

JAMIL AHMAD AND ORS.

v.

5TH ADDL. DISTT. JUDGE MORADABAD AND ORS.

OCTOBER 9, 2001

[SYED SHAH MOHAMMED QUADRI AND S.N. PHUKAN, JJ.]

*U.P. Imposition of Ceiling on Land Holdings Act, 1960*

*Ss. 5 and 10(2)—Determination of ceiling area—A Muslim tenure holder bequeathing some of his land on 15.12.1974—Death of tenure holder—Celing authority adding the said land in the holding of his son as inherited by him, without giving notice to legatees—Writ petition of legatees dismissed—Appeal by legatees contending that land bequeathed to them under the will having been mutated in their names and having become their property, cannot be treated to have been inherited by son of testator—Held, the will was found to be genuine by Tehsildar—Lands which testator was entitled to hold was determined—Out of that land, legatees would be entitled to the land under the will subject to their ceiling limit—In computation of ceiling area what is relevant is the land held by the individual as on 8.6.1973—But it is a continuous process—On subsequent acquisition of land by an individual, authorities will have to determine afresh his ceiling area as on the date of acquisition—Property bequeathed by a deceased person cannot be added to the share of his heirs for computing their khatas albeit it can be added to khatas of legatees—It is not clear as to how much extent the testator was entitled to hold and how much extent his son got by way of inheritance—Matter remitted to Prescribed Authority for fresh inquiry for determination of area which legatees are entitled to have under the Will having regard to the land, if any, held by them in their khatas—Mohammedan Law—Matruka—Scheme of distribution.*

*U.P. Zamindari Abolition and Land Reforms Act, 1950*

*Ss. 169 and 171—A Muslim bhumidhar—Bequeathing some of his land under a will—Distribution of land left by him—Held, would be governed by ss. 167 and 171—Limitation placed under Mohammedan Law that bequest should not exceed 1/3rd of Matruka and it should not be in favour of an heir will not apply, so also classification of heirs and the proportion in which they will inherit Matruka under Mohammedan Law is replaced with the provisions*

A of s.171 of the Act in which a different order of succession is provided—*Mohammedan Law—Matruka—Scheme of distribution.*

*Mohammedan Law—Matruka left by a Bhumidhar under U.P. Zamindari Abolition and Land Reforms Act, 1950—Scheme of distribution—Explained.*

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2025 of 1979.

From the Judgment and Order dated 24.11.78 of the Allahabad High Court in W.P. No. 1054 of 1978.

C E.R. Kumar, Musharraf Chowdhary, P.H. Parekh, Chandra Shekhar, (AC) for the appellants.

*Ex-parte* for the Respondents.

The following Order of the Court was delivered :

D This appeal is from the order of the High Court of Judicature at Allahabad dated November 24, 1978 disposing of the Writ Petition No. 1054/78 filed by the appellants in terms of the order in W.P. No. 1270/78 passed on the same date. By virtue of the said order, the Writ Petition filed by the appellants stood dismissed.

E To comprehend the controversy, it will be necessary to refer briefly to the facts giving rise to this appeal. One Wali Mohammed held certain agricultural lands. He had transferred an extent of 25.79 acres of land in favour of his blind unmarried daughter (Moti Begum) in 1359 Fasli - long before coming into force of the Act. In accordance with the provisions of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (for short, 'the Act'), his ceiling area, under Section 5 of the Act, was determined. On December 15, 1974 he executed a Will bequeathing an extent of 25.32 acres out of his land in favour of the appellants herein. He died on June 16, 1975 leaving behind him a son, Gulam Mohammed and a daughter, the said Moti Begum.

G On the basis of the said Will the appellants approached the Tehsildar, Billari (U.P.) to have their names mutated in the revenue records. The Tehsildar, after issuing a public notice and after examining witnesses produced by the appellants held, by his order dated August 28, 1975, that the Will was proved and ordered that their names be mutated in the revenue records as legatees H of Wali Mohammed in respect of an extent of 25.32 acres. That order makes

it clear that mutation would not affect the ceiling proceedings under the Act.

The Prescribed Authority treated the land held by Wali Mohammed on the date of his death as inherited property of Gulam Mohammed, added the same to the plots of land which were standing in his name and issued notices under Section 10(2) of the Act to Gulam Mohammed and Moti begum for determining the extent of land which he could retain under the Act. But no such notice was admittedly given to the appellants. The Prescribed Authority confined its consideration to the question as to how much land Gulam Mohammed was entitled to hold under the Act after he inherited lands of his father and whether Moti Begum could retain in her own right the land conveyed to her by late Wali Mohammed in 1359 fasli. The Prescribed Authority negatived the claim of Moti Begum and added all the lands which stood in the name of Wali Mohammed to the holding of Gulam Mohammed by order dated January 6, 1975.

Immediately thereafter the appellants filed an application before the Prescribed Authority to implead them in the proceedings under Section 10(2) of the Act on the ground that the lands given to them under the Will of Wali Mohammed were already mutated in their favour. That application was dismissed on August 31, 1976 as the said proceedings stood disposed of on June 30, 1976.

Against the said two orders of the Prescribed Authority three appeals were filed before the learned 5th Additional District Judge, Moradabad - the Appellate Authority under the Act. By a common order dated December 2, 1977, the appeals were disposed of. Insofar as the appeal of Moti Begum is concerned, the learned Additional District Judge upheld her claim and ordered that the land conveyed to her by late Wali Mohammed could not be included in the khata of Gulam Mohammed and thus allowed her appeal. That order has become final. So far as the appeal of Gulam Mohammed is concerned, it was partly allowed giving consequential benefit. Misc. Appeal No. 317/76 filed by the appellants was dismissed.

Aggrieved by the said common order of the Appellate Authority two Writ Petitions were filed—Writ Petition No. 1270/78, by Gulam Mohammed and Writ Petition No. 1054/78 by the appellants. It has been noticed above that the writ petition of the appellants was dismissed by the High Court on November 24, 1978 and against that order of the High Court the appellants

A are in appeal before us.

Mr. E.R. Kumar, the learned counsel for the appellants, contends that the lands given to the appellants under the Will of late Wali Mohammed could not be treated as lands inherited by Gulam Mohammed because those lands having been bequeathed became the property of the appellants in which Gulam Mohammed could not claim any right or interest.

Inasmuch as the respondents did not enter appearance in spite of service of notice we requested Mr. Chandra Shekhar, Advocate, to assist us as *amicus curiae*. The learned *amicus curiae* submits that from the record made available to him he could gather the developments after the death of Wali Mohammed with regard to issuing of notice under Section 10(2) of the Act to Gulam Mohammed and his sister Moti Begum; the claim of the appellants under the Will of late Wali Mohammed depends upon the genuineness of the Will which is not proved and is subject to the U.P. Zamindari Abolition and Land Reforms Act, 1950 (for short, 'ZALR Act'). He has invited our attention to Sections 169 and 171 of the ZALR Act to contend that though late Wali Mohammed was entitled to bequeath his land under Section 169 of ZALR Act, it has to be read subject to the principle of Mohammedan Law that no person can give away by way of bequest more than 1/3rd of his property. With regard to Section 171 the learned *amicus curiae* has argued that the principles of Mohammedan Law of inheritance do not apply as a different scheme of succession is provided with regard to the *Bhoomidari* land in which both the son and the daughter will have an equal share.

The question that falls for our consideration is : whether the Will of Wali Mohammed is genuine and the land bequeathed by late Wali Mohammed in favour of the appellants under it could be treated as inherited land of Gulam Mohammed.

The property (both movable as well as immovable) left by a deceased Muslim is called *Matruka*. The scheme of distribution of *Matruka* among the heirs of a deceased Muslim is that first that part of the *Matruka* which is covered by a Will of the deceased, if there is a valid Will, (subject to a maximum of 1/3rd of the total *Matruka* provided it is not in favour of an heir) will be separated and given to the legatee. The balance of *Matruka* alone is distributable among the heirs and in the proportion ordained under the Mohammedan Law. However, in regard to *Bhoomiswami* land the distribution of *Matruka* will be governed by Sections 169 and 171 of ZALR Act.

Consequently the limitation placed under the Mohammedan law that the bequest should not exceed 1/3rd of the *Matruka* of the deceased and it should not be in favour of an heir, will not apply; so also classification of heirs and the proportion in which they will inherit *Matruka* under the Mohammedan Law is replaced with the provisions of Section 171 of ZALR Act in which a different order of succession is provided.

Inasmuch as the appellants were not parties to the proceedings initiated under Section 10(2) of the Act the question of genuineness of the Will, did not arise for consideration before the Prescribed Authority. The appellants filed an application to implead them but as they woke up after the disposal of the case, their application was dismissed by the Prescribed Authority. In the appeal filed by the appellants, the Appellate Authority took note of the fact that the lands were mutated in their names; it was, however, observed that the Will was not proved. In our view, the observation is not well-founded. As noted above the question of genuineness of the Will was not considered by the Prescribed Authority, before the Appellate Authority there was no occasion to prove the Will as it was not in dispute. Further, the Appellate Authority ignored the order of the Tehsildar dated August 28, 1975, referred to above, which shows that after issuing public notice and examining the witnesses the Tehsildar found that the Will executed by Wali Mohammed was proved and on that finding the names of the appellants were directed to be mutated in the revenue records. In view of the fact that the Will of late Wali Mohammed has been found to be genuine; the only question which remains to be considered is : whether the land bequeathed in favour of the appellants by late Wali Mohammed could form part of inherited property of Gulam Mohammed.

We make it clear that in the computation of the ceiling area under the provisions of the Act what is relevant is the land held by the individual as on June 8, 1973. But it is a continuous process. On subsequent acquisition of land by an individual either by purchase or by succession or otherwise, the authorities will have to determine afresh his ceiling area as on the date of acquisition of land. From the material placed before us it appears that the lands which late Wali Mohammed was entitled to hold was determined and excess land of 8.14 acres was declared by the Prescribed Authority, which was reduced by the Appellate Authority to 2.47 acres by order dated October 25, 1975. From out of the land which Wali Mohammed was entitled to hold pursuant to the final determination of his *khata* he bequeathed Acres 25.32 in favour of the appellants who would be entitled to that land under the Will subject

A to their ceiling limit. The property bequeathed by a deceased person cannot be added to the share of his heirs for computing their *khatas* albeit it can be added to the *khata* of the legatee.

B From the record it is not clear as to how much extent late Wali Mohammed was entitled to hold and how much extent Gulam Mohammed got by way of inheritance which alone could be added to the land already held by him. The High Court took the view that by making a Will the declarant cannot reduce his ceiling area. We think no exception can be taken to the said statement of law provided the determination of the ceiling area under consideration is that of the testator. But if the determination relates to his successors/heirs either by intestate succession or testamentary succession the said proposition will not be apt. In the instant case the Will was executed by C late Wali Mohammed. In computing the ceiling area of his heirs Gulam Mohammed and Moti Begum the land given by Will to the appellants (legatees) will have to be excluded before the actual area of the land inherited by the D said heirs is worked out.

We, therefore, set aside the order of the High Court and that of the Appellate Court, remit the case to the Prescribed Authority for fresh enquiry for determination of the area which the appellants are entitled to have under the Will of late Wali Mohammed having regard to the land, if any, held by E them in their own *khatas*.

The appeal is accordingly allowed. There shall be no order as to costs.

Before parting with the case we record our appreciation of the efforts made by Mr. Chandra Shekhar, the learned *amicus curiae* in studying the case F thoroughly by going through the original records of the High Court as well as of the lower courts and in assisting us by arguing the case for the respondents extensively.

R.P.

Appeals allowed.