

Sonawati & Ors.

Vs

Sri Ram & Anr.

Civil Appeal No. 34 of 1965

(J. C. Shah, S. M. Sikri, J. M. Shelat JJ)

21.09.1967

JUDGMENT

SHAH, J. -

A piece of agricultural land bearing Survey Nos. 723/2, 724, 725 and 726 of Naugawan, tahsil Fatehabad, District Agra, originally belonged to two brothers Tota Ram and Lajja Ram. Tota Ram and Lajja Ram were declared to be bhumidhars in respect of that land and a Sanad was issued in their favour under s. 7 of the U.P. Act 10 of 1949. On October 20, 1951, Tota Ram and Lajja Ram sold their interest in the land to two brothers Sri Ram and Ram Prasad - who will hereinafter be called 'the plaintiffs'. Disputes arose thereafter about the possession of the land between one Pritam Singh and the plaintiffs, and proceedings under s. 145 of the Code of Criminal Procedure were started before the Sub-Divisional Magistrate at the instance of Pritam Singh. The Sub-Divisional Magistrate attached the land and called upon the parties to agitate the dispute as to their respective rights therein in a civil suit.

The plaintiffs then commenced an action in the Court of the Munsif, Fatehabad, against Pritam Singh and Tota Ram for a declaration of their rights as bhumidhars in possession of the land in suit and for an order "expunging" the name of Pritam Singh from the revenue records. Pritam Singh resisted the suit contending, inter alia, that the land was abandoned by Tota Ram and Lajja Ram and that since it was under his cultivation continuously since Fasli year 1356 (the year commencing from July 1, 1948 and ending on June 30, 1949) he had acquired the rights of an adhvasi in the land and he was not liable to be evicted from the same. The Munsif referred the following issue arising out of the pleadings to the Assistant Collector, Agra, for decision :

"Whether the defendant No. 1 (Pritam Singh) has acquired adhvasi rights, if so, its effect ?"

The Assistant Collector held that the revenue records did not show that Pritam Singh was in possession at any time in or before the end of 1359 Fasli and that the entries in the Khasra relied upon by Pritam Singh had been fabricated to support his case. Consistently with the finding of the Assistant Collector, the Munsif passed judgment in favour of the plaintiffs. But in appeal to the District Court, Agra, that judgment was reversed. The Appellate Judge held that the revenue entries were genuine entries posted by the Patwari in discharge of his duty and that Pritam Singh was in possession in the year 1356 Fasli and also in 1359 Fasli and he had acquired the rights of an adhvasi. The plaintiffs then carried the dispute to the High Court of Allahabad. The High Court reversed the decree passed by the First Appellate Court and restored the decree of the Munsif. With special leave, the heirs and legal representatives of Pritam Singh have appealed to this Court.

It was not the case of Pritam Singh that he has acquired title to the land by adverse possession. Pritam Singh relied merely upon the entries in khasra for 1356 Fasli and his claim of possession of the land in Fasli 1359, and upon statutory consequences arising from the entries under s. 20(b) of the U.P. Zamindari Abolition and Land Reforms Act 1 of 1951, and s. 3 of the U.P. Land Reforms (Supplementary) Act 31 of 1952. The U.P. Zamindari Abolition and Land Reforms Act 1 of 1951 was brought into force from July 1, 1952. By s. 20 certain rights were conferred upon persons whose names were recorded in the revenue records in respect of agricultural land. The material clause (b) of s. 20 on which reliance is placed reads as follows :

"20. Every person who -

#(a) . . . ##

(B) was recorded as occupant -

(i) of any land (other than grove land or lands to which section 16 applies) in the khasra or khatauni prepared under sections 28 and 33 respectively of the U.P. Land Revenue Act, 1901, or who was on the date immediately preceding the date of vesting entitled to regain possession thereof under clause (c) of sub-section (1) of section 27 of the United Provinces Tenancy (Amendment) Act, 1947, or

#(ii) . . . "##

The land in dispute is not grove land, nor it is land to which s. 16 of the Act applies. Pritam Singh claimed that his name was entered as an occupant in the khasra of 1356 Fasli prepared under the U.P. Land Revenue Act, 1901, and he was on that account entitled to the right of an adhvasi in respect of the land. It was held by this court in *Amba Prasad v. Abdul Noor Khan and Others* ([1964] 7 S.C.R. 800) that s. 20 U.P. Act 1 of 1951 does not require proof of actual possession : it eliminates inquires into disputed possession by accepting the record in the khasra or khatauni of 1356 Fasli or its correction before July 1, 1952. In view of that decision it must be held that the Civil Court in adjudging a claim of a person to the rights of an adhvasi is not called upon to make an enquiry whether the claimant was actually in possession of the land or held the right as an occupant : cases of fraud apart, the entry in the record alone is relevant.

But the entries on which reliance was placed by Pritam Singh do not support his case that he was recorded as an occupant in the khasra or khatauni of 1356 Fasli. In the certified extract of the khasra for 1356 Fasli (Ext. A/1) tendered in evidence by Pritam Singh in the column 'Name and caste of cultivator' the entry is "Tota Ram and others" and in the column for 'remarks' the entry is "Pritam Singh s/o. Pyarelal of Sankuri." Our attention has not been invited to any provision of the U. P. Tenancy Act or instruction issued by the Revenue authorities which tend to establish that the name of an occupant of land is liable to be entered in the column reserved for 'remarks'. In order that a person may be regarded as an adhvasi of a piece of land, s. 20(b) of Act 1 of 1951 requires that his name must be recorded in the khasra or khatauni for 1356 Fasli as an occupant. The Assistant Collector has pointed out that according to paragraph 87 of the Land Records Manual it is necessary for a Patwari to make an enquiry about the status of the occupant, and if he thinks that a claimant is an occupant, he should enter the name in red ink khasra as - "Kabiz, sajhi etc.". Admittedly Pritam Singh was not shown as Kabiz or sajhi nor the entry posted in red ink.

There is also strong evidence on the record which shows that the name of Pritam Singh was

surreptitiously entered in the khasra for 1356 Fasli. In the Khasra Barahsala i.e. consolidated khasra for 1347 to 1358 Fasli Tota Ram and Lajja Ram are shown as person cultivating the land and there is no record of the name of any sub-tenant on the land. Before the Assistant Collector two certified extracts of the khasra for 1356 Fasli in respect of the land in dispute were produced. In the certified extract Ext. A/1 tendered by Pritam Singh his name was shown in the 'remarks' column. In the certified extract tendered by the plaintiffs there was no such entry. The Assistant Collector did not call for the original record, nor did he attempt to probe into the circumstances in which the entry of Pritam Singh came to be made. He, however, observed that in Ext. A/1 the name of Pritam Singh was entered in the 'remarks' column against Survey No. 723/1 which had fallen in an earlier partition to the share of one Kunjilal and in respect of which Pritam Singh had never claimed any right. The First Appellate Court did not refer to these important pieces of evidence. His conclusion cannot be regarded as binding upon the High Court in Second Appeal.

It must therefore be held that relying upon the entry of his name in the 'remarks' column in the khasra for 1356 Fasli Pritam Singh could not claim that he had established his right as an adhvasi of the land under s. 20(b) of the U.P. Zamindari Abolition and Land Reforms Act 1 of 1951.

The alternative case under s. 3 of the U.P. Land Reforms (Supplementary) Act 31 of 1952 may now be considered. Section 3 of Act 31 of 1952 provides, insofar as it is material :

"(1) Every person who was in cultivatory possession of any land during the year 1359 fasli but is not a person who as a consequence of vesting under Section 4 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act 1 of 1951) (hereinafter referred to as the said Act), has become a bhumidhar, sirdar, adhvasi or asami under Sections 18 to 21 of the said Act shall be and is hereby declared to be, with effect from the appointed date -

(a) if the bhumidhar or sirdar of the land was, or where the land belongs jointly to two or more bhumidars or sirdar, all of them were, on the appointed date person or persons referred to in item (i) to (vi) of sub-section (2) of Section 10 of the said Act, an asami from year to year, or

(b) if the bhumidhar or sirdar was not such a person, an adhvasi,

and shall be entitled to all the rights and be subject to all the liabilities conferred or imposed upon an asami or an adhvasi, as the case may be, by or under the said Act.

Explanation - A person shall not be deemed to be in cultivatory possession of the land, if he was cultivating it as a mortgagee with possession or a thekedar, or he was merely assisting or participating with a bhumidhar, sirdar, adhvasi or asami concerned in the actual performance of agricultural operations."

The section appears to be somewhat involved in its phraseology. But its purport is fairly clear. A person who is not in consequence of the provisions of ss. 18 to 21 of the U.P. Act 1 of 1951 a bhumidhar, sirdar, adhvasi or asami but who is in "cultivatory possession" of land during 1359 Fasli shall be entitled to the rights in respect of that land of an asami from year to year if the bhumidhar or sirdar of the land was on the appointed date a person who is referred to in item (i) to (vi) of s. 10(2) of the U.P. Act 1 of 1951, and he shall be entitled to the rights of an adhvasi if the bhumidhar or sirdar of the land was not a person referred to in items (i) to (vi) of s. 10(2). The U.P. Act 31 of

1952 was enacted to grant protection to certain person who had been in "cultivatory possession" of land in the holdings of bhumidhars or sirdar, and had been or were being forcibly evicted from the land by the tenure holders. The language of the section clearly shows that it was intended to grant the right of an asami or adhivasi according as the case fell within cl. (a) or cl. (b) to a person who had been admitted to cultivatory possession and who was in such possession in 1359 Fasli.

Pritam Singh had no right to the land at all and the revenue record shows that till the end of 1358 Fasli i.e. till June 30, 1951, the land was not in his possession Pritam Singh is recorded in the khasra of 1359 Fasli in the column for shikmi (sub-tenant) as "without settlement of rent", and Tota Ram and Lajja Ram are entered as cultivators. In the khatauni for 1359 Fasli Pritam Singh is shown as "cultivator for one year, without settlement of rent." There are similar entries in the khasra and khatauni for 1361 Fasli, and in 1362 Fasli the names of the plaintiffs are entered in the column of cultivator, and the name of Pritam Singh is shown in the column for shikmi.

The scheme of s. 3 of the U.P. Land Reforms (Supplementary) Act, 1952 is different from the scheme of s. 20(b) of the U.P. Zamindari Abolition and Land Reforms Act 1 of 1951. Whereas under Act 1 of 1951 the entry is made evidence without further enquiry as to his right of the status of the person who is recorded as an occupant under s. 3 of the U.P. Land Reforms (Supplementary) Act, 1952, a person who claims the status of an asami or an adhivasi must establish that he was in "cultivatory possession" of the land during the year 1359 Fasli. The expression "cultivatory possession" is not defined in the Act, but the Explanation clearly implies that the claimant must have a lawful right to be in possession of the land, and must not belong to the classes specified in the explanation. "Cultivatory possession" to be recognized for the purpose of the Act must be lawful, and the whole year 1359 Fasli. A trespasser who has no right to be in possession by merely entering upon the land forcibly or surreptitiously cannot be said to be a person in "cultivatory possession" within the meaning of s. 3 of U.P. Act 31 of 1952. We are of the view that the Allahabad High Court was in holding in Ram Krishna v. Bhagwan Baksh Singh ([1961] A.L.J. 301) that a person who through force inducts himself over and into some land and succeeds in continuing his occupation over it cannot be said to be in cultivatory possession of that land so as to invest him with the rights of an asami or an adhivasi, and we are unable to agree with the subsequent judgment of a Full Bench of the Allahabad High Court in Nanhoo Mal v. Muloo and others (I.L.R. [1963] All. 751) that occupation by a wrongdoer without any right to the land is "cultivatory possession" within the meaning of s. 3 of the U.P. Act of 31 of 1952.

A person who has no right to occupy land may rely upon his occupation against a third person who has no better title, but he cannot set up that right against the owner of the land. It must be remembered that by s. 3 of U.P. Act 31 of 1952 the Legislature conferred right upon persons in possession of land against the tenure holders, and in the absence of any express provision, we are unable to hold that it was intended by the Act to put a premium upon forcible occupation of land by lawless citizens. We have no doubt therefore that by forcibly occupying the land after 1358 Fasli, Pritam Singh could not acquire as against the bhumidhar of the land rights of an adhivasi by virtue of s. 3 of U.P. Act 31 of 1952.

Counsel for the appellants contended that the finding recorded by the First Appellate Court that Pritam Singh was in "cultivatory possession" in 1359 Fasli was binding upon the High Court in Second Appeal. For reasons already set out, possession of a person in wrongful occupation cannot be deemed cultivatory possession. Again the Appellate Judge in arriving at his conclusion ignored very important evidence on the record, and on that account also the conclusion was not binding on the High Court. Pritam Singh's name was recorded in the khasra for the year 1359 Fasli as sub-

tenant "without settlement of rent." Pritam Singh did not offer to give evidence at any stage of the trial before the Assistant Collector, and it was not his case that he had entered into any contact of sub-tenancy with Tota Ram and Lajja Ram. The entry which records him as a sub-tenant of Tota Ram and Lajja Ram for the year 1359 Fasli is on his own case untrue. There is further no oral evidence in support of the case of Pritam Singh that he was in actual "cultivatory possession" of land and the entry relied upon by him does not support his case. To get the benefit of s. 3 of U.P. Act 31 of 1952, it had to be established that Pritam Singh was in actual cultivatory possession of the land and that fact is not established by direct evidence of possession, nor is it established by the entry relied upon by him. The conclusion of the learned Appellate Judge that Pritam Singh was in "cultivatory possession" was partially founded on the conclusion recorded by him that in 1356 Fasli Pritam Singh was in possession of the land. We have already pointed out that in so concluding he misread the khasra entry for 1356 Fasli and gave no effect to the khasra Barahsala which showed that Pritam Singh was not in possession of the land till the end of 1358 Fasli. The learned Judge also inferred that because it was stated by Sir Ram the first plaintiff and his witness Maharaj Singh that no crops were cultivated during the Kharif season and as the khasra for 1359 Fasli showed that Bajra was sown in one of the plots in 1359 Fasli and gram was raised in all the plots, Pritam Singh must have been in possession as a sub-tenant and must have cultivated the land in the Kharif season of 1359 Fasli. This was, in our judgment, a far-fetched inference. The Appellate Judge also did not refer to other evidence to which pointed attention was directed in support of his conclusion, by the Assistant Collector Agra : for instance, Banwari Lal, Naib Registrar examined on behalf of the plaintiffs had clearly stated that Pritam Singh was not in possession of the land prior to 1359 Fasli and that Tota Ram who was examined as a witness stated that Pritam Singh was not in possession of the land and he had not given the land to Pritam Singh on lease, and that he did not receive rent from Pritam Singh. We are unable, therefore, to hold that a conclusion arrived at only from an entry in the revenue records which does not prima facie support the case of Pritam Singh, that he wrongfully trespassed upon the land and cultivated it may be regarded as conclusive in Second Appeal. The High Court was, in our judgment, right in reaching the conclusion that Pritam Singh was not in "cultivatory possession" of the land in 1359 Fasli within the meaning of s. 3 of Act 31 of 1952.

Counsel for the appellants finally contended that the High Court was incompetent in this suit to grant a decree for possession of the land to the plaintiffs. Counsel submitted that a suit for possession, even against a trespasser, could lie only in the Revenue Court and not in the Civil Court, and the High Court by allowing amendment of the plaint in the Second Appeal before it could not assume to itself the jurisdiction which the Civil Courts do not possess. Our attention was not invited to any provision which enacts that even against a rank trespasser the Civil Court may not pass a decree, in favour of an owner of the land, in ejection in respect of agricultural land. But even assuming that the statute law in the State of U.P. warrants that submission, we think that the High Court had jurisdiction in the circumstances of the present case to allow amendment of the plaint and to grant a decree for possession. It may be recalled that the plaintiffs had originally filed a suit for a declaration of title and for injunction restraining Pritam Singh from interfering with their possession. The land was at the date of the suit under attachment by the order of the Magistrate, 1st Class, Agra in proceedings under s. 145 of the Code of Criminal Procedure, started by Pritam Singh, and the Magistrate had directed the parties to establish their possession or right to possession in a competent Civil Court. A suit for declaration and injunction in that state of affairs was properly filed. If the plaintiffs established their title to the land, they could claim an order from the Criminal Court for delivery of possession, and an injunction restraining Pritam Singh from interfering with their possession was an appropriate. But it appears that pursuant to the order of the First Appellate

Court Pritam Singh obtained possession from the Criminal Court and thereafter the plaintiffs amended the plaint with the leave of the High Court and a decree for possession was claimed. When the High Court held in favour of the plaintiffs and rejected the claim made by Pritam Singh, in our judgment, the High Court was justified, and indeed bound, to avoid giving a fresh lease of life to this litigation, to make an order consistently with the rights declared by it, since Pritam Singh had during the pendency of the suit managed to obtain possession of the land from the Court Officer who was in possession of the land. A party who is defeated on the merits of the dispute may not by securing an order from another Court during the pendency of a suit be permitted to displace the jurisdiction of the Civil Court to try the suit which was within its competence when the suit was filed.

The appeal therefore fails and is dismissed with costs.

G.C.

Appeal dismissed.

</html