AMRIT LAL AND ORS. A

v.

MAHARANI AND ORS.

(Civil Appeal No. 4585 of 2009)

JULY 21, 2009 B

[S.B. SINHA AND DEEPAK VERMA, JJ.]

Hindu Succession Act, 1956/Oudh Rent Act, 1886:

Mitakshara coparcenary property – One party claiming C
to the exclusion of others, on the basis of patta, allegedly granted by Zamindar – Held: Property enured to the benefit of joint family – It was for the claimant to establish that the joint family disrupted prior to the alleged grant of patta but there was no pleading far less any proof in that regard – If for D
purpose of collection of revenue or otherwise, name of one of them was entered into in the revenue records, the same would not mean that the property vested in him irrespective of the share of the other co-owners – Records clearly point out that the disputed property was ancestral property – There E
exists a presumption with regard to continuance of joint family – Also there was nothing on record to show that the provisions of the Oudh Rent Act were applicable – U.P. Zamindari Abolition and Land Reforms Act, 1951.

The parties to the present appeal constituted a F
coparcenary governed by Mitakshara Law. 'B', the common ancestor of the parties, was the purported original owner of the disputed property. He died leaving behind two sons 'S' and 'R'. Appellants are the grand-children of 'S'. G

It was claimed by the appellants that in terms of the provisions of the Oudh Rent Act, 1886, after death of 'B', the property vested in the then Zamindar of the village

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A who granted fresh lease of the property in question in favour of 'S', and thus the same became his self acquired property and ceased to be joint family property.

Respondents, on the other hand, claimed that the B disputed property was joint family property and the right acquired by 'S' therein was only of a representative character.

Dismissing the appeal, the Court

C HELD: 1.1. Noticeably the matter was heard by another Bench of this Court. The appellants were asked to file the deed of lease of the disputed property. On the plea that the said deed of lease could not be traced out because the house of the appellants had fallen down due D to rain and valuable things including the said deed was destroyed, the same has not been produced. Such a plea had not been taken earlier. The said deed of lease was directed to be produced as the same had not been produced before the courts below. It was absolutely E necessary for proving his case. [Para 14] [623-F-G]

1.2. There is also nothing on record to show that the provisions of the Oudh Rent Act would apply. If the Khata No. 908 was the subject matter of an occupancy tenancy, there cannot be any doubt whatsoever that the property F would be heritable. Once it is held that the property belonged to mitakshra coparcenary family, 'B' cannot be said to have an exclusive right thereover and, thus, the question of the said property having vested again to the Zamindar of the Village upon his death did not and could G not arise. The rule of succession governing the Mitakshra School of Hindu Law would operate. [Para 14] [624-A-C]

Bijai Sunderji v. Hari Prasad & Ors. (decided by Board of Revenue) (1942) Revenue Decisions 212, distinguished.

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2.1. If for the purpose of collection of revenue or otherwise, the name of 'S' was entered into in the revenue records after the death of 'B', but the same would not mean that the property vested in him irrespective of the share of the other co-owners. A mitakshra coparcenary being a separate entity; once the property vested in it, the same would continue to vest in it irrespective of the death of one or the other coparceners subject of course to the application of rule of survivorship. Furthermore, upon coming into force of the U.P. Zamindari Abolition and Land Reforms Act, 1951, the right, title and interest of the Zamindar vested in the State. The matter relating to succession and inheritance would be governed by the provisions of the Hindu Succession Act, 1956. [Para 15] [624-F-H; 625-A]

2.2. In any view of the matter as has rightly been held by the High Court, there exists a presumption with regard to the continuance of the joint family. It was for the appellants to establish that the joint family disrupted prior to the said purported grant. It has been found as of fact that there has been no pleading far less any proof that 'B' was in possession of the land pursuant to any patta granted by the Zamindar in his individual capacity. On the other hand, the records clearly point out that the Khata in question was an ancestral property recorded in the name of late 'B'. [Para 16] [625-B-D]

Case Law Reference:

(1942) Revenue Decisions 212 distinguished Para 15

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4585 of 2009.

From the Judgment & Order dated 15.11.2006 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Writ Petition No. 8555 of 1987.

A Dilip Pandey, S.K. Kaushik, R.C. Kaushik for the Appellants.

Shrish Kumar Misra for the Respondents.

The Judgment of the Court was delivered by

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S.B. SINHA, J. 1. Leave granted.

2. The core question involved in this appeal, which arises out of a judgment and order dated 15th November 2006 passed by a learned single judge of the High Court of C Judicature at Allahabad, Lucknow Bench, Lucknow in Writ Petition No. 8555 of 1987, is as to whether a purported patta granted in favour of the appellant's predecessor herein could enure to the benefit of the joint family or not.

D 3. The relationship between the parties is not in dispute. It is also not in dispute that the family was governed by the Mitakshra School of Hindu Law.

One Baldi was the original owner of the property. He left behind two sons, namely, Shankar and Ragghu. After his death, E the name of Shankar was recorded in revenue records. Ragghu died leaving behind his widow Smt. Sukhraja.

4. An objection was filed by Sukhraja under Section 9(A)(2) of the Consolidation of Holding Act before the F Consolidation Officer, which was allowed by reason of order dated 22nd January, 1971, holding:

> "Therefore, on the basis of the evidence available on record, Ragghu was the son of late Baldi and real brother G of Shankar. It is proved that disputed property is the ancestral property since the lifetime of Baldi and after the demise of Ragghu, possession of Sukhraja, widow of Ragghu is also proved.
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> Accordingly, issues are decided.

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Therefore, it is ordered that name of Sukhraja, widow of Ragghu is recorded as co-khatedar in Khata No. 908 and name of Umrao, Mata Badal, Ram Dulare, son of Shankar were recorded in place of deceased Shankar. Name of Hira Lal, son of Bharose be deleted from Gata No. 3961/3/53-0. Area be recorded by AP. Partition of the numberan within the consolidation be recorded as under:

1. Sukhraja, widow of Ragghu ½ portion
2. Umrao, S/o Shankar 1/6 share
3. Mata Badal, S/o Shankar 1/6th share
4. Ram Dulare, S/o Shankar, 1/6th share"

5. Being aggrieved by the said order dated 22nd January, 1971, Umrao, Mata Badal and Ram Dulare filed an appeal before the Settlement Officer, Consolidation, Rai Bareli on 12th February, 1971, which was allowed by him by its judgment and order dated 26th October, 1971, holding:

"It was the duty of the appellant to prove beyond doubt that either the land was inherited by Shankar from Baldi or alternatively he was to prove that the land was acquired by Shankar in a representative capacity. The appellants have failed to prove that Shankar's name was recorded in the papers as heir to Baldi because if the Land was inherited not only Shankar but Ragghu's name should also be recorded. Alternatively he was to prove that the Land was acquired by Shankar out of the common funds of joint Hindu Family. But no Nazarana etc. was to be charged by the Zamindar and therefore, the plea is also untenable, according to Sheetal witness Shankar acquired the property in the Lifetime of his father Baldi. The recorded tenure holder has however stated on oath that the pedigree is wrong but the pedigree has been proved beyond doubt and there is no parallel pedigree to prove that the pedigree

A produced by the appellants is wrong. In the circumstances I am of the view that the pedigree is correct.

Smt. Shukharana (sic Sukhraja) herself says that the lease deed was executed in favour of Shankar, in the circumstances it cannot be legally presumed that the land was acquired by Shankar in a representative capacity or that the land was ancestral. The Consolidation Officer has, therefore, decreed the claims of Srimati Sukharana (sic Sukhraja) against the facts on file.

C The appeal is accordingly allowed, the order of the Consolidation Officer is set aside and it is hereby ordered that after expunction of the name of Shankar deceased, names of Umrao, Mata Badal and Ram Dulare sons of Shankar shall remain recorded on Khata No. 908 of village D Kandrawan with equal shares. Name of Srimati Sukharana (sic Sukhraja) of Ragghu shall not be recorded in any capacity. Her claim is hereby dismissed."

6. Revision filed thereagainst by Sukhraja was dismissed E by the Deputy Director of Consolidation, Rae Bareli by an order dated 25th September 1972.

7. Feeling aggrieved thereby, a writ petition marked as Writ Petition No. 190 of 1973 came to be filed by Sukhraja.

F 8. The High Court by its order dated 10th July 1979 remanded the matter to the Deputy Director of Consolidation for further evidences. The Deputy Director of Consolidation after taking further evidence again dismissed the Revision Application by an order dated 19th May, 1987.

G 9. Aggrieved by and dissatisfied therewith, Sukhraja filed a Writ Petition marked as Writ Petition No. 8555 of 1987 before the High Court of Judicature at Allahabad at Lucknow Bench, which has been allowed by reason of the impugned judgment.

H 10. During the pendency of the writ petition before the High

Court, the original petitioner Sukhraja and the respondents 1 to 3 died and they have been substituted by their legal heirs and representatives.

11. The appellants are, thus, before us.

12. Mr. Dilip Pandey, learned counsel appearing on behalf of the appellants, contended that in terms of the provisions of the Oudh Rent Act, 1886, after the death of Baldi, the properties vested in the then Zamindar of the village who granted fresh lease of the lands in question in favour of Shankar and, thus, the same became his self acquired property and ceased to be joint family property.

The learned counsel furthermore has drawn our attention to a purported admission made on behalf of the respondents herein to contend that a partition by and between the parties having been admitted and Khata No. 908 which is the subject matter of the present controversy being not the subject matter of the partition, the High Court committed a serious error in passing the impugned judgment.

13. Mr. Shrish Kumar Misra, learned counsel appearing on behalf of the respondents, on the other hand, would support the impugned judgment.

14. Before adverting to the question involved, we may notice that the matter was heard by another Bench of this Court. The appellants were asked to file the deed of lease of the disputed property. On the plea that the said deed of lease could not be traced out because the house of the appellants had fallen down due to rain and valuable things including the said deed was destroyed, the same has not been produced. Such a plea had not been taken earlier. The said deed of lease was directed to be produced as the same had not been produced before the courts below. It was absolutely necessary for proving his case.

We had pointedly asked Shri Pandey to show from the

A records as to when the said lease was granted and what was the date of partition. The learned counsel failed to answer any of the queries. There is also nothing on record to show that the provisions of the Oudh Rent Act would apply. If the Khata No. 908 was the subject matter of an occupancy tenancy, there B cannot be any doubt whatsoever that the property would be heritable. Once it is held that the property belonged to mitakshra coparcenary family, Baldi cannot be said to have an exclusive right thereover and, thus, the question of the said property having vested again to the Zamindar of the Village upon his C death did not and could not arise. The rule of succession governing the Mitakshra School of Hindu Law would operate.

15. Mr. Pandey has relied upon a decision of the Board of Revenue in *Bijai Sunderji v. Hari Prasad & Ors.* reported in 1942 Revenue Decisions 212. In that case, the name of Sarbjit D alone was entered in the patwari papers although the name of the plaintiffs had been shown as marfat in the column for tenant-in-chief and in the remarks column and in certain other years they were shown as sub-tenants. It is in the fact of that case and keeping in view the provisions of Section 48 of the Oudh E Rent Act, 1886 vis-à-vis Section 3(10) thereof, it was held that when a patta is granted in favour of one member of the family, the same cannot be treated to be a grant made in favour of the entire joint family.

F It is not a case where the patta was granted in favour of one of the members of the family. Admittedly, it belonged to a family governed by Mitakshra School of Hindu Law. If for the purpose of collection of revenue or otherwise, the name of Shankar was entered into in the revenue records after the death G of Baldi, but the same would not mean that the property vested in him irrespective of the share of the other co-owners. A mitakshra coparcenary being a separate entity; once the property vested in it, the same would continue to vest in it irrespective of the death of one or the other coparceners subject of course to the application of rule of survivorship. H

Furthermore, upon coming into force of the U.P. Zamindari Abolition and Land Reforms Act, 1951, the right, title and interest of the Zamindar vested in the State. The matter relating to succession and inheritance would be governed by the provisions of the Hindu Succession Act, 1956. A

In that view of the matter, the case *Bijai Sunderji* (supra) cannot be said to have any application whatsoever. B

16. In any view of the matter as has rightly been held by the High Court, there exists a presumption with regard to the continuance of the joint family. It was for the appellants to establish that the joint family disrupted prior to the said purported grant. It has been found as of fact that there has been no pleading far less any proof that Baldi was in possession of the land pursuant to any patta granted by the Zamindar in his individual capacity. On the other hand, the records clearly pointed out that the Khata in question was an ancestral property recorded in the name of late Baldi. C D

17. For the reasons aforementioned, there is no merit in this appeal. It is dismissed accordingly with costs. Counsel's fee assessed at Rs.10,000/-. E

B.B.B. Appeal dismissed.