

Tokha, etc. v. Smt. Samman, etc. (Mahajan, J.)

cause for not appearing in the Court. Under these circumstances, *ex parte* decree could not have been passed against him.

(18) I would, therefore, accept this revision petition, reverse the orders of the learned Senior Subordinate Judge as well as the trial Court, accept the application of the petitioner under Order 9, rule 13, Code of Civil Procedure, and set aside the *ex parte* decree passed against him on 25th April, 1968. In the circumstances of this case, however, I will leave the parties to bear their own costs.

(19) It has been conceded by the learned counsel for the parties before me that in view of my above decision in the Civil Revision, the connected Regular Second Appeal is automatically accepted and the judgments of the Courts below are set aside. Parties have been directed to appear before the trial Court on 1st March, 1972, for further proceedings in the case.

B.S.G.

APPELLATE CIVIL

Before D. K. Mahajan, J.

TOKHA ETC.,—Appellants.

versus.

SMT. SAMMAN ETC.,—Respondents.

Regular Second Appeal No. 295 of 1961.

February 3, 1972.

Hindu Succession Act (XXX of 1956)—Sections 4 and 14—Punjab Tenancy Act (XVI of 1887)—Section 59(3)—Widow holding occupancy tenancy rights in land inherited from her husband—Gift of the land made by her after coming into force of Hindu Succession Act—Whether void.

Held, that the rights of an occupancy tenant are "property" and a widow inheriting these rights from her husband holds them for lifetime. On her death they do not pass on to her heirs but to the heirs of her husband under section 59 of the Punjab Tenancy Act. However, after the coming into force of the Hindu Succession Act and by reason of section 14(1) she becomes the absolute owner of those rights and the limited estate she held no longer

exists. Her position vis-a-vis the occupancy rights is that of an absolute owner. In view of section 4 of the Hindu Succession Act read with section 14, the embargo put on the alienation of occupancy rights on the widow under section 59(3) of the tenancy Act is no longer there. Hence a gift made by her of the land of which she is holding occupancy rights is not void after the coming into force of the Hindu Succession Act. Even if the gift is void, the land of which she is the occupancy tenant remains vested in her and with effect from 15th July, 1958, when the occupancy Tenants (Vesting of Proprietary Right) Act, 1958 came into force, she becomes the absolute owner of those rights, that is, she becomes an absolute owner of the land of which she was the occupancy tenant and as an absolute owner she can do whatever she likes with the land.

Regular Second Appeal from the decree of the Court of Shri Murari Lal Puri, District Judge, Hissar, dated the 18th day of November, 1960, affirming that of Shri Dev Bhushan Gupta, Sub-Judge IVth Class, Sirsa, dated the 21st November, 1958, dismissing the plaintiffs suit. Both the Courts left the parties to bear their own costs.

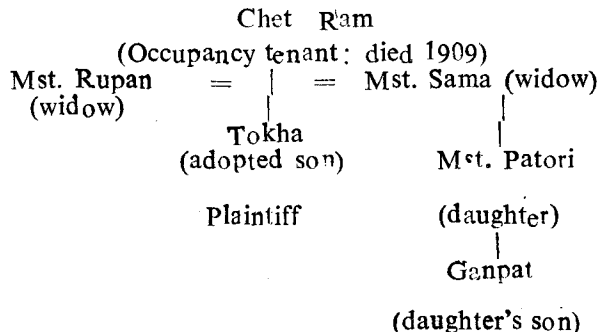
D. N. Aggarwal, Advocate with B. N. Aggarwal, Advocate, for the appellants.

H. S. Wasu, Senior Advocate with L. S. Wasu, Advocate, for the respondents.

JUDGMENT

MAHAJAN, J.—This second appeal is directed against the concurrent decisions of the Courts below dismissing the plaintiff's suit.

(2) In order to appreciate the controversy in this appeal, a short pedigree-table may be set down:—



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On the death of Chet Ram, there was a dispute between his two widows and his adopted son Tokha. This dispute was settled by a compromise before the Revenue authorities. The compromise was that the widows will make a statement before the revenue officer and get the mutation sanctioned in all the three villages in which the land will be entered as one-third, one-third and one-third in the names of the adopted son and the two widows. In case they do not make such a statement, then the land in village Sheikhpura will remain in possession of the adopted son and the land in villages Kheowali and Phaggu would remain in possession of the two widows. Steps were taken to get the mutation entered but they failed. The result was that the adopted son remained in possession of the land in Sheikhpura and the two widows remained in possession of the land in the two remaining villages. It was also provided in the compromise that on the death of any one of the widows, the land left by her would be mutated half and half between the adopted son and the surviving widow. However, on the death of Rupan, which took place in 1932, this clause of the compromise was not given effect to and in village Kheowali her share of the land was mutated in the name of Mst. Sama and half of it was not mutated in the name of Tokha as provided in the compromise. It may be mentioned that Tokha took no steps to enforce the compromise within 12 years of the death of Mst. Rupan. In the year 1957, Mst. Sama gifted the land in village Kheowali to her daughter Mst. Patori. This led to the present suit by Tokha to challenge the gift. A number of pleas were advanced by Tokha but without success and he was failed in the trial Court as well as in the lower appellate Court. He has now come up in second appeal to this Court.

The contention of Mr. Aggarwal in the second appeal is that Tokha can challenge the gift made by Mst. Sama because Mst. Sama was holding the occupancy tenancy rights on the date when she made the gift and under section 59 (3) of the Punjab Tenancy Act, her gift would be void. Therefore, the short question that has to be settled is whether the gift made by Mst. Sama is void?

There are two ways of looking at the matter. One, what is the effect of the Hindu Succession Act on section 59 (3) of the Tenancy Act Section 4 of the Hindu Succession Act is the following terms:—

- (1) Save as otherwise expressly provided in this Act,—
 - (a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease

to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.

(2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings."

Thus it provides that its provisions will override all other provisions in other laws which are inconsistent with its provisions. Section 14 is one of the provisions of the Hindu Succession Act. It stipulates that any female Hindu in possession of property whether acquired before or after the commencement of the Act, shall be the full owner thereof and in the explanation, property acquired by way of maintenance or as a limited estate would be property within the meaning of sub-section (1) of section 14. It would be different if the case had fallen under sub-section (2) of section 14. On the facts, that is not the case and it is also not the contention of the learned counsel that his case falls under section 14 (2) of the Hindu Succession Act. His real contention is that if reference is made to section 4 (2) of the Hindu Succession Act, it must follow that the provisions of section 14 will not apply to occupancy tenants. The learned counsel was constrained to admit that the rights of an occupancy tenant are property and that being so it follows that section 14 will govern the case. However, the learned counsel was under an impression that absolute right of occupancy would mean proprietary right instead of occupancy right, i.e. Mst. Sama would cease to be an occupancy tenant and would become a proprietor. This is not what would happen under section 14(1). Mst. Sama before the Hindu Succession Act came into force held the occupancy rights as a widow that is, for her lifetime and on her death they would not pass on to her heirs but to the heirs of her husband under section 59 of the Tenancy Act. If the law as it existed prior to the Hindu Succession Act had stood, the position would be different. But after the coming into force of the Hindu Succession Act and by reason of section 14 (1) she has become the absolute owner of those rights and the limited estate she

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held in those rights no longer exists. Therefore, her position vis-a-vis the occupancy rights is that of an absolute owner and even better than that of a male owner of such rights. The male owner's alienation of occupancy rights, if the rights were ancestral, could be questioned by his reversioners, whereas the alienation of such rights by a female owner cannot be questioned. If the matter is viewed in this perspective, it will be clear that in view of section 4 of the Hindu Succession Act read with section 14, the embargo put on the alienation of occupancy rights on the widow under section 59 (3) of the Tenancy Act does not exist; That being the position of matters, it is idle to contend that the gift by Mst. Sama in 1957 was void.

In any case, if I am wrong in my view that section 4 of the Hindu Succession Act overrides section 59 (3) of the Tenancy Act, there would be no difference in the position. It is true that in 1957 occupancy tenants of evacuee landowners did not become proprietors of their holdings under the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952. But the position was reversed by an Ordinance which came into force on 15th of July, 1958, and from that date the female occupancy tenants of owners who were evacuees also became the absolute owners of the land which was under their possession as occupancy tenants. In other words, they became proprietors of that land and section 59 (3) will not apply, because the occupancy rights have disappeared by merger in the larger estate, i.e. ownership, by operation of law. The gift by widow being void this result would inevitably follow. The gift being void, the land of which Mst. Sama was the occupancy tenant remained vested in her and with effect from 15th July, 1958, when the Occupancy Tenants (Vesting of Proprietary Rights) Act came into force she became the absolute owner of those rights.

It has been settled by this Court that when female acquires occupancy rights under the Occupancy Tenants (Vesting of Proprietary Rights) Act she becomes the absolute owner of the rights acquired, that is, she becomes an absolute owner of the land of which she was the occupancy tenant and as an absolute owner she can do whatever she likes with the land.

In this view of the matter, there is no force in this appeal; the same fails and is dismissed, but there will be no order as to costs.

N. K. S.