

**(1985) 05 CAL CK 0005****Calcutta High Court****Case No:** C.R. No. 12770 (W) of 1984

Mojahar Sheikh

APPELLANT

Vs

The State

RESPONDENT

**Date of Decision:** May 16, 1985**Acts Referred:**

- West Bengal Land Reforms Act, 1955 - Section 15A, 18, 18(1), 18(1)(a), 18(2)

**Citation:** 89 CWN 986**Hon'ble Judges:** M.G. Mukherjee, J**Bench:** Single Bench**Advocate:** Hari Narayan Mukherjee and Chandi Charan Day, for the Appellant; L.C. Bihani for State Respondent Nos. 1 to 4 and Japan Kumar Mukherjee for Respondent Nos. 5 to 11, for the Respondent**Judgement**

M.G. Mukherjee, J.

The predecessor-in-interest of the petitioners, one Khudi Sheikh was admittedly; the bargadar against whom a proceeding u/s 18(1) (a) and 18(2) of the Land Reforms Act was filed by the predecessor-in-title of private respondents viz, Siddique Hoasain, Farooque Hossain, Raosan Adjani and Abul Kalam Azad, claiming owners" share of bhag produce for the years 1386 & 1387 B.S. amounting to Rs. 12658/15/6 in respect of ka Schedule properties. They also prayed that the names of the petitioners nos. 1 to 4 be deleted from the category of bargadars in respect of the lands under schedule and the deceased Khudi Sheikh be treated as bargadar in respects thereof. The case of the private respondents before the Trial authority, i.e. the Bhagchas Officer under Sub-section (1) of Section 18 of the West Bengal Land Reforms. Act had been that Khudi Sheikh who had been a bargadar under them, assigned his interest in favour of his four sons who claimed to have partitioned the lands in between themselves though such bargadar"s interest was neither assignable nor partible. That apart the four sons of Khudi Sheikh got their names collusive and surreptitiously recorded as bargadars exparte without notice to the private

respondents in Operation barga, though each brother was claiming a different portion of the original land cultivated by their father Khudi Sheikh. Their case further was that they provided manure and seeds and hence they were entitled as owners to 50% of the produce in their share. The case was registered as Case No. 5 of 1980-81. The case was contested by the said Khudi Sheikh as also the petitioners nos. 1 to 4. After recording the deposition of some of the witnesses, on 30.7.81 the trial authority held inter alia that the land was cultivated by Khodabaksh Sheikh alia Khudi Sheikh till his death in April, 1981. His sons (petitioners nos. 1 to 4) had been helping their father to cultivate the suit land. Their names were recorded as bargadars on misrepresentation so as to avoid future litigation apprehending trouble after the death of their father. The petitioner no. 4 was a minor at the time of recording his name as bargadar. He ordered a fresh recording cancelling the previous recording. Regarding delivery of produce, he held that the respondents were entitled to owners" share of the produce for 1386 & 1387 B.S. But he directed the assessment to be made on report of concerned B.D.O. He also called for the local market price of the crops and asked the Block Tahsildar for assessment of production as well as market price of the crops. On 17.9.81 the said report of Block Tahsildar was submitted. A. D. M. (L. R.) intervened into the matter. At this stage, as per Memo dated 20.8.81 he sent the file to J. L. R. O. Murshidabad L. R. Circle. On 19.10.81 the owners i.e. the private respondents informed the Officer concerned trying the matter, to whom the case stood transferred, that Khudi Sheikh died in April 1981 and beside his four sons, who were already on record, some more heirs and legal representatives were to be added as parties defendants to whom notices are to be served. On 7.11.81 after due notices were served and the petitioners were duly represented, the matter was adjourned to 16.11.81 for judgment and order. It is indeed true that none of the heirs and legal representatives of Khudi Sheikh, the erstwhile bargadar came with any application within the meaning of Section 15A of the Land Reforms Act for determination of any one of them as bargadar in the place and stead of the deceased Khudi Sheikh. However every bereft of such an application, when an application for substitution was filed before the trial authority with a prayer for addition of other heirs and legal representatives as parties defendant to the said proceeding, even if some contrary pleadings were taken up by some of the sons of deceased Khudi Sheikh that they were bargadars bereft of their status as sons of Khudi Sheikh, it was the duty of the Officer concerned to intervene in the matter and apprise all the heirs and legal representatives of the deceased bargadar about their legal rights to choose one of them as the successor to Khudi Sheikh as a bargadar in respect of the suit land. It should never be forgotten that this case has some peculiar features of its own, where the owners themselves admitted Khudi Sheikh as bargadar and Khudi Sheikh did not disclaim his status as such, though some of his sons, being impleaded in the proceeding, might have taken a stand contrary to that of the father. That apart, the Officer concerned has also the power, independent of an application, to choose and select one of the heirs and legal representatives of Khudi Sheikh as the legal

representative of the deceased Bargadar to step into his shoes as successor to the bargadar. The attitude taken by the Officer concerned that in the absence of any application, the interests of bargadar would go by default; though the heirs as such would be liable to pay the alleged liability of the deceased Khudi Sheikh seems to be opposed to the spirit of law in a social we if are state like ours. Law is well-settled that if an heir does not get the property of the person whom he inherits, he cannot be called upon to pay the debts and obligations of the deceased. The parties not being Hindus, the theory of moral obligation of every Hindu to pay off the debt of the deceased father also is not applicable.

2. The trial authority by judgment and order dated 16.11.81 held all the heirs and legal representative liable for owner's share of produce for 1386 & 1387 B. S. assessed at Rs. 948671 in four equal annual instalments., the first of which shall be paid on or before 1st January 1982. He also held that the petitioners nos. 1 to 4 (respondents O. Ps. nos. 2 to 5 in the said proceeding) be hot determined bargadars u/s 18(2) of the West Bengal Land Reforms Act. He however granted the liberty to the heirs of the owners of the land whose land the deceased bargadar Khudi Sheikh cultivated to file application before the authority u/s 18(1) of the West Bengal Land Reforms Act for nominating one of the heirs of the deceased bargadar under Rule 2A(2) of the West Bengal Land Reforms Rules 1956. He however acted illegally and with material irregularity and failed to exercise a jurisdiction vested in him by law in not deciding for himself with due notice to all the heirs and legal representatives of Khudi Sheikh, who were all before him, to determine who amongst them should be chosen as the successor to the deceased bargadar Khudi Sheikh u/s 15A(2) of the Land Reforms Act 1956. However this judgment was affirmed on appeal by the appellate authority i.e. Deputy Magistrate & Deputy Collector, Lalbagh, Murshidabad by his judgment and order dated 28.6.84 with a modification of the amount payable by the petitioners as heirs and legal representatives of Khudi Sheikh., deceased. The appellate officer held that unless plough and cattle were supplied along with seed and manure, the owners were not entitled to 50% of the produce and he restricted the claim of the owners to 25% of the produce in respect of the crops for 1386 and 1387 B. S. which came to a total amount of Rs. 511126.

3. I have seen the reasoning that weighed with the appellate authority as regards the lack of jurisdiction of the Bhagchas Officer to entertain an application for correction of entires in the record of rights but he averted the issue by holding inter alia that it the said question did crop up while deciding other issues, he could validly determine the same in a legal manner. This Court has time and again held that only a finally published record of rights has a statutory presumption in the eye of law. If the records are finally published, every aggrieved party who feels prejudicially affected thereby, can pursue the course of action determined by Chapter VII of the Land Reforms Act by adopting the procedure as envisaged by Rules 22 to 29 of the West Bengal Land Reforms Rules. There is no statutory clothing to the procedure called Operation Barga and certificates granted in favour of the petitioners nos. 1 to

4 in this regard called Barga Certificates have also no statutory recognition. However just because the petitioners were armed with such certificates as weapons of defence, and claimed to have an independent status bereft of that of a succession to their father, the Bhagchas Officer being the Trial authority should not have failed to exercise a jurisdiction otherwise vested in him by law to decide, on the basis of his own finding that Khudi Sheikh was a bargadar in respect of the disputed, lands, as to who amongst the heirs, in view of the claim by each of the petitioners nos. 1 to 4 to be a bargadar, was lawfully entitled to come into the place of the deceased bargadar, under Section 15A of the Land Reforms Act. It was incumbent on the part of the said Appellate Authority to intervene into this question when the trial authority granted only an opportunity to the heirs of the original owners to have the same determined but did not grant such an opportunity to the heirs and legal representatives of Khudi Sheikh inter se more so when all of them were before him in the proceeding impugned.

4. The proviso to sub-section (1) of Section 15A of the West Bengal Land Reforms Act makes it clear that where the lawful heirs of the bargadars omit or fail to make determination as required by sub-section (1), the officer or authority appointed under sub-section (1) of Section 18 may nominate one of the lawful heirs of the bargadar, who is in a position to cultivate the land personally, to continue the Cultivation thereof. Sub-section (2) to Section 15A stipulates that the lawful heir of the bargadar, who is determined or nominated for the cultivation of the land, shall cultivate the land subject to such terms and conditions as may be prescribed. Hence it was indeed duty of the trial authority who was vested with jurisdiction in this regard to make a determination within the meaning of Proviso to Sub-section (1) to Section 15A to nominate one of the lawful heirs of the deceased bargadar, Khudi Sheikh who was in a position to cultivate the land personally, so as to continue cultivation thereof.

5. Though in sub-section (3) to Section 15A it is provided inter alia that where the officer or authority appointed under Sub-section (1) of Section 18 also omits or fails to nominate, within the prescribed period, any lawful heir of the deceased bargadar for the continuation of the cultivation of land and the lawful heirs of the bargadar themselves also fail to determine the heirs by whom cultivation of the land will be continued, cultivation of the land may be continued by such persons, whether an heir of the deceased bargadar or not, as may be nominated by the persons whose land was cultivated by the deceased bargadar. That has also not been done in the instant case. In that view, of the matter a remand to the trial authority on this score alone is justified in the circumstances.

6. Both the trial authority as well as the appellate authority on a sifting of the evidence reached a concurrent finding as to non-delivery of the owner's share of produce for 1386 B. S. As regards the year 1387 B. S. is concerned the factum of non-delivery was more or less admitted before the authorities below." I do not find

any cogent reason for interference in respect of the finding of fact as arrived at by both the authorities below in this regard and I affirm the finding of the appellate authority that the total due from the petitioners is to the tune of Rs. 5111|2o". A sum of Rs. 3000[- has already been paid by the petitioners pursuant to my orders dated 23.8.84 and 8.3.85. I grant liberty to such of the petitioners who will be nominated u/s 15A of the Act, to pay off the balance amount of Rs. 211126 in two yearly instalments of Rs. 105563 each, to be payable by 1st January, 1986 and" 1st January, 1987 respectively.

7. For ends of justice let a writ in the nature of Mandamus issue calling upon the State respondents to decide through the Bhagchas Officer competent in this regard, as to who amongst the heirs and legal representatives of Khudi. Sheikh should be determined as a bargadar in place of the deceased Bargadar, Khudi Sheikh, upon notice to all of them. Only if they disclaim their rights in this regard, that the authority below would be competent to hold that none of the heirs being interested, the owners are to treat the lands as without any bargadar and would otherwise be free to make their own arrangements accordingly. Let such a determination be done within a period of two months from today. On this limited point alone, there should be remand.

8. I must make it clear that pursuant to my orders dated 23.8.85 and 8.3.85 the petitioners have already deposited a sum of Rs. 3000/- out of total dues of Rs. 5111|26. I gave liberty to the respondents nos. 5 to 11 to withdraw the said amount deposited by the petitioners without prejudice to the rights and contentions of the parties. I am however of the further view that in case the petitioners, despite being held to be the heirs of the deceased bargadar Khudi Sheikh are found not to have actually inherited any of the properties of the said Khudi Sheikh besides the barga land, they have no liability under the law to repay the amount found due. Without deciding such objections which could be raised by the heirs and legal representatives of the deceased Khudi Sheikh at the time of execution of the amount under award, I make it clear that if any one of the heirs be nominated under 15A of the Act he should on such an event, be liable for the amount under award. This is in consonance with doctrine that an heir of a deceased bebtor is not bound to repay debts of the deceased if he can show to the satisfaction of the court or quasi-judicial authority that he has not inherited any property from the deceased, but he would be so liable in the event he succeeds to any property including the barga interest of the deceased. With such observations as made hereinbefore the Rule is made absolute in part. Let appropriate writ in the nature of Mandamus and or Certiorari issue accordingly. There will be no order as to costs.