
AIR 1967 All 273

Allahabad High Court

Case No: Second Appeal No's. 2660 and 2693 of 1962

Chhangu Aheer and
Others

APPELLANT

Vs

Dukhi Aheer

RESPONDENT

Date of Decision: March 3, 1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 32 Rule 7#Uttar Pradesh Tenancy Act, 1939 " Section 36

Citation: AIR 1967 All 273

Hon'ble Judges: D.P. Uniyal, J

Bench: Single Bench

Advocate: A.P. Pandey and S.D. Pandey, for the Appellant; P.N. Katju and K.P. Singh, for the Respondent

Final Decision: Dismissed

Judgement

D.P. Uniyal, J.

Second Appeal No. 2698 of 1962 arises out of Suit No. 631 of 1954 instituted by Dukhi respondent against Chhangu and

others, appellants, for a declaration that plots detailed in Schedules, A, B, C and D are in possession of the respondent as bhumidhar, and for

cancellation of a gift deed dated 2-9-1939 executed by Smt. Govindi, widow of Gajadhar, in favour of the appellants Chhangu and others, as also

for cancellation of the compromise dated 17-7-1940 in partition suit No. 44 of 1940 (Dukhi and others v. Smt. Govindi and others) decided on

31-3-1942.

Second Appeal No. 2660 of 1962 arises out of Suit No. 105 of 1956 instituted by Chhangu appellant against Dukhi and others respondents for a

permanent injunction restraining the defendants from interfering with his possession over the properties of Schedules A and B.

2. In order to appreciate the facts of the case it is necessary to give a short pedigree:

HANNU

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Gajadhar = Smt. Govindi Panchu = Smt. Kalui

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_____ | _____ |

(4 daughter) | Guman = Smt. Ramraji

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_____ | _____ |

|| Dukhi

||

(defdts. 1 to 9

Chhangu & others)

3. It appears that after the death of Hannu about the year 1898 his two sons Gajadhar and Panchu succeeded to the tenancy holding described in

Schedule A. It is admitted that these holdings were occupancy tenancies. Panchu died on 6-2-1915 and was survived by his brother Gajadhar.

The latter also died in 1922. After the death of Gajadhar the tenancy holdings came into the possession of his widow Smt. Govindi, who

succeeded to the holdings as a female tenant u/s 22 of Act II of 1901 Guman son of Panchu was a minor aged about 8 years when Gajadhar died.

Guman died in 1936 and was survived by his widow Smt. Ramraji. He had a son named Dukhi (respondent) who was born two months after

Guman's death Smt. Govindi widow of Gajadhar, continued to remain in cultivatory possession of the tenancy plots till her death which occurred

some time in 1951 or 1952. Smt. Govindi had four daughters. The appellants, including Chhangu are the daughters' sons of Smt. Govindi.

4. During her lifetime Smt. Govindi executed a deed of gift on 2-9-1939 in respect of occupancy holdings described in Schedule A in favour of her

daughter's sons Chhangu and others. Shortly after the execution of the gift deed aforesaid a partition suit was filed by Smt. Ramraji as next friend

of her son Dukhi minor in respect of properties described in Schedule A. This suit was compromised by Smt. Ramraji and it was decreed in terms

of the compromise on 31-3-1942. Under the consent decree Dukhi got a half share in Schedule A properties, the other half going to the

daughters' sons of Smt. Govindi. Dukhi seeks to challenge the compromise entered into by his mother Smt. Ramraji in the partition suit on the

ground that he being a minor his guardian and next friend did not obtain permission of the court as required under Order 32, Rule 7, C.P.C. to

enter into the compromise. He also seeks the cancellation of the gift deed dated 2-9-1939 executed by Smt. Govindi on the ground that she had a

life-interest in the tenancy holding inherited by her from her husband Gajadhar and, as such, had no right to alienate it in favour of her daughter's

sons.

5. It is common ground that the tenancy plots left by Hannu were occupancy holdings. During the lifetime of Hannu. Gajadhar purchased two

occupancy plots Nos. 1142 and 1143, on 26-8-1888. These very plots were mortgaged by him on 6-6-1914 to third parties, vide Ex. A-30.

Similarly, Gajadhar obtained a mortgage in his name on 12-5-1884, in respect of four plots, nos. 1162, 1163, 1166 and 1167, vide Ex. 17. These

plots were later purchased by him under the sale deed Ex. A-6 dated 1-7-1889. He mortgaged these plots on 1-6-1909, vide Ex A-31. Gajadhar

further acquired an occupancy plot No. 1111 under a sale deed dated 17-11-1892, vide Ex. A-10, and also obtained a lease in respect of some

other occupancy plots on 3-6-1891, vide Ex. A-9.

6. The case of the appellants Chhangu and others was that the properties purchased by Gajadhar in his own name were his self-acquired

properties, and were not in the joint tenancy holdings of Gajadhar and his brother Panchu. The appellants claimed that they being the daughters

sons of Gajadhar were entitled to inherit the said property, and have been in possession of the same. They, therefore, sought an injunction to

restrain the respondents Dukhi and others from interfering with their possession over the said properties. Chhangu and others disputed the right of

the respondents to challenge the validity of the gift deed and the compromise and claimed that the gift deed executed by Smt. Govindi was valid

inasmuch as the said plots had been in exclusive possession of Smt. Govindi as a female tenant who succeeded to the holding as the widow of the

last male holder. It was contended that the compromise entered into by Smt. Ramraji as next friend of Dukhi respondent was binding on him and

the respondent was not entitled to more than a half share in the properties of Schedule A which were ancestral tenancy holdings of Hannu.

7. The learned Munsif dismissed the suit filed by the respondent Dukhi and decreed the suit filed by the appellants Chhangu and others. On appeal,

the learned Civil Judge reversed the decree of the trial Court and decreed the suit of Dukhi and dismissed the suit of Chhangu and others. Hence

these two appeals by Chhangu and others.

8. It is common ground that the properties described in Schedule A were ancestral in the sense that they were inherited by Gajadhar and Panchu

upon the death of their father Hannu. The properties mentioned in Schedules B, C and D are those which were claimed by the appellants Chhangu

and others to be self-acquisitions made by Gajadhar, and which, according to the appellants, devolved on them after the death of Smt. Govindi as

the heirs of Gajadhar. The respondent Dukhi on the other hand, asserted that the plots of Schedules B, C and D were joint tenancies in the hands

of Gajadhar and Panchu. After the death of Gajadhar his widow succeeded as a female tenant for her life. There being no heir in the male line of

Gajadhar the tenancy plots devolved on Dukhi as reversioner of the last male tenant, namely, Gajadhar.

9. In the Courts below the main controversy centred round the question whether the tenancy plots of Schedules B, C and D were joint tenancies

or whether they were self-acquisitions of Gajadhar and did not belong to the heirs of Panchu. The case of the appellants was that there had been

separation between Gajadhar and Panchu after the death of Hannu and the properties purchased by Gajadhar were exclusively acquired by him

from his own personal earnings and were not the joint tenancies of Gajadhar and Panchu. The lower appellate Court came to the conclusion that

the purchases of tenancy plots made by Gajadhar in his name were for the benefit of the family and were joint tenancy holdings of both Gajadhar

and Panchu.

It seems to me that on the admitted and proved facts of this case there can be little doubt that the purchases of tenancy plots in the name of

Gajadhar were for the benefit of the family. Three of the sale deeds under which these purchases were made in the name of Gajadhar relate to a

period when Hannu, the father of Gajadhar and Panchu, was alive. Similarly, the lease obtained by Gajadhar in his name in respect of certain plots

in 1891 was also obtained during the lifetime of Hannu. It was nobody's case that Gajadhar had separated from his brother Panchu during the

lifetime of his father. It was not suggested, much less proved, that Gajadhar was possessed of sufficient means to make these purchases on his

own. On the contrary, the circumstances clearly go to show that Gajadhar and his brothers remained joint even after the death of their father

Hannu. There is on the record a sale deed dated 30-4-1912 (Ex. A-29) executed by Gajadhar and his brothers in respect of the property

mentioned in Schedule A. Had there been separation between Gajadhar and his brothers, they could not have executed a joint sale deed in respect

of property which was admittedly ancestral. I am, therefore, of the opinion that the finding recorded by the lower appellate Court that Gajadhar

and his brothers, including Panchu, remained in joint possession even after the death of their father, appears to be fully justified.

10. The next question that falls to be considered is whether the possession of Smt. Govindi over the properties of Schedules A, B and C and D

was that of a female tenant who succeeded to the holding after the death of her husband. The present case is governed by the provisions of Section

22 of Act II of 1901. Section 22 reads as follows:

When an ex-proprietary tenant, an occupancy tenant, or a non-occupancy tenant (other than a thekadar) dies, his interest in the holding shall

devolve as follows:

(a) on his male lineal descendants in the male line of descent; and

(b) failing such descendants, on his widow till her death or re-marriage; and

(c) failing such descendants, and widow, on his brother, being a son of the same father as the deceased;

and failing any such heirs as above mentioned,

(d) on his daughter's son; and

(e) failing such daughter's son, the nearest collateral male relative in the male line of descent;

Provided that no such daughter's son or collateral relative shall be entitled to inherit who did not share in the cultivation of the holding at the time of

the tenant's death".

11. Smt. Govindi being the widow of Gajadhar succeeded as a life tenant under Clause

(b) of Section 22, there being no male lineal descendants in

the male line of Gajadhar, Since Gajadhar died when Act II of 1901 was in force, Smt. Govindi became entitled to succeed to the holding as the

widow of the last male holder. Her interest was, however, limited and would come to an end on her death or re-marriage. She died in 1951 or

1952 when the U. P. Tenancy Act XVII of 1939 was in force. Section 36 of the Act provides for succession to a female tenant holding an interest

inherited as a widow It says that-

when a female tenant who either before or after the commencement of this Act has inherited an interest in a holding as widow dies,such

holding shall, notwithstanding anything in Section 45, devolve in accordance with the order of succession laid down in Section 35 on the heir of the

last male tenant.

Clause (a) of Section 35 says that when a male tenant other than a tenant mentioned in Section 34 dies, his interest in a holding shall devolve in

accordance with the order of succession given thereunder. Clause (a) of that section gives a preferential right of succession to male lineal

descendants in the male line of descent

12. It will be seen that even u/s 24 of Act III of 1926 a preferential right of succession was accorded to the heirs of the last male tenant after the

death of the widow The right was made subject to the condition that the heir of the last male tenant was shown to have shared in the cultivation of

the holding at the time of the tenant's death. By Section 36 of the U P. Tenancy Act of 1939 no such condition is attached to the right of

succession by the heir of the last male tenant

13. In Dular Pandey and Another Vs. Nanda Budhai and Another, the question referred for decision to the Full Bench was whether upon the

death of the widow of an occupancy tenant the holding would devolve u/s 25 (1) or Section 25 (2) of Act III of 1926. There an occupancy tenant

died while the Agra Tenancy Act of 1901 was in force He was succeeded by his widow u/s 22 of that Act. The widow died after the Agra

Tenancy Act of 1926 had come into force and the question arose whether the tenancy devolved upon the nearest surviving heir of the last male

tenant in accordance with the table of succession for occupancy tenancies or whether the tenancy devolved upon the heirs of the widow u/s 25 (2)

of the 1926 Act. That was a case in which the widow who succeeded to the holding after the death of the last male tenant died in 1931 when the

Act III of 1926 was in force It was held that the succession was governed by Section 25 (1) of the 1926 Act, provided the nearest surviving heir

of the last male tenant was proved to have shared in cultivation with him.

14. The legal position obtaining now is that u/s 36 of the U. P. Tenancy Act, 1939 after the death of the widow the tenancy will devolve on the

nearest surviving heir of the last male tenant irrespective of the fact whether he was co-sharing with him or not.

15. The status of Smt. Govindi was that of a female tenant whose right of possession was limited during her lifetime She could not, therefore,

validly transfer any part of the holding and create rights in favour of a party contrary to the line of succession laid down in Section 36 The gift deed

therefore was clearly unlawful and liable to be set aside. As regards the compromise entered into by Smt. Ramraji on behalf of her minor son in

partition suit No. 44 of 1940, the fact is that she was a next friend representing her minor son in the suit. She could not enter into a valid agreement

or compromise without leave of the Court expressly recorded in the proceedings. There is no order on the record permitting Smt. Ramraji to make

the compromise on behalf of her minor son. It was contended on behalf of the appellants Chhangu and others that the compromise having been

acted upon and a decree in terms of the compromise having been passed by the Court, there was a presumption that the leave of the Court was

granted to the next friend. The language of Rule 7 of Order 32 is not susceptible of a presumption being raised in favour of an agreement or

compromise entered into on behalf of a minor without an order of the Court On the contrary. Rule 7 is mandatory in terms and requires the

guardian or next friend of the minor to obtain leave of the Court for entering into a compromise, and such permission must appear expressly in the

proceedings of the Court There was neither an application seeking leave of the Court to enter into a compromise nor was an express order passed

by the Court to that effect. Consequently, the compromise dated 16-7-1940 was wholly illegal and ineffectual and did not in any way affect the

rights of Dukhi minor in respect of the subject-matter of the partition suit.

16. The result of the above discussion is that the appellants have no right to succeed to the property left by Gajadhar in the presence of the

respondent who is the nearest heir in the male line of descent of the last tenant.

17. Both the appeals fail and stand dismissed. In the circumstances of this case, however, the parties will bear their own costs of these appeals.