such property.

28. This argument, in my opinion, is also misconceived. I have already stated that in the property, that was acquired, the opposite party, Sailabala, had only the limited estate of a Hindu widow succeeding to her husband. In the compensation money payable for the acquisition of the property, in which the opposite Party Sailabala had a share, the limited character of Sailabala's estate remained impressed. When, on apportionment, the disputed sum of money was awarded in her share, that money also retained the characteristic which Sailabala had in the acquired Property itself, because the apportioned compensation money must be treated as land, constructively or under legal fiction. The apportionment order did not, therefore, create the restricted estate. By directing the investment, of the money into Government Securities, the Court only recognised a restricted estate which was, all along, the true character of the property that the widow opposite party Sailabala had in the estate. In my opinion, there is nothing contained in Section 14(2) which deprives the opposite party, Sailabala, of the benefit of Section 14(1) of the Hindu Succession Act'.

29. In my view question (a) referred to this Bench must be answered in the affirmative and question (b) in the negative.

30. The Parties shall bear their own costs of this reference.

31. Let this matter be now placed before the learned Chief Justice, with the answers for further direction according to law.

Guha, J.

32. I agree with Banerjee, J.

P.N. Mookerjee, J.

33. I agree but I would like to add a few words,--particularly, on Section 14(2) of the Hindu Succession Act, with reference to the decision of Sarkar, J. and myself in the case of Jaria Devi v. Shyam Sundar, : AIR1959 Cal338 , to which also reference was made by Mr. Bakshi in argument. That decision, as the report clearly shows, is only authority for the proposition, -- which, of course, is not the case here, -- that, where the Hindu female's limited or restricted title is founded on some document or transaction, as mentioned in the said Section 14(2), and is not referable to Hindu law as such or, in other words, where the true source of that particular title, -- or, more Preciesly of its particular limited or restricted nature, -- is not Hindu law as such but some such document or transaction as aforesaid, as was the case in the decision cited, Sub-section (2) of the said Section 14 will prevent the application of Sub-section (l) thereof. In the present case, the true or real source of the opposite party's limited or restricted title to the compensation money, which, in the eye of law, is the substitute for the acquired land, is, indisputably, as already fully and lucidly explained by my Lord in his judgment, just delivered, her inheritance under the Hindu law, -- the said money in question, merely representing her inherited share in the acquisition money or the acquired land and it is, thus even on the express terms of the decision cited (vide : AIR1959 Cal338), within Sub-section (l) of Section 14 and outside Sub-section (2) of the said section.

34. One word now on Section 32 of the Land Acquisition Act and the question of possession. Section 32 makes it quite clear that the compensation money is the acquired land, transformed into money, retaining all the characteristics of the said acquired land as to inter alia title and possession. In other words, it remains impressed with all the said charcteristics (including, of course, all restrictions also on title, etc.) which attached to it, while it had its shape of land. This is patent on the face of the section, which interposes the conversion of the acquired land into money and its investment or conversion into securities until its reconversion into land again, to be held under like title and conditions of ownership (which include possession, vide 14 Cal WN 1024 at p. 1031) as the acquired land. The substance, then, throughout remains the same, only a change of form intervenes, the thing in question losing none of its essential characteristics. Viewed in the above light or context, the possession, during the transitional stage, remains the

possession of the widow or the limited owner, who was, admittedly, in such possession, that is,'in possession of the acquired land, on the date of acquisition and who would, in point of fact, be put in such possession, again, on reconversion into land as aforesaid,and the Land Acquisition Court's above interim custody of the acquisition money or of the securitiesor any such custody on its behalf by the ReserveBank of India, etc., would be, in the ultimate analysis, plainly, on behalf of the said limited owner.This interim custody, imposed as a measure of protection in the reversioner's interest, does not affectthe legal possession of the limited owner, whichlaw throughout maintains without any the least effective' or material disturbance.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com