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Mst. Bimla Devi Vs. Bimal Kumar and ors.

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Court : Jammu and Kashmir

Decided On : Jan-31-1997

Reported in : AIR1997J& K105

Judge : R.C. Gandhi, J.

Acts : Jammu and Kashmir Agrarian Reforms Act, 1976 - Section 31; ;Jammu and Kashmir Transfer of Property Act, 1977 - Section 5

Appeal No. : Civ. Rev. Petn. No. 161 of 1991

Appellant : Mst. Bimla Devi

Respondent : Bimal Kumar and ors.

Advocate for Def. : N.P. Kotwal, Adv.

Advocate for Pet/Ap. : J.S. Kotwal, Adv.

Disposition : Petition allowed

Judgement :
ORDER

R.C. Gandhi, J.

1. The suit in which this revision has arisen was instituted by the petitioner-plaintiff Bimia Devi seeking declaration and perpetual injunction claiming that she being

the widow of Chuni Lal son of Amar Singh by virtue of a 'will' executed by the deceased Chuni Lal is entitled to the property after his death and a mutation on the basis of the 'will' already stands attested in herfavour. The suit was resisted by the other side and the trial court upon the pleadings of the parties, framed the issues and one of the issues so framed is that,

'Whether deceased Chuni Lal executed will on 15-12-1973 in favour of the plaintiff and what is its effect on the suit. Opp'

The parties led their evidence and the suit has been transferred to the Collector, Agrarian Reforms after holding that the validity and execution of the 'will' stand proved and consequently what is the effect of the will on the suit property. While dealing with this proposition, the trial court observed that Sections 30 and 31 of the Agrarian Reforms Act 1976 (hereinafter referred to as the Act) if made applicable to the 'will' the authorities created under the Agrarian Reforms Act have to hold an inquiry as to whether what is the effect of Section 31 upon the suit property. In order to hold such an inquiry and to decide the effect of will, the file has been transferred to Collector Agrarian Reforms, Bhaderwah, and decided the issue No, 2 accordingly.

2. The petitioner aggrieved of this direction and disposal of Issue No. 2 has sought revision of the impugned order on the ground that Section 31 of the Agrarian Reforms Act has no applicability on the determination of the question of any effect of the will upon the suit property.

3. I have heard the leasrned counsel for the parties, perused the record and memo of revision petition. The contention of Mr. Kotwal, learned counsel for the petitioner, is that prohibition created for alienation of land under Section 31 of the Act is not applicable to the land, subject matter of the will. The expression 'land' has been defined under Subsection (9) of Section 2 of the Act as follows:

''land' means land which was occupied, or was let, for agricultural purposes or for purposes subservient to agriculture or for pasture in Kharif, 1971 and includes -

(a) structures on such land used for purposes connected with agriculture;

(b) areas covered by, or fields floating over, water;

(c) forest land and wooded wastes;

(d) trees standing on land; and

(e) 1 (omitted)

2 (but does not include an orchard or) site of a building or a structure within municipal area, town area, notified area or village abadi or any land appurtenant to such building or structure;'

4. The 'land' defined under the Act cannot be alienated as there is statutory restrictions placed on the sale of the land in terms of Section 31 of the Act which reads thus,

'Restriction on alienation and felling or removal of trees. Notwithstanding anything contained in any law for the time being in force-

(a) (i) alienation of land, whether by act of parties or a decree or order of a Court or of a Revenue Officer; or

(ii) felling or removal of trees standing on land;

except under such conditions as may be prescribed and with previous permission of the Revenue Minister, or such officer as may be authorised by him in this behalf, is forbidden;--..... (b) any alienation of land made on or after the first day of May, 1973 in contravention of-

(I) the provisions of this Act; or

(ii) Section 45 of the Jammu and kashmir Agrarian Reforms Act, 1972; or

(iii) Section 8 of the Jammu and Kashmir Agrarian Reforms (Suspension of Operation) Act, 1975; or

(iv) clause (a) of Sub-section (I) of Section 3 of the Jammu and Kashmir Prohibition on Conversion of Land and Alienation of Orchards Act, 1975:

shall be null and void and the land so alienated shall, after such enquiry as may be prescribed, vest in the State:

Provided that nothing herein contained shall be deemed to affect the provisions ofSection 4 of the Jammu and Kashmir Prohibition on Conversion of Land and Alienation of Orchards Act, 1975;

(c) no transfer of possession of land affected in anticipation of alienation of such land shall be valid and the land in respect of which possession has been so transferred shall, after such (enquiry), as may be prescribed, vest in the State;

(d) no document purporting to alienate land in contravention of the provisions of this section shall be admitted to registration.

Explanation:-- For the purpose of this section, alienation means sale, gift, mortgage with possession,

l(x x x) or exchange.'

5. A plain reading of the extracted relevant portion of Section 31 shows that 'will' is not included in the explanation of alienation of land. The restriction placed for dispoal of the land is of sale, gift, mortgage with possession, bequest or exchange. There is no prohibition placed on disposal of immovable property by will. The word 'bequest1 has been omitted by incorporating amendment to Section 31, by Act No. IV of 1989. There is no prohibition placed on the mode of disposal of the property by will and it does not find place either in Section 31 or in the Explanation attached thereto.

6. The alienation is a transfer of property which according to Section 5 of the Transfer of Property Act contains the expression that 'transfer of property means the act by which a living person conveys property in present or in future to one or another person, whether living or unborn of to himself and one or more or such other persons and to transfer property is to perform such an act.' Sale, gift, mortgage with possession or exchange of the property contain an element of alienation of transfer of possession between living persons and a will is not a transfer of property as the property is not subject to transfer immediately. The

executor of the will makes an expression for disposal of the property which is not being transferred to the legatee forthwith and immediately on the execution of the will, Therefore, the Legislature in its wisdom has not included the word 'will' while explainingthe word 'alienation' because the legislature never intended so and perhaps for the said reasons the word 'bequeath' has also been withdrawn and omitted by Act No. IV of 1989.

7. The argument of Mr. Kotwal, learned counsel for the petitioner, that the VHP is a mode of transfer of property conveying the title is not justified and sustainable. The 'will' is an intention expressed by the testator with regard to the disposal of the property which creates a right with regard to property on the legatee on the death of the testator. Mr. Kotwal could not make out any other proposition of law or interpretation of the 'will' with regard to the prohibition on alienation of land as contained under Section 31 of the Act. In order to deprive the legatee of the benefit of the will there should be unmistakable and unambiguous provision of law attracting prohibition with regard to the disposal of immovable property by will and in absence of such codified provisions, the beneficiary cannot be denied the benefit flowing from the law.

8. For the aforesaid reaons, it is held that the disposal of the landed property by means of a 'will' is excluded from the operation and ambit of Section 31 of the Act.

9. The trial Court being the Civil Court has to determine the civil rights of the parties. It is for the Civil Court to determine and decide the validity of will and not for the Courts created under the Agrarian Reforms Act. Under Section 19(e) of the Act the Authorities created under the Agrarian Reforms Act have to see only the observance and to deal with the possession which the Civil Court has no jurisdiction as per law pronounced by a Full Bench of this Court in case titled Jagtu v, Badri, reported in 1979 Kash LJ 172 : (AIR 1980 J & K 1). After deciding the civil rights of the parties the matter only with regard to possession, if the case warrants such a situation, is required to be sent to the Collector. The trial Court has transferred the file to Collector Agrarian Reforms for determining the applicability of S. 31 of the-Agrarian Reforms Act, which is unwarranted, uncalled for and unsustainable. The finding recorded by the trial Court on the issue' No. 2 is set

aside with a direction to the trial' Court to decide the issue in accordance with the aforesaid observations.

1O. The revision petition is allowed. No order as to costs.

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