AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 479 of 1998

1. Purushottam S/o Konda Aged About 45 Years Agriculturist And R/o Village Deltukri, R-I- Circle Rajim, Tahsil Gariyaband, District Raipur, Madhya Pradesh (now Chhattisgarh)

2. Mansingh S/o Purushottam Aged About 21 Years Agriculturist And R/o Village Deltukri, R-I- Circle Rajim, Tahsil Gariyaband, District Raipur, Madhya Pradesh (now District : Gariyabandh, Chhattisgarh)

3. Indal Singh S/o Purushottam Aged About 30 Years Agriculturist And R/o Village Deltukri, R-I- Circle Rajim, Tahsil Gariyaband, District Raipur, Madhya Pradesh (now District : Gariyabandh, Chhattisgarh)

4. Pannalal S/o Purushottam Aged About 27 Years Agriculturist And R/o Village Deltukri, R-I- Circle Rajim, Tahsil Gariyaband, District Raipur, Madhya Pradesh, District : Gariyabandh, Chhattisgarh

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Versus

1. Kasiram S/o Rama Aged About 27 Years Agriculturists And R/o Village Partewa, Tahsil Gariyaband, District Raipur, Madhya Pradesh, (now Chhattisgarh)

2. Somnath S/o Rama Aged About 24 Years Agriculturists And R/o Village Partewa, Tahsil Gariyaband, District Raipur, Madhya Pradesh, District : Raipur, Chhattisgarh

3. Ishwari S/o Rama Aged About 21 Years Agriculturists And R/o Village Partewa, Tahsil Gariyaband, District Raipur, Madhya Pradesh, District : Raipur, Chhattisgarh

4. Mst. Thakia W/o Rama Aged About 30 Years Agriculturists And R/o Village Partewa, Tahsil Gariyaband, District Raipur, Madhya Pradesh, District : Raipur, Chhattisgarh

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For Appellants	:	Shri Anand Gupta, Advocate
For Respondents	:	Shri H.B. Agrawal, Senior Advocate with Smt. Meera Jaiswal, Advocate

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S.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava

Judgment On Board

12/04/2018

1. This appeal is directed against the judgment and decree dated 28th August 1998 passed by learned Fifth Additional District Judge, Raipur in Civil Suit No.24-A/1984 (new No.151-A/96) by which appellants'/plaintiffs suit has been dismissed.

2. Appellants/plaintiffs filed a suit for joint possession of the disputed property to the extent of 1/ 3rd share in bhumi-swami lands, house, mesne profit and share in the compensation on the pleading, inter alia, that the property in dispute shown in Schedule-A & Schedule -B appended to the plaint belonged to one Ramhu who married Ramkunwar, defendant No.1. Ramhu had two daughters namely Chandrakunwar and Thaghiya Bai (defendant No.5). After Ramhu died, the property of Ramhu devolved upon inheritance to his successors namely his wife Ramkunwar and two daughters Chandrakunwar and Thagiya Bai and each of them were entitled to 1/ 3rd share in the entire property held by Ramhu at the time of his death. Further pleading was that later on, without any authority, Ramkunar executed a sale deed on 18.10.1978 in favour of Kasiram, Somnath and Ishwari (defendants No. 2, 3 & 4), sons of Mst. Thagiya (defendant No.5) and Rama (defendant No.6). The cause of action arose for filing a suit when defendants No. 2 to 6 appropriated the crop yield from the agricultural land and disputed the entitlement of the plaintiff No.1 namely Purshottam (husband and deceased Chandrakunwar) and his sons Man Singh, Indal Singh, Pannalal and Kashiram (plaintiffs No. 2, 3, 4 & 5) (sons of Purushottam and Chandrakunwar Bai). The plaintiffs also pleaded that out of the income earned through joint property in Schedule -A & B, land admeasuring 6.29 acres were purchased in the name of defendants No. 2 to 4 and it is in the same village -Partewa shown in Schedule-C appended to the plaint and therefore, the plaintiffs were also entitled to 1/ 3rd share in the said property. The plaintiffs further pleaded that the defendant

obtained crops from the joint property and therefore the plaintiffs were entitled to appropriate share in the sale proceeds of the crop yield. The plaintiff also prayed for share in the compensation amount paid towards acquisition of a part of joint family property. The plaintiffs further pleaded by way of amendment in their plaint that during pendency of the suit, a settlement was arrived at between Purshottam (Plaintiff No.1) for and on behalf of all other plaintiffs and Rama (defendant No.6) for and on behalf of other defendants wherein the parties agreed to get disputed property apportioned against them in the manner described therein. Therefore, the plaintiffs are entitled to decree on the basis of said agreement between them.

3. The defendants disputed the claim of the plaintiffs by pleading that upon death of Ramhu, the property duly devolved only upon Ramkuwar Bai, his widow, and not on his daughters namely Chandrakunwar and Thagiya Bai. As Ramkunwar was the sole owner of the property in dispute, she was fully entitled under the law to sell the property in favour of defendants Kasiram, Somnath and Ishwari. The plaintiffs' assertion that land shown in Schedule -C were purchased out of the income and therefore formed part of the income of the so called joint family property and therefore constituting joint family property were also denied by them. All other assertions and claims were denied.

4. Learned trial Court framed as many as 18 issues (including additional issues framed on 15.4.1982), which are reproduced hereinbelow:

> **"**1. Whether Ramhu had left 23-23 acres of land and house described in Schedule-B as pleaded by plaintiffs ?
>
> Or,
>
> Ramhu left only 16-94 acres of land and only one house as pleaded by defendants ?
>
> 2 (a) Whether Ramhu died on 13.11.1959 ? If so
>
> (b) Whether after death of Ramhu, the lands, house and other movable were inherited by his two daughters Chandrakunwar & Thagiya also or by his widow Ramkunwar only ?

3 (a) Whether defendant 1 received any compensation on behalf of her daughter ?

(b) If so what amount ?

4. Whether on death of Chandrakunwar, the plaintiff inherited any interest in the suit property ?

5 (a) Whether plaintiff No.1 ever looked after the cultivation of the lands in suit ?

(b) If so, effect ?

Or,

(c) Whether Ramkunwar herself managed and cultivated the lands ?

6. Whether the sale-deed dated 18.10.1978 is inoperative in respect of 1/ 3rd share for the reason mentioned in para-12 of the plaint ?

7. Whether Ramkunwar is liable to render any account to the plaintiffs ?

8 (a) Whether 6-29 acres of lands in Schedule -C of the plaint was purchased from the income of land jointly held by Ramkunwar and her daughters ?

(b) If so, effect ?

9. Whether plaintiffs are entitled to joint possession to the extent of 1/ 3rd share in property in suit ?

10. Whether plaintiffs are entitled to a decree for Rs.16,420/- and Rs.1288/-

Additional issues framed on 15.4.1982

11. Whether during the pendency of this suit there was community panchayat and the parties agreed to abide by its decision by letter dated 5.9.1981 ?

12. Whether the Panchayat was convened and partition was effected and an award given dividing the properties in three shares between Purshottam, Rama and Ramkunwar in terms of the award ?

13. Whether the plaintiffs are entitled to decree in term of the award dated 5.9.1981 ?

14. Whether the letter dated 5.9.1981 does no amount to arbitration agreement and it is no agreement in eyes of law and not admissible ?

15. Whether previous permission of Court was necessary to entering into arbitration agreement ? If so, effect ?.

16. Whether the award of the Panchayat given during pendency of the suit is operative and enforceable in law ?

17. Whether the award being unstamped and unregistered is admissible in evidence ?

18. Relief and cost ? ”

5. Amongst various issues, the crucial issue for determining before the trial Court was whether after death of Ramhu, the property in dispute devolved upon his widow Ramkunwar or it devolved upon Ramkunwar along with two daughters Chandrakunwar and Thagiya Bai. The learned trial Court held that in view of provision contained in Section 164 of the M.P. Land Revenue Code, 1959 (as it stood prior to amendment of M.P Act 38 of 1961 w.e.f.8.12.1961), the property in dispute devolved upon Ramkunwar to the exclusion of daughters Chandrkunwar and Thagiya Bai. On all other issues, the trial Court held against the plaintiffs and in favour of defendants, hence this appeal.

6. Learned counsel for the appellants/plaintiff argues that the learned trial Court fell in error in recording finding regarding date of death of Ramhu. According to him, the plaintiffs have proved from the contents of Ex.P-4, the excerpts of 1958 Fouti Register (death records) that Ramhu died on 23.11.1958 which is also supported from the oral testimony of Thanuram (PW2) who has clearly stated regarding the death having taken place 27-28 years before, that means, in the year 1958. As against this, the evidence led by defendant that the death occurred in the year 1959 was liable to be rejected because the date of death as recorded in Ex.P-4 and as recorded in Ex.D-1, upon comparison, would show that the entries made in the collectorate office were based on the entries made earlier in the village and police station as per Ex.P-4. Therefore, Section 164 of the Land Revenue Code 1959 which itself came into force after the death of Ramhu will have no application and consequently, the law of succession as provided in Hindu Succession Act, 1956 would be applicable wherein daughters would

be inheriting the property of their father along with their mother as Class-I heirs. He would further submit that in any case, the provision contained in Section 164 of the Land Revenue Code as un-amended, could not take precedence over the law relating to succession as provided in Hindu Succession Act, 1956. According to learned counsel for the appellants, only devolution of tenancy right are protected. The devolution of bhumi-swami rights has to take place in accordance with provision of the Hindu Succession Act, 1956 only because bhumi-swami's right cannot be treated as tenancy right within the meaning and import of those words as defined in Land Revenue Code 1959. Learned counsel for the appellants/plaintiffs next submits that as against the plaintiffs' clear assertion that defendant had no source of income except the agricultural land shown in Schedule-A appended to the plaint and the defendant failed to prove any other source of income, the Court below ought to have held that the land, subsequently purchased as shown in Scheduled- C, was also purchased from agricultural income derived from agricultural land shown in Schedule-A and consequently it ought to have held that the entire property shown in Schedule A, B and C formed joint property and accordingly the plaintiffs entitled to joint possession and share in yield crop income, compensation etc. Learned counsel for the appellants/plaintiff further argues that as far as sale deed dated 18.10.1978 is concerned, the same was illegal and not operative in law and incapable of taking any legal effect in so far as 1/ 3rd share of the plaintiffs is concerned.

7. On the other hand, learned counsel for the respondents would submit that the plaintiffs' suit has rightly been dismissed by learned Court below. The clinching evidence recording date of death of deceased Ramhu as Ex.D-1 has been duly proved, which clearly records the date of death as 13.11.1959. He would submit that in that view of the matter, the provision contained in Section 164 of the Land Revenue Code, as un-amended, would be applicable which lays down special provision with regard to succession in respect of the tenancy rights. Under these provision, widow is Class-I heir, whereas, the daughters are heirs of Class-II. Therefore, the daughters namely Chandrakunwar and Thagiya Bai were not entitled to any share in

the property and the entire property, upon death of Ramhu, devolved upon Ramkunwar. He would next submit that provisions contained in Section 164 of the Land Revenue Code, 1959 are saved in view of provision contained in Section 4 of the Hindu Succession Act which provides for devolution of tenancy rights. He would next submit that as the plaintiffs are only claiming interest in the property as successor of late Chandrakunwar Bai and as Chandrakunwar did not inherit any property of Ramkunwar, upon her death, claim of the plaintiffs must fail. He would submit that the plaintiffs have not prayed for any relief either for cancellation or for declaring the sale deed dated 11.10.1978 null and void in any Court. Therefore, only on this ground, the suit is liable to be dismissed though learned trial Court, upon due consideration of merits of the case, has also found that the plaintiffs were otherwise not entitled to any share in the property in dispute.

8. I have given my anxious consideration to the submissions made by learned counsel for the respective parties and perused the records.

9. Before I advert to the issues on merits of the case, during the course of hearing, it was noticed that though document Ex.P-4 was marked by learned trial Court upon production of original records before the Court by Bhuneshwar (P.W.9 / D.W.2), copy of the same was not retained along with the records and returned to concerned witness. Learned counsel for the appellants, however, filed a photocopy of Ex.D-4 before this Court admission of which is not disputed by learned counsel for the respondents.

10. After hearing learned counsel for the parties, following points arise for consideration in this appeal:

(i). Whether the learned trial Court erred in recording a finding of fact that Ramhu died on 13.11.1959 ?

(ii). Whether the provisions contained in Section 164 of the Land Revenue Code 1959 (as un-amended) would be applicable as a special provision regarding succession and devolution of bhumi-swami rights upon death of Ramhu.

If Issues No. (i) & (ii) are decided in favour of the plaintiffs, then:

(iii). Whether the plaintiffs have proved that property described in Schedule-"C" was purchased out of the joint family property as shown in Schedule "A" & B ?

(iv). Whether the plaintiff is entitled to joint possession of property described in Schedule A, B, & C and to share to 1/ 3rd share in the proceeds of crop yield and amount of compensation upon acquisition of a part of property in dispute ?

11. In so far as finding with regard to date of death of Ramhu is concerned, the plaintiffs have pleaded in para-2 of their plaint that Ramhu died on 23.11.1958. The defendants, however, have denied and according to defendants, Ramhu died on 13.11.1959.

12. In order to prove the aforesaid date of death of Ramhu, plaintiffs' witness Bhuneshwar (P.W.9) produced before the Court Fouti register (death register of 1958 of village Partewa, Police Station- Rajim) which contains an entry on page No.111 at serial No.7 regarding death of Ramhu S/o Heeraman. In these entries (copy of which was produced during the course of hearing, it being Ex.P-4), the date of death is mentioned as "23/11" without mentioning the year of death. This record was produced from the office of the Collector as stated by this witness in his cross-examination. He states that he is posted in the Hindi records room of the office of the Collector.

In the evidence of this witness, there is nothing to show the year in which Ramhu died. In this regard, the submission of learned counsel for the appellant is that the year should be taken as "1958" because the register was pertaining to year 1958. Therefore, even if the year of death is not written, it should be treated as 29.11.1958. In addition to the aforesaid documentary evidence, the oral evidence of Thanuram (PW-2) as stated by him in his cross- examination is that Ramhu died 27 years before. Thereafter, he has again admitted suggestion that Ramhu died 28 years before. This witness is not related to deceased Ramhu but is stating regarding the year of death of Ramhu on his own memory.

As against this, a documentary evidence (Ex.D-1) in the form of death register of 1959 was produced by the same witness Bhuneshwar (DW2) from the same office i.e. Collector Officer which contains an entry with regard to death of Ramhu S/o Heeraman Sahu in which date of death of Ramhu is recorded as 13.11.1959. It is also relevant to notice that while in Ex.P-4, the age of Ramhu at the time of death is recorded as 44 years, in Ex.D-1, the age of Ramhu has been shown to be 60 years.

13. In order to prove date of death of Ramhu, Bhuneshwar (P.W.9) has appeared as witness of the plaintiffs and produced certain records. This only contains date and month as “29/11”, whereas the same custodian of records Bhuneshwar was later on examined as defendant's witness No.2 and he again produced another register in which the date of death of Ramhu has been shown as 13.11.1959, said to be reported on 28.11.1959. The learned trial Court has examined both the documents. A clear entry which contains the detail of the 'date', 'month' and 'year' has been preferred as compared to entry containing only 'date' and 'month'. In the considered opinion of this Court, the finding of learned trial Court in this regard does not warrant any interference because the date of death as recorded in Ex.D-1 is complete as against incomplete entry made in Ex.P-4. It is relevant to note that both the records were produced by the same witnesses from the same office. The argument of learned counsel for the appellants that as Ex.D-4 shows year of register as “1958”, the correct date of death of Ramhu is 29.11.1958, cannot be accepted. It is relevant to note that out of all plaintiffs' witnesses, Purshotttam is the closest relative of deceased Ramhu and he has been examined as P.W.8 and in his Court statement, he has stated that Ramhu died 20-22 years before. Therefore, the complete detail regarding date of death as recorded in Ex.D-1 has rightly been relied upon by the learned trial Court.

14. Having held so, the next issue which arises for consideration is whether upon death of Ramhu on 13.11.1959, the bhumi-swami rights devolved only on his widow Ramkunwar or Ramkunwar along with two daughters

Chandrakunwar and Thagiya Bai succeeded to those rights as Class-I heir under the Hindu Succession Act which was in force at the time of death of Ramhu.

15. Learned trial Court has taken the view that Section 164 of the Land Revenue Code, 1959 (as un-amended) existed and in force at the time of death of Ramhu, constituted special provision regarding succession and that will govern the succession and not the provision contained in Hindu Succession Act, 1956. However, according to learned counsel for the appellants, Hindu Succession Act, 1956, being central enactment, would override the State legislation providing for devolution of bhumi-swami rights of agricultural land which are regulated by the provision of local laws i.e. local land revenue act.

16. The aforesaid issue has been authoritatively adjudicated by the Full Bench of Madhya Pradesh High Court in the case of **Nahar and Ors. Vs. Mst. Dukalhin & Ors.** (1974 MPLJ 257). The Full Bench of the High Court of Madhya Pradesh, upon consideration of provision contained in Section 164 of the Land Revenue Code, 1959 (as un-amended) held that in so far as it provided for devolution of tenancy rights, is saved and to that extent the provision of Hindu Succession Act 1956 will not apply but the special rule of succession provided under Section 164 of the Land Revenue Code would be applicable. In the said case, it has also been held that the words devolution of tendency rights are of wide amplitude and would also include matters relating to devolution of bhumi-swami and bhumi-dhari rights as well. In the majority view authored by P.K. Tare, Chief Justice, as he then was, conclusion were summed up as below:

> "30. We may observe that the M. P. Land Revenue Code, 1954, as also the M. P. Land Revenue Code, 1959, had received the assent of the President and, therefore, by virtue of Sub-clause (2) of Article 254 of the Constitution, that law will prevail in the State of Madhya Pradesh as against any provisions of the Hindu Succession Act, 1956. However, the matter will

be different when the M. P. Land Revenue Code, 1959, after amendment of Section 164 by the M. P. Land Revenue Code (Amendment) Act of 1961 makes the personal law of the parties applicable to devolution to agricultural properties. Upon such amendment, the personal law as amended from time to time will be applicable. We do not find any conflict between the State law and the Central enactment and, therefore, we are of the opinion that it cannot be urged that the State law and particularly Section 164 of the M. P. Land Revenue Code, 1959, or even the provisions of the Hindu Succession Act, 1956, in their applicability to devolution of agricultural properties in the State of Madhya Pradesh would be ultra vires or unconstitutional. We would reject such a contention outright. In our opinion, so far as the Madhya Pradesh State is concerned, it is the special provision of the tenancy law (land tenure Legislation), which will prevail on account of the assent given by the President and if such legislation does not make any provision, whatsoever, or if such legislation specifically makes the personal law of the parties applicable to devolution of agricultural tenures; in that event the provisions of the Hindu Succession Act, 1956, will be applicable to Bhumiswamis who are Hindus and as regards the other Bhumiswamis having different personal laws, their personal law will be applicable to them as may have been amended from time to time till the question of devolution or succession comes to be considered in any particular case. That is the conclusion we would arrive at. Thus, we have adopted the line of reasoning slightly different from the Division Bench of this Court as also of the Bombay

High Court and the Allahabad High Court in the cases mentioned earlier. But, in our opinion, this is the only rational line of reasoning, which will harmonise the different statutory provisions avoiding any conflict. There is a presumption that the Legislatures act within their power may be either the State Legislature or the Parliament and the presumption is against the unconstitutionally. Therefore, although some doubt may have been thrown on the constitutionality of either Section 151 of the M. P. Land Revenue Code, 1954, or Section 164 of the M. P. Land Revenue Code, 1959, or the provisions of the Hindu Succession Act in their applicability to devolution of agricultural properties, we would reject all those suggestions and would hold all the three Legislations constitutional, which were perfectly within the competence of the State Legislature or the Parliament, as the case may be.

31. This would dispose of the question referred to us in both these cases. Accordingly, recording our opinion to the following effect, we remit Second Appeal No. 91 of 1966 to the Single Bench for a decision of the other questions on merits and recording the same opinion in the Letters Patent Appeal, we propose to decide the said appeal on merits. Our answer to the question posed is as under:--

> "That Section 164 of the M. P. Land Revenue Code, 1959, as it stood before its amendment in the year 1963, was a valid provision and that it was not ultra vires in view of Section 4 of the Hindu Succession

Act, 1956."

17. Therefore, in view of majority view of the Full Bench decision it is clear that even in the matter of devolution of bhumi-swami rights, as is in the present case, as per the Rule of succession provided under Section 164 of the Land Revenue Code (as un-amended) in the Land Revenue Code 1959, daughters who are placed as heirs of Class-II will not be entitled to succession to the bhumi-swami rights along with the widow of deceased bhumi-swami. The widow of the deceased bhumi-swami has been classified as Class-I heir under section 164 of the Land Revenue Code and she would be taking the property along with other Class-I heirs only, which two daughters Chandrakunwar and Thagiya Bai were not.

18. In view of the aforesaid finding of this Court, the trial Court conclusion in this regard that upon death of Ramhu, the property devolved only on Ramkunwar to the exclusion of Chandrakunwar and Thagiya Bai, is affirmed.

19. The other point for consideration need not be gone into as this Court has held that in view of provision contained in Section 164 of the Land Revenue Code (as un-amended), property of deceased devolved upon his widow and not to his two daughters and husband and sons of the deceased daughters- Chandrakunwar and Thagiya did not get any property by way of succession upon death of Ramhu, the claim of the plaintiffs has to fail. Therefore, the learned trial Court has not committed any illegality in dismissing the suit.

20. In the result, the appeal fails and is hereby dismissed. Let a decree be drawn accordingly. Costs as incurred and certified by the parties.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen