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HIGH COURT OF CHHATTISGARH, BILASPURJudgment reserved on 27-06-2019Judgment delivered on 14-11-2019SA No. 782 of 1998

[Arising out of judgment and decree dated 24-7-1998 rendered by the Third Additional District Judge, Raipur, in Civil Appeal No. 36-A/1997]

1. Smt. Kanti Mishra W/o Shri Badri Prasad Mishra Aged About 55 Years
2. Sameer Mishra S/o Shri Badri Prasad Mishra Aged About 24 Years
3. Durgesh Mishra S/o Shri Badri Prasad Mishra Aged About 22 Years

Appellants No.1 to 3 R/o Nayapara, Raipur, Tahsil And Distrtict- Raipur, CG.

4. Smt. Seema Shukla D/o Shri Badri Prasad Mishra Aged About 28 Years W/o Shri Neel Kanth Shukla, R/o Pandaria, Tahsil Mungeli, District- Bilaspur (now Mungeli), Chhattisgarh
5. Dinesh S/o Late Kedaar Prasad Mishra Aged About 30 Years.
6. Krishna Bai Wd/o Late Kedar Prasad Mishra Aged About 55 Years

Appellants No.5 & 6 are r/o Raipur, Tahsil And District- Raipur, CG

Though Appellants No. 5 & 6 Were Appellants Before The Lower Appellate Court As Appellant No. 2 & 4, it Appears that By Mistake In The Impugned Judgment Their Names Have Not Been Mentioned.

----- Appellants

Versus

1. Rajendra Shankar Shukla S/o Shri Ram Avtar Shukla Aged About 50 Years
2. Smt. Pratibha Shukla W/o Shri Rajendra Shankar Shukla Aged About 44 Years
3. Miss Ranjana Shukla D/o Shri Rajendra Shankar Shukla Aged About 30 Years
4. Rohit Shukla (Dead) Through Legal Heirs

4 (A) Ekta Deepa Shukla W/o Rohit Shukla Aged About 40 Years

5. Rahul Shukla S/o Shri Rajendra Shankar Shukla Aged About 19 Years

Respondents No.1 to 5 are R/o Malviya Road, Raipur, Tahsil And District- Raipur, CG.

6. Smt. Shail Kumari Shukla W/o Shri Ratnesh Kumar Shukla Aged About 25 Years R/o Azad Nagar, Tahsil And District- Bilaspur, CG.

Respondent/legal heir of Defendant No.1-A (Kedar)

7. Sardar Fouja Singh S/o Late Sardar Ishwar Singh Aged About 75 Years R/o Hospital Ward, Near Amar Deep Talkies, Raipur, Tahsil And District- Raipur, CG

Respondent/defendant No.7

8. Jameel Saifi S/o Shri Abdul Jabbar Aged About 44 Years R/o Hospital Ward, Near Amar Deep Talkies, Raipur, Tahsil And District- Raipur, CG

Respondent No.8/defendant No.4

---- Respondents

For Appellants

Shri Prakash Tiwari & Shri Palash
Tiwari, Advocates

For Respondents

Shri Varun Sharma, Advocate

Hon'ble Shri Prashant Kumar Mishra, J

C A V Judgment

1. This second appeal under Section 100 of the Code of Civil Procedure, 1908 has been preferred by the defendants challenging the concurring judgment and decree of eviction on different grounds enumerated under Section 12 of the Chhattisgarh Accommodation Control Act, 1961 (for short 'the Act, 1961').

Plaintiffs' case :

2. The original plaintiff – Brijrani, Widow of Lalloo preferred the suit on 14-11-1971 i.e. about 48 years ago, on the pleadings that the defendant No.1 – Tulsiram, S/o Ayodhya Prasad Tiwari was occupying plaintiffs two open plots situated at Hospital Ward, Tahsil & District Raipur, as detailed in the plaint schedule map as tenant for yearly rent of Rs.700/- for which lease was granted by Pandit Ramnarayan Dixit and plaintiff's husband Lalloo Prasad Dixit, both sons of Mohanlal Dixit by registered lease deed dated 14-10-1946. The lease was for a period of 25 years from 1-1-1946 to 31-10-1971. Lalloo Prasad died in the year 1946 whereas Ramnarayan died in 1959 leaving the plaintiff as the sole surviving heir to succeed the property. The defendant No.1 thus became tenant

of the plaintiff and he has been paying the rent to the plaintiff. The defendant No.1 did not pay rent for the period from 1-11-1970 to 31-10-1971, therefore, the lease stands terminated after the said date, but the defendant No.1 did not deliver the vacant possession rendering his possession wrongful.

3. It was pleaded that despite the provisions of the Chhattisgarh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (for short 'the Act, 1950'). The suit property having not vested in the State the original plaintiff's brother and brother-in-law continued to own the property. The suit land having situated in Mahal No.2, Raipur, over which plaintiff, which term includes is predecessors, had no proprietary interest, there was no question of vesting of property in the State due to the Act, 1950.
4. The plaintiff further pleaded that the defendant has sublet the shop situated over the suit land to the other defendants without her or her predecessors consent or permission and further that the plaintiff requires the plots including the plots occupied by the defendants No.2 to 7 for constructing houses on them. The plaintiff claimed ejectment under 12 (1) (a) (b) (c) (h) & (n); vacant possession from the defendant No.1 as

also from the defendants No.2 to 7 of the respective plots/shops occupied by them as sub-tenant of defendant No.1. The plaintiff also claimed damages at the rate of Rs.1,500/- per month.

5. Upon denial of plaintiff's title to the suit premises, the plaintiff also raised ground for eviction for denial of landlords title as the legal heirs of original defendant No.1 Tulsiram having inherited the tenancy, they stepped into the shoes of original defendant No.1 and, as such, they are also estopped from denying the title of the plaintiff. The original plaintiff Brijrani having died during pendency, the substituted plaintiffs being arrayed on the strength of WILL executed by Brijrani, denial of the said WILL by the defendant No.1 or by the sub-tenants was objected in the amended plaint on the plea that the defendants have no right to challenge the WILL executed by Brijrani as such plea can be raised only by a person setting up title in himself as heir of Brijrani. It was also stated that by virtue of the WILL duly registered on 13-12-1985, the substituted plaintiffs are entitled to continue the suit as they have become landlords and the defendants their tenant by operation of law.

Defendants' case :

6. The defendant, which term included the legal heirs of defendant No.1, contested the suit on pleading that Tulsiram held portion of plot A, B, C & D on lease from Mohanlal Malguzar, the father-in-law of the original plaintiff, since 1921 and the remaining portion of plot was held on lease by Tulsiram's cousin Ramratan. Ramratan had obtained lease from Mohanlal since 1921. After death of Ramratan in 1934 Tulsiram continued to pay the rent of the plot he was allowed to occupy by Ramratan, in addition to the A, B, C, D plots which he directly obtained on lease from Mohanlal. The common lease was thereafter executed in respect of both the plots on 14-10-1946, thus Tulsiram admits the lease pleaded by the plaintiffs, however, he denied that rent was not paid.
7. It was also stated that shop was constructed by Tulsiram and has been leased out to other defendants. The shops being the source of livelihood of Tulsiram he cannot be evicted from the said shops. Tulsiram denied plaintiff's claim being without sufficient notice and before expiry of two months from 31-10-1971 or any date after 4-10-1971. It was also denied that the plaintiff is entitled to decree for ejectment on the ground of denial of title. It was stated that sub-letting was done with the knowledge and consent of the plaintiff.

8. It was denied that the plaintiff is entitled to a decree for ejectment under Section 12 (1) (b) & (h) of the Act, 1961 . By amending the written statement it was stated that the vacant site leased to Tulsiram bearing khara No.280/2 formed part of site of abadi of village even before coming into force of the Act, 1950, therefore, after the said Act was enacted w.e.f. 31-3-1951, the suit land vested in the State and, as such, the plaintiff and/or her predecessor in title had no right, title or interest in the suit land from the date of vesting, therefore, the plaintiff is not entitled for decree for ejectment. It was then pleaded that by raising this plea the defendants do not want to prejudice the right of the plaintiff to recover the rent and to exercise any right under lease deed dated 14-10-1946.
9. In amended para 13 of the written statement, the defendant No.1, including the legal heirs, admitted paying rent to Lalloo Prasad Dixit and Ramnarayan Dixit and upon death of both these persons, to the original plaintiff Brijrani. It was specifically pleaded that the fact of vesting of the suit land in the State being not known to the defendants they continued to pay rent under a mistake of fact and law. The fact of sub-letting was admitted in para 14 of the written statement albeit with a rider that this was allowed permissible under the lease, however, it was further stated that in any event, there was no

express prohibition for sub-letting. The WILL executed by Brijrani in favour of the substituted plaintiffs was denied, therefore, the right, title and interest of the substituted plaintiffs over the suit property has also been denied.

10. Defendants No.2 to 7 admitted their possession over the suit land /shop through the defendant No.1, however, they denied that the premises have been sub-let to them in contravention of the terms of lease or without permission or consent of the plaintiffs.

Discussion :

11. The parties went on trial on the above set of pleadings and eventually, at the end of trial, the trial Court decreed the suit holding that the lease in favour of the defendant No.1 expired on 31-10-1971; the defendant No.1 has not proved that one part of the suit premises was obtained on lease in 1934; the defendant No.1 has sub-let part of the premises in form of plots occupied by the defendants No.2 to 7 without permission or consent of the plaintiff or her/their predecessors; the plaintiff needs the premises for construction of houses, however, the plaintiff was found not entitled to damages except the agreed rent.

12. Plaintiff's claim for eviction on the ground of non payment of rent was also denied, however, at the same time it was held, while deciding the additional issue, that the lease in favour of the defendant No.1 is not a permanent lease. While deciding another additional issue framed on 28-9-1977 the trial Court held that the plaintiff is entitled to seek eviction on the ground of denial of title of the defendants. While deciding the additional issue framed on 31-3-1975 trial Court held that possession of the defendant No.7 over E, F, G, H, I, J, K, E part is illegal being without permission or consent of the defendant No1's lessor i.e. plaintiff.
13. The trial Court specifically held that the defendants' plea of vesting of 1.60 acre bearing khasra No.280/2 is not sustainable, as the said issue has been decided in favour of the plaintiff in civil suit No.60-B/1954 decided by First Civil Judge Class II, Raipur, on 20-4-1956; its Civil Appeal No. 5-B/1958 decided on 5-8-1958 by the District Judge, Raipur; and Second Appeal decided by the High Court in SA No.421 of 1958 (*Mahant Vaishnavdas ji v Ramnarayan Dixit (dead) Smt. Brijrani Bai & Anr.*) decided on 4-10-1960. In this suit it was held that the subject khasra situated at Mahal No.2 was purchased by the predecessors of original plaintiff Brijrani, therefore, it was not their proprietorship property and, as such,

it was not available for vesting in the State under Section 5(a) of the Act, 1950. Ex. D/74 relied by the defendant to prove vesting was not found adequate enough as the said document is not an order of vesting.

14. The trial Court also found that Brijrani's failure to enter into the witness box does not effect the plaintiff's case, as PW-1 Rajendra Shankar has proved the lease, which does not permit sub-letting.
15. The trial Court's judgment and decree has been affirmed by the First Appellate Court under the impugned judgment and decree.
16. While admitting the instant second appeal the following substantial questions of law have been framed by this Court on 9-9-1998 :

(1) Whether the suit land which was inherited by the original plaintiff Brij Rani Bai from her husband and brother-in-law (*Jeth*) after the death of original plaintiff would devolve upon the present plaintiffs in derogation of provisions contained in clause (b) of sub-section (2) of Section 15 of the Hindu Succession Act ?

(2) Whether the Courts below erred in law in holding that the suit property did not vest in the State after coming into force of M.P. Abolition of Proprietary Rights Act, 1950 ?

17. The question of law needs to be determined would manifest that the relationship of landlord and tenant having been

proved concurrently in favour of the plaintiff the same being the concurrent finding of fact, no question of law has been framed on this issue. Similarly, on the issue of plaintiffs need of the premises for raising construction; sub-letting of 7 plots, out of the suit premises, by the defendant No.1 in favour of the defendants No.2 to 7 and the decree by the trial Court on the ground of denial of title by the defendant No.1 or by other defendants has also become final as no questions of law have been framed on these counts. There is no prayer by the appellants during argument of this appeal for framing any additional substantial questions of law.

18. In the above view of the matter, I shall now deal with the two questions of law framed by this Court for decision making in this appeal.

First Question of Law :

19. Whether the suit land which was inherited by the original plaintiff Brij Rani Bai from her husband and brother-in-law (*Jeth*) after the death of original plaintiff would devolve upon the present plaintiffs in derogation of provisions contained in clause (b) of sub-section (2) of Section 15 of the Hindu Succession Act ?

Discussion in respect of the first Question of law :

20. It is the appellants' case, invoking clause (b) of sub-section (2) of Section 15 of the Hindu Succession Act, 1956 (for short 'the Act, 1956'), that the suit premises were inherited by the original plaintiff Brijrani from her husband or husband's brother, therefore, in absence of she having son or daughter at the time of her death, the property would devolve upon the heirs of her husband and not on the substituted plaintiffs, therefore, plaintiffs claim on the basis of WILL has wrongly been allowed by the Courts below.
21. Stoutly defending the title, the present respondents/ plaintiffs would contend that Section 15 of the Act, 1956 as a whole applies to the property of a female Hindu dying intestate whereas in the present case the original plaintiff Brijrani had executed a WILL in favour of substituted plaintiffs, therefore, clause (b) sub-section (2) of Section 15 of the Act, 1956 has no application.
22. Concededly, Brijrani became a widow when her husband Lalloo Prasad died in 1946. Her brother-in-law (*Jeth*) Ramnarayan Dixit died in 1959 leaving behind the plaintiff Brijrani as the only surviving legal heir. Brijrani herself died in 1987. The present substituted plaintiffs are Brijrani's

brother's son. Brijrani executed a WILL duly registered on 13-12-1985 in favour of the present plaintiffs. It is, therefore, contended by the defendants/appellants that in absence of legal heirs of Brijrani being joined in the suit, present plaintiffs are not entitled to prosecute the suit without having any title.

23. It is important to bear in mind that the defendant No.1 or for that matter any other defendants have not set up any title in themselves. They have neither challenged the registered WILL executed by Brijrani in favour of the present substituted plaintiffs by preferring a separate suit. They are collaterally attacking the WILL in a suit for eviction, which is not permissible in law.
24. Again, concededly, Brijrani inherited the property and became full owner by virtue of Section 14 of the Act, 1956 upon the death of her husband in 1946 and thereafter upon death of her brother-in-law (*Jeth*) in 1959. Once she became absolute owner of the property there was no fetter or legal impediment on her way to execute the WILL in favour of any other person as per her desire. If she has executed a registered WILL in favour of the present set of plaintiffs, which has not been declared illegal or inoperative by any Court of law, the

defendant cannot invoke clause (b) of sub-section (2) of Section 15 for the simple reason that Section 15 applies to the property of a female Hindu dying intestate and the Act does not put an embargo on a female to execute a WILL.

25. Applying clause (b) of sub-section (2) of Section 15 of the Act, 1956 in the manner argued by the appellants would otherwise violate the right of a female Hindu conferred upon her under Section 14 of the Act, 1956.
26. In *Bishwanath Pandey v Badami Kaur & Others*¹ the Supreme Court held that widow of the last proprietor of lands in dispute would become absolute owner of the property after coming into force of the Hindu Succession Act, 1956 by virtue of Section 14 of the said Act.
27. In *Shambhu Chanan Shukla v Shri Thakur Ladli Radha Chandra Madan Gopalji Maharaj and Another*² the Supreme Court held that widow having succeeded to the shebaiti rights in the nature of immovable property upon death of her husband, as a limited owner, that right has become enlarged into an absolute right by the provisions of Section 14 (l) of the Hindu Succession Act, 1956 and she could transfer that right by a WILL.

¹ AIR 1980 SC 1329

² AIR 1985 SC 905

28. In the context of application of Section 15 of the Act, 1956 the Supreme Court in *Omprakash and Others v Radhacharan and Others*³ held thus at part 14 :

14. If the contention raised by Mr. Choudhury is to be accepted, we will have to interpret sub-section (1) of Section 15 in a manner which was not contemplated by the Parliament. *The Act does not put an embargo on a female to execute a will.* Sub-section (1) of Section 15 would apply only in a case where a female Hindu has died intestate. In such a situation, the normal rule of succession as provided for by the statute, in our opinion, must prevail. For the aforementioned purpose, the golden rule of interpretation must be applied.

(Emphasis supplied)

29. It is also significant to notice that present suit was preferred in the year 1971. Brijrani having died in 1987, for these 16 years neither the defendant No.1 raised any objection as to the title of Brijrani nor any other rival claimant surfaced to challenge her title on the ground that there are other legal heirs of her husband or her brother-in-law (*Jeth*). Thus, the fact that Brijrani was absolute owner of the property was never in doubt during her lifetime.

Answer to the first question of law :

³ (2009) 15 SCC 66

30. In view of foregoing, it is held that clause (b) of sub-section (2) of Section 15 of the Act, 1956 would not effect the original plaintiff Brijrani's right to execute a WILL as she was the absolute owner of the property. Devolution of interest in the suit property in favour of present plaintiffs on the strength of a registered WILL is, thus, not in derogation of the provisions of clause (b) of sub-section (2) of Section 15 of the Act, 1956. The first question of law is, therefore, decided against the appellants/defendants and in favour of the respondents/plaintiffs.

Second question of law :

31. Whether the Courts below erred in law in holding that the suit property did not vest in the State after coming into force of M.P. Abolition of Proprietary Rights Act, 1950

Discussion in respect of the second Question of law :

32. This question of law need not detain this Court for long as the issue has been settled in civil suit No.60-B/1954 decided by First Civil Judge Class II, Raipur, on 20-4-1956; thereafter in Civil Appeal No.5-B/1958 decided on 5-8-1958 by the District Judge, Raipur; and in Second Appeal decided by the High Court in SA No.421 of 1958 (***Mahant Vaishnavdas ji v***

Ramnarayan Dixit (dead) Smt. Brijrani Bai & Anr.)

decided on 4-10-1960. The relevant part of the judgment rendered by the High Court in second appeal is reproduced hereunder :

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2. The first respondent, Ramnarayan (since deceased) and Smt. Brijranibai filed the present suit for recovery of lease money from the third respondent, Ramtahallal, and his assignee, Mahant Vaishnavdas, the appellant. Mohanlal the father of Ramnarayan and Ganeshram were originally owners of Mahal No.1. The suit plot, in respect of which the rent is claimed was situated in Mahal No.2. By a registered sale deed dated 30.1.1901 (Ex.P.1), Laxman Sao proprietor of Mahal No. 2 sold the suit plot to the predecessors of the plaintiffs for consideration and in pursuance of the sale deed, the plaintiffs' predecessors were in possession of the same.

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6. The defence of the appellant was that the property had vested in the State under section 4(1) (a) of the Abolition of Proprietary Rights Act No.1 of 1951. Therefore, the present plaintiffs had no right to recover premium. The suit claim was further resisted on the ground that there was no privity of contract between the plaintiffs and the present appellant. If at all the original lessors, could recover rent from Ramtahallal, the assignee from the original lessees. In no case, could the amount be claimed from Mahant Vaishnavdas.

7. The learned Judges of the Courts below held that the property did not vest in

the State under Section 4(1) (a) of the M.P. Abolition of Proprietary Rights Act No. 1 of 1951. The first assignment by Mohammad Hayathan and others in favour of Ramtahallal was with the permission of the original lessors. Therefore, the plaintiffs could recover premium from Ramtahallal on account of a privity of contract. There was no such privity of contract between the plaintiffs and Mahant Vaishnavdas. But, as there was a privity of estate between them, the plaintiffs could recover the amount from the present appellant.

8. The second defendant, Mahant Vaishnavdas raises only two questions in the present appeal. The first one is that the plaintiffs had no right to recover lease money from him, as the property vested in the State under Section 4(1) (a) of the M.P. Abolition of Proprietary Rights Act No. 1 of 1951. Secondly, it is urged that there was no privity of estate between the appellant and the plaintiffs, as the sublease by Ramtahallal in favour of the appellant created a liability of the appellant in favour of Ramtahallal alone.

9. The learned counsel for the appellant invited attention to Section 5(a) of the M.P. Abolition of Proprietary Rights Act No. 1 of 1951 and argued that the suit plot was not saved to the plaintiffs under the said section. This suggestion made by the learned counsel for the appellant is obviously incorrect, as the plot had been purchased by the predecessors of the plaintiffs for valuable consideration by a registered sale deed dated 31.1.1901. They were in possession of the same in pursuance of the registered sale deed. It is to be noted that the predecessors of the plaintiffs were not proprietors of Mahal No.2, wherein the suit plot is situated. Their interest in the suit plot was not in the capacity of proprietors, but it was in the capacity of owners of the property.

Under Section 5(a) of the M.P. Abolition of Proprietary Rights Act No. 1 of 1951 all abadi sites purchased for consideration are saved to the ex-proprietors. There is no substance in the contention of the appellant that the suit plot vested in the State. The learned Judges of the Courts below were right in holding that the suit plot continued to be the property of the plaintiff respondents under Section 5(a) of the M.P. Abolition of Proprietary Rights Act No.1 of 1951. The conclusion cannot be assailed on any ground, whatsoever.

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33. It was, thus, clearly found by the High Court in the suit filed by Ramnarayan Dixit, Smt. Brijrani Bai & Ramtahal Lal Dau against some other lessees of land/plot, which was part of Mahal No.2, of which the present suit premises was also a part, that the said land having been purchased by the predecessors of Brijrani Bai and others by a registered sale deed dated 30.1.1901, it was not available for vesting under Section 5 of the Act, 1950. It is, thus, not permissible for this Court in another second appeal to reopen the issue.

Answer to the second question of law :

34. For the aforesaid reasons, the second question of law is also decided against the defendants/appellants and in favour of the plaintiffs.

35. No other point was argued in this appeal. Accordingly, the impugned judgment and decree is affirmed.
36. As an upshot, the instant second appeal, *sans substratum*, is liable to be and is hereby dismissed with costs throughout.
37. A decree be drawn accordingly.

Sd/-

(Prashant Kumar Mishra)
Judge

Gowri

HIGH COURT OF CHHATTISGARH, BILASPURSA No.782 of 1998

Smt. Kanti Mishra & Others

Versus

Rajendra Shankar Shukla & Others

HEAD NOTE

Clause (b) of sub-section (2) Section 15 of the Hindu Succession Act, 1956 would not effect a Hindu Widow's right to execute a WILL, she being an absolute owner of the property by virtue of Section 14 of the said Act.