Maharaja Pratap Singh Bahadur

Vs

Thakur Manmohan Deo and Ors.

Civil Appeal No. 35 of 1963

(K. Subha Rao, V. Ramaswami-I JJ )

28.02.1966

JUDGMENT

SUBHA RAO, J.

The facts that gave rise to this appeal may be briefly stated. In the plaint there are three schedules, A, B and C. We are concerned in this appeal only with schedules A and C and nothing, therefore, need be said in regard to schedule B. The lands described in schedules A and C were situated in Rohini Ghatwali Estate. When that Estate was in the management of the Court of Wards, on March 25, 1873, the then Deputy Commissioner, Santal Paragana, on behalf of the Court of Wards representing the said Estate executed a lease in perpetuity in respect of the A schedule property in favour of Maharaja Sir Jai Mangal Singh Bahadur, the predecessor-in-interest of the 2nd defendant, for the purpose of erecting dwelling houses thereon. The 2nd defendant and his ancestors had been in possession of the said property since the date of the said lease. The lands described in Schedule C annexed to the plaint were not covered by the said lease, but it is alleged that the 2nd defendant and his ancestors had been in possession of the same. The plaintiff, who is the present Ghatwal of the Rohini Ghatwali Estate, after attaining majority on October 17, 1949, filed Title Suit No. 37 of 1952 on the file of the Court of the Subordinate Judge, Deoghar, for recovery of possession of the said lands on the ground, inter alia, that they formed part of his Estate and that the lease executed by the Deputy Commissioner in respect of the A Schedule lands was void, as it was not countersigned by the Commissioner, Bhagalpore, and that the 2nd defendant had no title to the C Schedule lands. To that suit the member, Board of revenue, Bihar, was made the 1st defendant and Maharaja Pratap Singh, the successor-in-interest of the lessee, being a minor represented by the Collector of Monghyr, as representing the Court of Wards, as the 2nd defendant. The 2nd defendant contended that the suit was barred by limitation.

The learned Subordinate Judge held that the lease executed on behalf of the Court of Wards, not having been sanctioned by the Board of Revenue, became void as soon as the superintendence of the Court of Wards was removed from the Ghatwali Estate. So far as the lands mentioned in Schedule C were concerned, he came to the conclusion that they were outside the scope of the lease of 1873 and, therefore, the plaintiff was entitled to get possession thereof. He held that the suit was not barred by limitation. In the result he decreed the suit of the plaintiff for possession of A and C Schedule land. Against the said decree the 2nd defendant filed an appeal to the High Court at Patna.

The said appeal was heard by a division Bench of the High Court. It held that the validity of the lease of 1873 should be judged on the provisions of the Bengal Ghatwali Lands Act, 1859 (Act V of 1859) and not on those of Court of Wards Act, 1870, (Act IV of 1870) and so judged the lease was void, as it was not executed by the Court of Wards as provided thereunder. It also held that even if

Act IV of 1870 applied, the lease would be void inasmuch as no sanction of the Board of Revenue was obtained under s. 9 of the said Act. In regard to the C Schedule properties it accepted the finding of the learned Subordinate Judge that it was not the subject-matter of the said lease. But it further held that the suit was not barred by limitation. In the result, the decree of the first court was confirmed; but in the circumstances of the case, no order for costs was made. Hence the present appeal.

At the outset learned counsel for the appellant raised a point for the first time before this Court that as the Rohini Ghatwali Estate vested in the Government under the Bihar Land Reforms Act, 1960. (Bihar Act XXX of 1950). The plaintiff had no locus standi to maintain the suit. When this appeal came up for hearing before this Court on August 18, 1965 it called for a finding from the High Court on the point whether the subject-matter of the appeal had vested in the State Government under the said Act. Pursuant to that order, the High Court submitted a finding to the effect that the subject-matter of the appeal vested in the State under Notification No. 74 L.R./Zan. dated May 22, 1952, published in Bihar Gazette issued on May 29, 1952. At the time this Court called for a finding, no decision was given by it on the question raised by the appellant as regards the locus standi of the plaintiff to file the suit. After hearing arguments we now find that this is not a case where we can dismiss the suit on the ground that the subject-matter of the suit vested in the State Government. The suit was filed on October 21, 1952, i.e., after the Estate had no locus standi to maintain the suit. Pending the appeal in the Patna High Court, the State of Bihar was made a party to it on February 19, 1957; but the said State did not put forward its claim to the suit property. That apart, the question whether Basauri Ghatwali Tenure vested in the State was the subject-matter of T.S. No. 115 of 1950 between the parties. It is represented to us that the learned Subordinate Judge held in that suit that the said tenure also vested in the State, that an appeal filed in the High Court also went against the respondents and that the respondents would file an appeal to this Court. In the circumstances we do not think we are justified in permitting the appellant to raise for the first time before us the contention based upon the provisions of the Bihar Land Reforms Act. But we must make it clear that we leave open the said question in view of the fact that proceedings are pending in regard thereto.

The next question turns upon the validity of the lease deed of the year 1873. The lease executed by the Court of Wards is not filed, but the Kabuliat executed by the 2nd defendant's ancestor to the Court of Wards is filed and it is Ex. 1 in the case. Both the parties proceeded on the basis that the terms of both the documents are the same. Under Ex. 1, Maharaja Sir Jaymangal Singh Bahadur, the ancestor of the 2nd defendant, had taken on lease the A scheduled property for the purpose of erecting dwelling houses from Brown Wood, the then Deputy Commissioner, Santhal Pargana, on behalf of the Court of Wards representing the Rohini Ghatwali Estate. That document was executed under ss. 1 and 2 of Act V of 1859. Learned counsel for the appellant contended that the validity of the lease was questioned by the respondents in the plaint only on the ground that it was not countersigned by the Commissioner of Bhagalpore, that the High Court went wrong in invalidating it on a different ground and that, in any view, having regard to the fact that a period of about 80 years had elapsed from the date of the lease, the High Court should have presumed that the document was executed in strict conformity with the provisions of both Act IV of 1870 and Act V of 1859.

Mr. Sarjoo Prasad, learned counsel for the respondents, on the other hand, argued that both Act IV of 1870 and Act V of 1859 are complementary to each other, that a lease to be valid should comply with the provisions of both the Acts, that a lease in order to bind a Court of wards should be executed in the manner prescribed by Act IV of 1870 and that, as the lease was not executed by the

Court of wards as defined by the said Act with the sanction of the Board of Revenue, it was null and void on the removal of the Estate from the superintendence of the Court of Wards.

To appreciate the rival contentions it is necessary to consider the scope of the said two Acts. The relevant provisions of the said Acts may be extracted.

The Bengal Ghatwali Lands Act, 1859 (Act V. of 1859).

Section 1. Ghatwals holding lands in the district of Birbhoom under the provisions of the aforesaid Regulation (The Bengal Ghatwali Lands Regulation, 1814) shall have the same power of granting leases for any period which they deem most conducive to the improvement of their tenures as is allowed by law to the proprietors of other lands :

Provided that no lease of ghatwali lands for any period extending beyond the lifetime or incumbency of the grantor of the lease shall be valid and binding on the successors of the grantor, unless the same shall be granted for the working of mines or for the clearing of gunle, or for the erection of dwelling-houses or manufactories, or for tanks, canals and similar works, and shall be approved by the Commissioner of the Division, such approval being certified by an endorsement on the lease under the signature of the Commissioner.

Section 2. If any of the said ghatwali lands be at any time under the superintendence of the Court of Wards, or otherwise subject to the direct control of the officers of the Government, it shall be lawful for the Court of Wards or the Commissioner to grant lease for any such purpose as aforesaid; and every lease so granted shall be valid and binding on all future possessors of the said lands, anything in the existing law to the contrary notwithstanding.

The Court of wards Act, 1870 (Act of 1870)

Section 8. In every division of the provinces subject to the control of the Lieutenant Governor of Bengal, there shall from and after the passing of this Act, be a Court of Wards. The Commissioner of revenue of each such division shall be such court, and shall have and exercise all the powers and authorities conferred by this Act upon the court over the persons and property of all wards of such court.

Section 9. It shall be competent to the court to manage estates and other lands falling under their charge, either by appointment of a manager, or by giving some or all the estates and lands in farm, or by adopting such other form of management as may to the said court seem most expedient. Provided that no lease or farm shall accept under the sanction of the Board of Revenue, be given for a term exceeding ten years, not beyond the period of expiration of the ward's minority, and provided that all leases given by the court, or by the Collector acting for the court, or by the manager, shall become null and void on the removal of the estate from the superintendence of the court for whatever cause, save leases made with such sanction as aforesaid.

A comparative study of these two Acts discloses that Act V of 1859 is a special Act dealing with a specific subject-matter, namely, Ghatwali lands in the district of Birbhoom : it also provides for a particular incident of the tenure, namely, the power to lease the said lands. It says that a ghatwal holding lands shall have the same power of granting lease as is allowed by law to the proprietors of other lands. The proviso thereto enacts that a lease of a ghatwali land for a period extending beyond the lifetime of the grantor is not binding on the successors unless the same was granted for the purposes specified therein with the approval of the Commissioner signified in the manner prescribed

thereunder. But s. 2 thereof provides that in the case of a ghatwali land under the superintendence of the Court of Wards, it shall be lawful to the Court of wards or the Commissioner to grant leases of the same for any of the purposes mentioned in the proviso thereto. In that event, such leases shall be binding on the future possessors of the said land. It is, therefore, manifest from the said sections that a Court of wards could grant a lease of a ghatwali land for erecting dwelling houses so as to be binding on the future possessors of the said land. The Court of Wards Act deals generally with the management of all the estates that come under the superintendence of the Court of Wards and in respect of lands in such estates, the Court of Wards can grant a lease of the same for a term exceeding 10 years or beyond the period of expiration of the ward's minority only with the sanction of the Board of Revenue.

It is, therefore, clear that Act V of 1859 is a special statute and Act IV of 1870 is a general statute. The special statute does not make the sanction of the Board of Revenue a pre-condition for the validity of the lease executed by a Court of Wards so as to bind all future possessors of the said land, whereas s. 9 of Act V of 1859 imposes such a condition. The argument is that both the Acts should be read together and, if so read, the sanction of the Board of Revenue would also be a pre-condition in addition to the conditions imposed under the proviso to s. 1 of Act V of 1859. In our view, such a contention is untenable. The principle of law in this regard is well settled. In Maxwell on the Interpretation of Statues, the relevant principle is stated, at p. 168, thus :

> "A general later law does not abrogate an earlier special one by mere implication. Generalia specialibus non derogant, or, in other words, 'where there are general words in a latter Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the special Act'."

If this principle is applicable to the instant case - we do not see any reason why it is not - the special provisions made under Act V of 1859 in regard to the conditions imposed for the validity of such a lease should prevail over those imposed under the general Act, Act IV of 1870. The general Act in regard to leases of ghatwali lands should yield to the special Act. On this construction, the condition for the validity of the lease in question is that it should have been executed by the Court of Wards for the purpose of erection of dwelling houses. The lease of 1873 expressly states that the lease was granted for erecting dwelling houses.

The only outstanding question that remains in this context is whether it was executed by the Court Wards.

Exhibit 1 purports to have been given in favour of Brown Wood, the then Deputy commissioner of Santhal Pargana, on behalf of the Court of Wards representing the Rohini Ghatwali Estate for the purpose of erecting dwelling houses under ss. 1 and 2 of Act V of 1859. The only flaw pointed out by the learned counsel is that there is nothing in the Act to indicate that a Deputy Commissioner can grant a lease of a ghatwali land on behalf of the Court of words. But the document was ex facie executed by the Deputy Commissioner on behalf of the Court of wards and the validity of it was not questioned till the suit was filed, that is for about 80 years. The lessee and his successors-in-interest have been in possession of the lands all these years. In such circumstances the presumption under s.

114 of the Indian Evidence Act can readily be drawn. Under that section.

> "The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case."

Under illustration (e) the court may presume that judicial and official acts have been regularly performed. If an official act is proved to have been done, it will be presumed to have been regularly done. In this case it has been proved that the lease was executed on behalf of the Court of Wards and that the lessee and his successors have been in unquestioned enjoyment of the said lands for many years. Indeed, the plaintiff in the plaint does not allege that the Deputy Commissioner was not legally authorized to Act on behalf of the Court of Wards; his only objection is that the document was not countersigned by the Commissioner of Bhagalpur Division. But that condition was only applicable to a lease executed by a Ghatwal and not by the Court of Wards. In the circumstances, we think it is a fit case where the court can reasonably presume that the Deputy Commissioner, under appropriate rules, was duly authorised to act on behalf of the Court of Wards.

Assuming that the conditions laid down in Act IV of 1870 should also be complied with, we think the respondents are not in a better position. Under s. 9 of the Court of Wards Act, the Court of Wards can grant a lease for a term extending to 10 years or for a period beyond the expiration of the ward's minority with the sanction of the Board of Revenue. Under s. 8 thereof, the Commissioner of Revenue of each division shall be the Court of Wards. Under s. 9, the Court of Wards is competent to manage estates and lands falling under its charge and one of the acts of management is to grant leases of lands. Under s. 13, when estates or lands of wards are situated within more than one district but within the same division, the Collector of each district shall exercise the duties of the Court of Wards with respect to the ward's property situate within his district. A combined reading of these provisions indicates that the Collector can grant a lease of a property situate within his district, for, the grant of a lease of lands in his management is certainly an act of management. That he can do so is also implicit under the provisions of s. 9, for, under that section a lease granted by the Collector acting for the Court of Wards is valid beyond the prohibited period if it was made with the sanction of the Board of Revenue. On a fair reading of the provisions of the Act we have come to the conclusion that the Collector could grant a lease in perpetuity with the sanction of the Board of Revenue.

The only question now is whether such a sanction was given by the Board of Revenue. The Kabuliat indicates ex facie that the lease was granted in perpetuity by the Deputy Commissioner on behalf of the Court of Wards. It is not disputed that the expressions "Deputy Commissioner" and "Collector" are synonymous. The same officer is called by both the names and he discharges the same functions. The land covered by the lease has been in possession and enjoyment of the lessee for about 80 years. The validity of the said grant was not questioned all these long years. Even in the plaint its validity was not challenged on the ground that the sanction of the Board of Revenue was not given. For the reasons mentioned by us in the context of Act V of 1859, in our view, this is a fit case where we can reasonably presume that when the lease was granted all the statutory requirements were complied with, that is to say the Board of revenue gave its sanction. For the aforesaid reasons we hold that the lease of 1873 was valid and binding on the plaintiff.

Now coming to C Schedule lands, the position is simple. It was concurrently held by the courts below that the C Schedule property was not the subject-matter of the lease. The title to the property, therefore, clearly vested in the plaintiff. It is also found by the lower courts that the said property is

a waste land in regard to which there can be no effective enjoyment. The High Court, therefore, rightly drew the presumption that possession followed title.

In this view the question of limitation raised by the appellant does not call for a decision, for in the case of the A schedule property the 2nd respondent loses on the question of title and in regard to the C Schedule property he will be presumed to be in possession. In either view, the question of limitation does not arise.

In the result, the appeal is partly allowed and the decree of the High Court is modified. The parties will pay and receive proportionate costs throughout.

Appeal allowed in part.

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