

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4164 OF 2007

State of Gujarat

...Appellant

versus

Maliben Nathubhai (D) Through LRs & Ors.

...Respondents

J U D G M E N T

Madan B. Lokur, J.

1. Bhulabhai Bhikhabhai was the owner of landed property including open land being Survey No.74 admeasuring 4350 sq. meters in Jehangirabad, District Surat (Gujarat). He died intestate on 17th January, 1947 leaving behind his widow Harkhiben (who died on 13th February, 1957) and two sons Narsinbhai (who died on 22nd April, 1969 without any issue), Balubhai (died on 16th November, 1991) and two daughters – Gangaben (represented by her legal representatives) and Maliben Nathubhai (now represented by her legal representatives).

2. On the death of Bhulabhai Bhikhabhai his two sons inherited his estate and when the Urban Land (Ceiling and Regulation) Act, 1976 (for short the Act) came into force, Balubhai the only surviving son of

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Bhulabhai Bhikhabhai and brother of Gangaben and Maliben filed a declaration form on 10th August, 1976 under Section 6(1) of the Act. He filed the declaration as owner of the entire land and on behalf of his own family. His sisters Gangaben and Maliben did not make any claim in respect of the land in question and the revenue records at that point of time reflected only the names of the sons of Bhulabhai Bhikhabhai and not that of his two daughters.

3. The declaration made by Balubhai was taken up for consideration by the Competent Authority and Deputy Collector who passed an order under section 8(4) of the Act on 16th December, 1983 in ULC Case No.1/1900 declaring about 3426 sq. mtrs. of land as surplus land. This was followed by Notifications under Sections 10(1) and 10(3) of the Act in the Official Gazette on 6th January, 1984 and 13th July, 1984. The sisters of Balubhai (that is Gangaben and Maliben) did not make any claim before the Competent Authority and Deputy Collector in respect of the surplus land.

4. Thereafter, the State of Gujarat issued a notice to Balubhai under Section 10(5) of the Act on 17th August, 1984 to hand over possession of the surplus land.

5. Feeling aggrieved by the decision rendered by the Competent Authority and Deputy Collector as well as the notice issued by the State for C.A.No.4164 of 2007

handing over possession of the surplus land, Balubhai filed Appeal No. 1478 of 1984 under Section 33 of the Act before the Urban Land Tribunal challenging the order dated 16th December, 1983 read with notice dated 17th August, 1984.

6. It appears that despite adequate opportunities given to Balubhai to represent his case before the Tribunal, he did not remain present and the appeal was taken up ex parte by the Tribunal and dismissed on merits on 19th January, 1988. Subsequently, on 27th June, 1990 the State took possession of the surplus land and this action of the State has not been challenged or disputed by Balubhai (who later expired on 16th November, 1991) or his legal representatives. Effectively, therefore, Balubhai accepted that about 3426 sq. mts. of land in his hands was surplus and was rightly taken possession of by the State. According to the State, the surplus land was allotted to the weaker sections of society sometime in 1991-92.

7. After the demise of both brothers Narsinbhai and Balubhai and their sister Gangaben, Special Civil Suit No.525 of 1991 was filed by Maliben and the children of Gangaben on 2nd December, 1991 before the Civil Judge (Senior Division), Surat. It appears that the suit was for partition of the property bearing Survey No.74 in Jehangirabad and a challenge was also made to the legality and validity of the proceedings undertaken by the

Competent Authority and Deputy Collector in respect of the surplus land and thereby an injunction was sought restraining the Competent Authority and Addl. Collector from taking possession of the suit property. According to Maliben and the children of Gangaben (the plaintiffs) they had an interest through Harkhiben in suit property of Bhulabhai Bhikhabhai who had died intestate sometime in 1947. Along with the plaint, the plaintiffs filed an application for interim injunction but that was dismissed by the learned Civil Judge (Senior Division) on 9th December, 1991. It is not clear whether the civil suit was thereafter pursued by the plaintiffs.

8. However, soon after the rejection of the application for interim injunction, the plaintiffs preferred ULC Appeal No.102 of 1991 before the Urban Land Tribunal challenging the order dated 16th December, 1983 passed by the Competent Authority and Deputy Collector whereby it was declared that 3426 sq. mtrs. of land was surplus land in the hands of Balubhai. It may be noticed that this appeal was filed after a lapse of about eight years and after proceedings in respect of the order dated 16th December, 1983 had already come to an end on 19th January, 1988 when the appeal filed by Balubhai before the Urban Land Tribunal was dismissed.

9. Despite the delay of about eight years in filing the appeal, it was

entertained by the Urban Land Tribunal and allowed (after condoning the delay) on 31st March, 1992. The conclusion arrived at by the Tribunal was that Gangaben and Maliben were each entitled to one unit of land out of the land owned by their father Bhulabhai. Effectively therefore, the Urban Land Tribunal set aside its earlier order of 19th January, 1988.

10. Feeling aggrieved by the order passed by the Urban Land Tribunal, the State approached the Gujarat High Court by filing SCA No.2144 of 1993 challenging the correctness of the order dated 31st March, 1992 passed by the Tribunal. It was submitted in the appeal, inter alia, that the order dated 16th December, 1983 passed by the Competent Authority and Deputy Collector had attained finality when the Tribunal dismissed the appeal directed against that order on 19th January, 1988. It was also submitted that the surplus land had already been allotted to persons belonging to the weaker sections of society.

11. The learned Single Judge considered the grievances of the State and took the view, in the judgment and order dated 4th July, 2000 that the plea taken by the State for allotment of land to weaker sections of society was a new plea and need not be entertained. Other pleas advanced by the State were not dealt with.

12. The State preferred a Letters Patent Appeal against the judgment and order dated 4th July, 2000 passed by the learned Single Judge but the appeal was held to be not maintainable. Effectively therefore, the challenge before us is to the judgment and order dated 4th July, 2000 passed by the learned Single Judge.

13. It is submitted before us by learned counsel for the appellant that three issues arise for our consideration. The first issue relates to the question whether the plaintiffs are entitled to a share in the property (through Harkhiben) of Bhulabhai Bhikhabhai who died intestate sometime in 1947. The second issue is whether the plaintiffs could have maintained an appeal before the Tribunal against the order of the Competent Authority and Deputy Collector after a lapse of about eight years. Thirdly, when under the provisions of the Act since every claimant is required to file a declaration under Section 6(1) thereof and Gangaben and Maliben did not file any such declaration, whether they could claim any right in the property of their father.

14. Having heard learned counsel for the parties, we are of opinion that Bhulabhai Bhikhabhai having died sometime in 1947 when two of his sons, that is, Narsinbhai and Balubhai were still alive neither Harkhiben nor Gangaben and Maliben had any claim in the suit property of Bhulabhai

Bhikhabhai under Hindu Law. Indeed, we must point out that neither Gangaben nor Maliben claimed any direct share in the suit property – they claimed a share through their mother Harkhiben but there is nothing to even suggest how Harkhiben acquired any share in the suit property. Such an averment is completely missing from the pleadings of the plaintiffs.

15. Learned counsel for the plaintiffs has been unable to show us any decision or any other material to substantiate his claim that on the death of Bhulabhai, his widow Harkhiben acquired the suit property and on her death in 1957, after the Hindu Succession Act, 1956 came into operation, Gangaben and Maliben acquired a share in the suit property through Harkhiben. The submission of learned counsel proceeds on the assumption that on the death of Bhulabhai Bhikhabhai the suit property devolved solely upon his widow Harkhiben. There is no such averment made anywhere, nor is it substantiated in any manner. Learned counsel has not been able to show us any decision or any other material to show that this was the position in Hindu Law in 1947 when Bhulabhai Bhikhabhai died intestate. On the other hand, upon the death of the Karta of a joint family, his share will devolve only upon the remaining coparceners which in the present case were the two sons of Bhulabhai Bhikhabhai. It is therefore quite clear that neither Harkhiben nor Gangaben and Maliben had any

share in Survey No.74 which is the land in question.

16. We are also of opinion that the Tribunal was in error in entertaining the appeal filed by the plaintiffs after a gap of about eight years from the passage of the order dated 16th December, 1983 by the Competent Authority and Deputy Collector. The delay was totally inexplicable. That apart, the order dated 16th December, 1983 had merged with the order passed by the Tribunal on 19th January, 1988. That being the position, the Tribunal could not have reopened the proceedings which had already terminated before it. It has been held in ***Kunhayammed and Ors. v. State of Kerala & Ors.***¹ that the principle of merger of an order with the order of a superior court would apply equally to orders passed by tribunals. Therefore there can be no doubt that the order passed on 16th December, 1983 by the Competent Authority and Deputy Collector merged with the order of the Tribunal passed on 19th January, 1988 and which order attained finality.

17. In paragraphs 12 and 44(i) of the Report, it was held as under:

“The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be

effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either way — whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view.”

“(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.”

18. Finally, in our view if the plaintiffs did in fact claim to have a right in the property of Bhulabhai Bhikhabhai, they ought to have filed a declaration under Section 6(1) of the Act. That they did not do so when they attained the age of majority is a clear indication that they were fully aware that they had no right in the property of Bhulabhai Bhikhabhai who died intestate sometime in 1947. By filing an appeal before the Tribunal in 1991, the plaintiffs sought to make a claim, by a side-wind, on the suit property without even by filing a declaration under Section 6(1) of the Act. Surely, they cannot be permitted to indirectly make a claim which they failed to make directly.

19. Whichever way the issues are looked at, we have no doubt that the
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