Gram Sabha, Besahani

Vs

Ram Raj Singh & Ors

Civil Appeal No. 719 of 1966

(J. C. Shah, V. Ramaswami – I, V. Bhargava JJ)

31.01.1968

JUDGMENT

BHARGAVA, J. –

The plaintiffs/respondents filed a suit No. 25 of 1957 under section 209 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (No. I of 1951) (hereinafter referred to as 'the act'), claiming possession of five plots Nos. 729/2, 725/2, 723/2, 881/2 and 330/3 on the ground that they were Sirdars of plot No. 330/3 and Bhumidars of the remaining plots. The main allegation was that the Chairman of the Gram Samaj of the village, in which the plots were situated, had, for certain reasons, filed an application before the Sub-divisional Officer under section 212A of the Act for dispossession of the plaintiffs/respondents on the ground that these lands were of public utility and they vested in the Gram Samaj. The Sub-Divisional Officer, purporting to act under s. 212A of the Act, passed an order for dispossession of the plaintiffs/respondents and granted possession of the lands to the appellant, Gram Sabha, Besahani. That order purporting to be under s. 212A of the Act was challenged as invalid and, on that basis, possession was claimed from the appellant under s. 209 of the Act, alleging that the possession of the appellant was without any legal right. The suit was defended on behalf of the appellant on various grounds as a result of which the following ten issues were framed by the trial Court :-

> "Issue No. 1 : Whether the plaintiffs have right to file the present suit ?
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> 2 : Whether plaintiffs are Bhumidars of the plots in suit except plot No. 330/3 ? If so, its effect ?
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> 3 : Whether plaintiffs are Sirdars of plot No. 330/3 in suit ?
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> 4 : whether plaintiffs are entitled to recovery of possession over the plots in suit ?
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> 5 : Whether the disputed plots are land of public utility and they vest in Gaon Samaj ? If so, its effect ?
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> 6 : Whether the suit is barred by s. 23, C.P.C. ?
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> 7 : Whether the suit is barred by section 11, C.P.C. ?
>
> 8 : whether the disputed plots are culturable land ? If so, its effect ?
>
> 9 : Whether the Court has jurisdiction to the case ?

10 : whether the suit is within time ?"

Of these issues, issue No. 2 was triable exclusively by the Civil Court and, consequently, the Revenue Court, which was seized of the suit, referred this issue to the Civil Court for a finding. This issue No. 2 arose because of two pleadings put forward on behalf of the appellant. One was that the plaintiffs/respondents had never acquired Bhumidari rights, and the other was that even if it be held that they did possess any Bhumidari rights, those rights were extinguished when the respondents were dispossessed in pursuance of the order of the Sub-Divisional Officer under s. 212A of the Act and no suit within six months was instituted by the respondents in accordance with s. 212A(7) of the Act. The Civil Court, without going into the question whether the respondents had ever acquired Bhumidari rights, decided this issue only on the limited ground that the Bhumidari rights of the respondents had been extinguished as a result of the order under s. 212A of the Act. On receipt of this finding from the Civil Court, the Revenue Court proceeded to record its own finding on issue No. 3 in respect of plot No. 330/3 which was the only plot in which the respondents had claimed rights as Sirdars. On this issue, the Revenue Court went into the first question only raised on behalf of the appellant and held that it was not proved that the respondents had ever been admitted to tenancy of this plot of land, so that they never became Sirdars of this land. On this view, the Revenue Court considered it unnecessary to enter into the question whether the Sirdari rights acquired, if any, had been extinguished as a result of the order under s. 212A of the Act. In view of these findings no decision was recorded on issues Nos. 5-10, and the suit was dismissed. That order was upheld by the first appellate Court. The respondents then filed a second appeal in the Allahabad High Court. The High Court held that the order purporting to be under s. 212A of the Act was not valid, because it did not direct payment of compensation as required by s. 212A(6) of the Act, so that the rights as Sirdars and Bhumidars were not lost by the respondents. On this view, the High Court set aside the dismissal of the Suit by the lower Courts and decreed the suit of the respondents. The appellant has now come up to this Court against this judgment by special leave.

Two points have been raised in this appeal on behalf of the appellant before us. The first point is that the High Court was wrong in holding that the order passed under s. 212A of the Act by the Sub-Divisional Officer was not valid, and on that basis decreeing the suit which was clearly time-barred, as it was not instituted within six months of the order of ejectment passed by the Sub-Divisional Officer under s. 212A(6) of the Act. This ground raised in the appeal has to be rejected, as we are of the opinion that the High Court was perfectly correct in holding that the order of the Sub-Divisional Officer under s. 212A of the Act was not valid and, consequently, the provisions of s. 212A(7) of the Act were never attracted to the present dispute. Section 212A(6) & (7) are as follows :-

> "212A. (6) Where upon the said hearing the Collector is satisfied that the person was admitted as a tenure-holder or grove-holder of land referred to in Section 212 or being an intermediary brought such land under his own cultivation or planted a grove thereon on or after the eighth day of August, 1946, he shall pass an order of ejectment of the person from the land on payment of such compensation as may be prescribed.
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> (7) Where an order of ejectment has been passed under this section, the party against whom the order has been passed may institute a suit to establish the right claimed by it but subject to the results of such suit the order passed under sub-section (4) or (6) shall be conclusive."

The language of s. 212A(6) makes it clear that the order under that provision must be an order for

ejectment of the person in possession of the land on payment of such compensation as may be prescribed. This means that an order under that provision must first direct payment of compensation to the person in possession and the direction for ejectment of the person in possession must be made effective only thereafter, i.e. after the compensation has been paid. The order to be made under this provision of law must, therefore, contain as a condition precedent to ejectment the payment of compensation. If no payment of compensation is ordered, the order made would not be an order under this provision of law. In the present case, admittedly no compensation was ordered to be paid in the order purporting to have been passed under s. 212A(6) of the Act, so that that order cannot be treated as an order under this provision of law. The order not being under this provision, the dispossession of the plaintiffs/respondents in pursuance of that order was clearly illegal and the plaintiffs/respondents had the right to institute the suit for obtaining possession under s. 209 of the Act.

It is true that, in accordance with Entry at Sl. No. 32B of Appendix III read with Rule 338 of the U. P. Zamindari Abolition and Land Reforms Rules, 1952 (hereinafter referred to as "the Rules"), a suit to establish a right claimed in accordance with s. 212A(7) of the Act has to be instituted within six months. In pursuance of that right claimed, possession can also be claimed; and, if the suit for establishing the right fails, the right to obtain possession would also became time-barred. Consequently, under s. 189(c) of the Act, the person concerned, who fails to institute the suit within this period of limitation in accordance with s. 212A(7) of the Act, would have his interest in the land extinguished. This provision, however, will only apply to cases where a valid order has been made under s. 212A of the Act and the person concerned has been dispossessed in pursuance of such on order. In the present case, we have held that the order, in pursuance of which the respondents were dispossessed, was not a valid order under s. 212A(6) of the Act and cannot be held to be an order under that provision of law, so that the respondents in this case must be deemed to have been deprived of possession otherwise than in accordance with law. In such a case, a suit clearly lay against the appellant under s. 209 of the Act and such a suit could be instituted within six years from the date that unlawful possession was taken by the appellant in accordance with Entry at Sl. No. 30 of Appendix III read whit Rs. 338 of the Rules. The present suit was admittedly brought within this period of limitation and was, therefore, not time-barred. The High Court was therefore, right in holding that the claim of the plaintiffs/respondents could not be defeated on this ground.

The second point urged on behalf of the appellant, however, appears to us to have great force and must be accepted. It was urged that, so far as plot No. 330/3 is concerned, there was a finding of fact recorded by the trial Court, which was upheld by the first appellate Court, that the plaintiffs/respondents never acquired any tenancy or Sirdari rights in this land, so that, irrespective of the validity of the order under s. 212A(6) of the Act, the plaintiffs/respondents' suit for possession of this plot had to be dismissed. The High Court, in decreeing the suit, clearly ignored this aspect. The dismissal of the suit by the trial Court which was upheld by the first appellate Court in respect of this plot No. 330/3 was, therefore, not liable to be set aside even on the view taken by the High Court and to that extent it has to be upheld.

With regard to the remaining four plots in which the respondents were claiming Bhumidari rights the error committed by the High Court is that on the finding recorded by that Court there should have been an order of remand to determine other questions raised in the suit in respect of those plots. One of the questions raised, which formed part of issue No. 2 and was never decided by the Civil Court to which that issue was referred, was that the respondents had never acquired Bhumidari rights at all in these plots. That question should have been remitted for a fresh decision when the High Court held that the Civil Court was wrong in holding that the Bhumidari rights, if possessed

by the respondents in these plots, had been extinguished under s. 189 of the Act in view of the failure of the respondents to institute the suit within the period of limitation applicable to a suit under s. 212A(7) of the Act. Further, in respect of these plots, other issues which were not decided by the Revenue Court also required decision before the suit in respect of them could be completely disposed of. Consequently, it is now necessary to remand the suit to the trial Court for a fresh trial for the purposes indicated above.

As a result, the appeal is allowed and the decree passed by the High Court is set aside. The suit of the plaintiffs/respondents will stand dismissed in respect of plot No. 330/3, while it will go back to the trial Court for a fresh decision in respect of the remaining four plots in the light of our decision that, in case the respondents had acquired Bhumidari rights, they were not extinguished by any order under section 212A of the Act. Parties will be given an opportunity to give evidence on the question of acquisition of Bhumidari rights by the plaintiffs/respondents and on other issues which have not been decided so far. Costs of this appeal shall abide the result of the suit.

Appeal allowed.

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