Lallu Yeshwant Singh

Vs

Rao Jagdish Singh & Ors.

Civil Appeal No. 145 of 1965

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

09.11.1967

JUDGMENT

SIKRI, J. -

This appeal by special leave is directed against the judgment of the High Court of Madhya Bharat in Civil Miscellaneous Application No. 91 of 1955, read with Civil Miscellaneous Application No. 92 of 1955, filed under Art. 227 of the Constitution by Rao Jagdish Singh and others. By this judgment the High Court accepted the applications and quashed the decision of the Board of Revenue and dismissed the claim of Lallu Yeshwant Singh, son of Nahar Singh, now deceased, represented by Babu Singh, appellant before us. The relevant facts for appreciating the points arising in the appeal are as follows.

Yeshwant Singh and other sons of Lallu Nahar Singh, hereinafter referred to as the plaintiffs, filed a suit against Rao Jagdish Singh and 4 others (Revenue Case No. 24 of 2000 S. Y.) in the Court of Tahsildar, Pargana Pichhore, District Gwalior, for the possession of some agricultural land under s. 326 of Qanoon Mal. The plaintiffs' case, in brief, was that they were gairdakhilkar cultivators and that Rao Jagdish Singh, defendant No. 1, had forcibly prevented the plaintiffs from doing cultivation and got the disputed land cultivated by defendants Nos. 2 and 3, by interfering with the possession of the plaintiffs. The plaintiffs prayed that a decree for possession may be passed in their favour against all the defendants. The defendants' case, in brief, was that the village in which the land in dispute is situated is Ryotwari village and no suit could be instituted against Jagirdars under s. 326. The defendants further alleged that the plaintiffs had failed to pay revenue and their rights had been extinguished under s. 82 of Qanoon Ryotwari. The Tehsildar decreed the suit. The Collector on appeal upheld the order. The Commissioner on further appeal also upheld the order. On revision, the Board of Revenue agreed with the Commissioner and dismissed the revision.

On behalf of the appellant it is contended (1) that in a suit under s. 326 Qanoon Mal, read with s. 163, Qanoon Ryotwari, a plaintiff is entitled to recover possession if he is dispossessed from prior juridical possession, within six months of the suit, and the question of title is irrelevant in such a suit; and (2) that a landlord cannot forcibly enter and drive out the tenant whose tenancy is alleged to have been extinguished.

The relevant statutory provisions are as follows :

> "Qanoon Ryotwari
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> S. 82. The right of the pukhta Maurusi, Sakitul Milkiyat and Mamuli Maurusi will be

extinguished under the following circumstances;

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(3) When the Khatedar keeps in arrears the land revenue of his khata excepting the case where the collection of land revenue is ordered to be postponed;.....

S. 137. In case the land revenue for the whole year is not paid before one week of the date fixed for the last instalment the khatedar will be dealt with as follows :

1. By issue of process;

2. By arrest of the defaulter;

3. By attachment and sale of movable property;

4. By attachment and sale of immovable property;

5. By confiscation (Jupti) of the khata and ejectment of the defaulter;

6. By auctioning the khata;

Provided if the arrears are due against such khatedar who has been a good payer (khush-dehanda) and for some special reason for some years not by his own mischief but for reason beyond his control, the Suba (Collector) will be entitled to accept his instalments upto three years.

S. 163. Suits of trespass and obstruction between khatedars and between khatedars and other persons will be entertained in that Sega (Dept.) court and limitation which is described in Section 326 of Qanoon Mal Riyasat Gwalior Samvat 1983 and Section 326, 327, 328, 330, 331, 332, 333, 334 and 335 so far as they are applicable or appendices of the Qanoon Mal shall apply as may be applicable to the suits under Section 326 of the said Act.

Qanoon Mal

S. 325. If any person claiming to be in possession of any agricultural land desires his name to be entered in Revenue papers and papers of Patwari, then the Patwari, if in case of actual physical possession enter his name in accordance with procedure in Khasra and other papers and inform the Malguzar; in case of not being in possession, the cultivator not in possession shall have the right to file within three years of the date of dispossession a suit regular in Court of Tehsil on stamp paper, which may become payable on annual income of "Lagan" according to Scale in Schedule No. 4 prescribed.

S. 326. (1) Cases in respect of the return of possession which has been distributed unlawfully (Beja Tor Par) or for prevention of obstruction about agricultural lands, thrashing grounds, (Khaliyan) road, forest, grass-pastures, gardens, trees, wells, irrigation and tanks between Malguzars and cultivators or between cultivators will be entertained in the summary jurisdiction of the Pargana revenue Court or in the Tappa

courts within six (6) months and in case of proof of trespass or obstruction, possession and damages will be awarded against the defendant and if the court thinks fit it may also take bonds, quantum whereof will be decided in view of the nature of the trespass or obstruction.

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(3) Suits beyond this duration will be entertained as per Section 325 of the Qanoon Mal in the regular jurisdiction."

The Board of Revenue was of the view that in case land revenue remains in arrears, the right of a tenant gets extinguished under s. 82 of the Qanoon Ryotwari, but nevertheless the possession of the tenant whose right has been so extinguished is not put to an end automatically, and the tenant must be legally dispossessed. The Board observed :

"This is a general principle of law that no act can be done by the strength of one's own hands but help of the law should be taken and the procedure which is prescribed for that act must be acted upon. In this case the petitioner has not obeyed any law regarding the dispossession of the opponent after the plaintiff lost his right and he himself went there and took possession."

The Board was further of the view that action for dispossession should have been taken according to s. 137 of Qanoon Ryotwari, extracted above.

The High Court, however, came to the conclusion that it was not obligatory on the defendant to have filed a suit under s. 137 of Qanoon Ryotwari. The High Court felt that the proviso to s. 137, which enabled the Collector to accept arrears for three years, did not militate against such a construction. The High Court was also of the view that under the general law applicable to a lessor and a lessee there was no rule or principle which made it obligatory for the lessor to resort to Court and obtain an order for possession before he could eject the lessee. The High Court interpreted s. 163 of Qanoon Ryotwari to mean that in a proceeding under that section it is not sufficient to determine the question of de-facto possession alone but it is also necessary to enquire as to whether this possession is or is not wrongful.

It seems to us that on a true interpretation of the statutory provisions, extracted above, the Board of Revenue came to the correct conclusion. Under s. 82(3) Qanoon Ryotwari, the right 6 of a Khatedar is extinguished if the Khatedar keeps in arrears the land revenue of his khata but there is no automatic extinguishment of his right because s. 137 of Qanoon Ryotwari enables the Collector to accept the arrears if the Khatedar is a good payer (khush-dehanda) and there are special reasons beyond his control for not paying the land revenue. The existence of the proviso instead of assisting the landlord's contentions assists the tenant's case because if the reasoning of the High Court is accepted to be correct, the proviso would become a dead-letter for in every case where there are arrears of land revenue, the landlord would take possession forcibly without trying to recover land revenue under s. 137. Further, s. 163 of Qanoon Ryotwari clearly provides for suits of the nature described in s. 326 of Qanoon Mal. When we turn to s. 326, it is very similar to s. 9 of the Specific Relief Act, 1877 and it seems to us that the words "disturbed unlawfully" in s. 326 mean "disturbed not in due course of law." Otherwise, there is no reason why a shorter period of limitation and summary procedure is provided in s. 326 while s. 325 provides a longer period of three years for a

suit for possession.

Some stress was laid on the words "in case of proof of trespass" in s. 326 by the learned counsel for the respondent. According to him, a landlord does not commit trespass when he forcibly enters on land in the possession of a tenant whose tenancy has expired. In our view, in the context, the word "trespass" here would include forcible entry and dispossession by the landlord.

Reference was made to a number of English authorities in this behalf but it is not necessary to deal with them because the law in India on this subject is different, under s. 9 of the Specific Relief Act it is well-settled that question of title is irrelevant in a suit under that section. As the structure of s. 326 of Qanoon Mal, read with s. 163 of Qanoon Ryotwari, is similar to s. 9 of the Specific Relief Act, there is no reason why s. 326 should be interpreted differently.

In Midnapur Zamindary Company Limited v. Naresh Narayan Roy [51 I. A. 293 at 299], the Privy Council observed :

> "In India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a Court."

In K. K. Verma v. Naraindas C. Malkani [I. L. R. [1954] Bom. 950 at 957], Chagla C.J., stated that the law in India was essentially different from the law in England. He observed :

> "Under the Indian law the possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession after the termination of the tenancy his possession is juridical and that possession is protected by statute. Under s. 9 of the Specific Relief Act a tenant who has ceased to be a tenant may sue for possession against his landlord if the landlord deprives him of possession otherwise than in due course of law, but a trespasser who has been thrown out of possession cannot go to Court under s. 9 and claim possession against the true owner."

In Yar Mohammad v. Lakshmi Das [I.L.R. [1958] 2 All. 394 at 404], the Full Bench of the Allahabad High Court observed :

> "No question of title either of the plaintiff or of the defendant can be raised or gone into in that case (under s. 9 of the Specific Relief Act). The plaintiff will be entitled to succeed without proving any title on which he can fall back upon and the defendant cannot succeed even though he may be in a position to establish the best of all titles. The restoration of possession in such a suit is, however, always subject to a regular title suit and the person who has the real title or even the better title cannot, therefore, be prejudiced in any way by a decree in such a suit. It will always be open to him to establish his title in a regular suit and to recover back possession."

The High Court further observed :

> "Law respects possession even if there is no title to support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a court. No person can be allowed to become a judge in his own cause. As observed by Edge, C.J., in Wali Ahmed Khan v. Avodhya Kundu [[1891] I.L.R. 13 All. 537-556] :

> "The object of the section was to drive the person who wanted to eject a person into the proper court and to prevent them from going with a high hand and ejecting such persons."

Our attention was invited to the decision of the Calcutta High Court in State of West Bengal v. Birendra Nath Basunia [A.I.R. 1955 Cal. 601]. In that case the High Court refused to issue an order under Art. 226 of the Constitution prohibiting the Government from forcibly taking possession of lands which had been validly resumed by Government. We are not concerned with that question here. But we do not agree with the conclusion of the High Court that a lessor is entitled in India to use force to throw out his lessee.

In Hillaya Subbaya Hegde v. Narayanappa Timmaya [(1911) 13 B.L.R. 1200] it was observed :

> "No doubt, the true owner of property is entitled to retain possession, even though he has obtained it from a trespasser by force or other unlawful means : Lillu bin Raghushet v. Annaji Parashram [[1881] I.L.R. 5 Bom. 387-391] and Bandu v. Naba [[1890] I.L.R. 15 Bom. 238]."

We are unable to appreciate how this decision assists the respondent. It was not a suit under s. 9 of the Specific Relief Act. In Lillu bin Raghushet v. Annaji Parashram [[1881] I.L.R. 5 Bom. 387-391], it was recognised that "if there is a breach of the peace in attempting to take possession, that affords a ground for criminal prosecution, and, if the attempt is successful, for a summary suit also for a restoration to possession under Section 9 of the Specific Relief Act I of 1877 - Dadabhai Narsidas v. The Sub-Collector of Broach". [7 Bom. H.C. Rep. 82 A.C.J.] In Bandu v. Naba [[1890] I.L.R. 15 Bom. 238] it was observed by Sargent, C.J., as follows :

> "The Indian Legislature has, however, provided for the summary removal of any one who dispossesses another, whether peaceably or otherwise than by due course of law; but subject to such provision there is no reason for holding that the rightful owner so dispossessing the other is a trespasser, and may not rely for the support of his possession on the title vested in him, as he clearly may do by English law. This would also appear to be the view taken by West, J., in Lillu v. Annaji [[1881] I.L.R. 5 Bom. 387-391]."

In our opinion, the law on this point has been correctly stated by the Privy Council, by Chagla, C.J., and by the Full Bench of the Allahabad High Court, in the cases cited above.

For the aforesaid reasons we hold that the High Court erred in quashing the order of the Board of Revenue. The appeal is accordingly allowed with costs, judgment of the High Court set aside and the order of the Board of Revenue restored.

Appeal allowed.

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