

Hatti

Vs

Sunder Singh

Civil Appeal No. 1228 of 1966

(S. M. Sikri, V. Bhargava JJ)

11.09.1970

JUDGMENT

BHARGAVA, J. -

1. The appellant Hatti was declared a Bhumidar of some land belonging to the respondent, Sunder Singh, under Section 13 of the Delhi Land Reforms Act No. 8 of 1954 (hereinafter referred to as "the Act"). The respondent then brought a suit in the Civil Court claiming three reliefs. The first relief claimed was for a declaration that the declaration of Bhumidari issued in the name of the appellant with respect to the land in dispute was wrong, illegal, without jurisdiction, ultra vires, void and ineffective against the respondent. The second relief was that the respondent be declared entitled to Bhumidari rights under Section 11 of the Act; and the third relief was for possession of the land. The suit was brought on the allegation that the respondent was the owner of the land, while the appellant had no rights in it. The land along with some other land was on Mustrajri with one Sultan Singh for a period of 20 years ending in June, 1952 and the appellant had been admitted as a tenant-at-will by the Mustrajar. On the expiry of the period of 20 years in June, 1952, the Mustrajri stood terminated and the original Mustrajar's heirs left the land. The appellant, however, continued in possession, but, since he was a tenant-at-will of the Mustrajar, he had no rights in the land after the expiry of the Mustrajri. He was asked to surrender possession, but failed to do so. On the other hand, he was wrongly granted the declaration under Section 13 of the Act that he was a Bhumidar when he had no rights as tenant in the land at all. The main defence taken on behalf of the appellant was that he was a non-occupancy tenant and he was entitled to the declaration of his Bhumidari rights. Apart from the issues on merits, one issue was raised by the appellant that the Civil Court had no jurisdiction to entertain the suit in view of the provisions of Section 185 of the Act. The Trial Court held that the jurisdiction of the Civil Court was not barred. On merits, the finding recorded was that the respondent was the proprietor of the land, but no declaration could be granted that he became Bhumidar under Section 11 of the Act, as that relief could only be granted by the revenue authorities under the Act. It was held that he was, however, entitled to possession in exercise of his right as proprietor, so that a decree for possession was granted in his favour. That decree for possession was granted in his favour. That decree was upheld, in appeal, by the District Judge and, in second appeal, by a learned single judge of the High Court of Punjab. The Letters Patent appeal before the Division Bench was also dismissed, so that the appellant has now come up to this Court in this appeal by special leave.

2. The only point that was argued before the Division Bench in the Letters Patent appeal was that the Civil Court had no jurisdiction to entertain the suit, so that, in this appeal, we are also concerned with this issue alone. Section 185(1) of the Act, on which reliance has been placed for urging that the Civil Court has no jurisdiction, is as follows :

"185. (1) Except as provided by or under this Act, no court other than a court mentioned in Column 7 of Schedule I shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, take cognizance of any suit, application, or proceedings mentioned in Column 3 thereof."

The relevant entries in the First Schedule, which require consideration, are Numbers, 4, 19 and 28. Item 4 mentions applications for declaration of Bhumidari rights in Column 3 and, inter alia, refers to Sections 11 and 13 of the Act. For these applications, there is no period of limitation prescribed at all, and the Court of original jurisdiction is that of the Revenue Assistant. Item 19 refers to Section 84 of the Act, and relates to suit for ejectment of a person occupying land without title and for damages. The three sub-clauses mention that the suit can be instituted (i) by a Bhumidar declared under Chapter III of the Act or by an Asami falling under Section 6 of the Act where such unlawful occupant was in possession of the land before the issue of the prescribed declaration form; (ii) by a Gaon Sabha where the unlawful occupant was in possession of the land before the constitution of Gaon Panchayat and (iii) by a Bhumidar, Asami or Gaon Sabha in any other case. The period of limitation is three years, in the first case, from the date of issue of the prescribed declaration form; in the second case, from the date of constitution of Gaon Panchayat under Section 151; and, in the third case from the 1st of July following the date of occupation. The Court of original jurisdiction in each case is that of the Revenue Assistant. Item 28 refers to Section 104 and relates to declaratory suit under that section. No period of limitation is prescribed for such a suit, and the Court of original jurisdiction is again the Revenue Assistant. The plea put forward on behalf of the appellant was that this suit, which was instituted by the respondent, covered only those reliefs which could be granted by the Revenue Assistant under the three Items Nos. 4, 19 and 28 of the First Schedule to the Act mentioned above, so that, by virtue of Section 185 of the Act, the jurisdiction of the Civil Court was barred. The High Court has taken the view that the suit really is in the nature of a title suit and such a title suit is not covered by these items, so that the jurisdiction of the Civil Court was not barred. It is this view of the High Court that has been challenged before us in this appeal.

3. Learned counsel appearing for the appellant took us through the various provisions of the Act to show that the Act is a complete Code which lays down the rights that any person can possess in agricultural land in the area to which the Act applies, and the remedies that can be sought in respect of such land for obtaining declaration of their rights or any other declaration for possession. The Act abolished the ownership of agricultural land by the previous proprietors. This was affected by first laying down in Sections 11 and 13 that proprietors will become Bhumidars in respect of their lands which were their Khudkasht or Sir, while tenants would become belonging to several classes, which included non-occupancy tenants of proprietor's grove and sub-tenants of tenant's grove, and non-occupancy tenants of pasture land, or of land covered by water, and some other classes, shall become Asamis. "Holding" was defined in Section 3(11-A) of the Act by stating that it means:-

(a) in respect of -

(i) Bhumidar or Asami; or

(ii) tenant or sub-tenant under the Punjab Tenancy Act, 1887, or the Agra Tenancy Act, 1901; or

(iii) lessee under the Bhoodan Yagna Act, 1955, a parcel or parcels of land held under one tenure, lease, engagement or grant; and

(b) in respect of proprietors, a parcel or parcels of land held as Sir or Khudkasht.

The effect of Sections 6 and 13 was that, thereafter, tenants and sub-tenants are lessees under the Bhoodan Yagna Act, 1955, ceased to continue as such, and either became Bhumidars or Asamis in respect of their holdings. Similarly, under Section 11, proprietors in respect of their Sir and Khudkasht land became Bhumidars. These sections have to be read in conjunction with Section 154 of the Act of which the relevant portion is quoted below :

"154. On the commencement of this Act -

(i) all lands whether cultivable or otherwise, except land for the time being comprised in any holding or grove,

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situate in a Gaon Sabha area, shall vest in the Gaon Sabha :

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Sections 6, 11, 13 and 154 of the Act read together, thus, show that, after the Act came into force, proprietors of agricultural land as such ceased to exist. If any land was part of a holding of a proprietor, he became a Bhumidar of it. If it was part of a holding of some other person, such as a tenant or a sub-tenant etc., he became either a Bhumidar or an Asami, whereupon the rights of the proprietor in that land ceased. Lands, which were not holdings of either the proprietor or any other person, vested in the Gaon Sabha. In the case of proprietors, their rights in the land continued to exist only in respect of holdings which, under the definition, must have been either their Sir or Khudkasht at the commencement of the Act. If it was not Sir or Khudkasht of a proprietor, it would not be his holding and, consequently, such land would vest in the Gaon Sabha under Section 154, the result of which would be that the rights of the proprietor would be extinguished. It appears that it was in view of this scheme of the Act that, under Section 84, the right to institute a suit for possession was granted only to a Bhumidar, or an Asami, or the Gaon Sabha. The Act envisaged only these three classes of persons who would possess rights in agricultural land after the commencement of the Act. Proprietors as such having ceased to exist could not, therefore, institute a suit for possession. This aspect of the case has been lost sight of by the High Court and the lower courts, because it appears that their attention was not drawn to the provisions of Section 154 of the Act, under which all lands of proprietors, other than those comprised in their holdings, vested in the Gaon Sabha, thus extinguishing their proprietary rights.

4. A second aspect that needs examination relates to the provisions of the Act for declaration of Bhumidari rights. Sections 11 and 13 grant power to the Deputy Commissioner to declare proprietors in respect of their holdings and certain classes of tenants in respect of their holdings as Bhumidars. The procedure to be adopted for issuing the declaration forms was laid down in the Delhi Land Reforms Rules, 1954 (hereinafter referred to as "the Rules") made by the Chief Commissioner of Delhi in exercise of the powers conferred by Sections 9, 105, 149, 162, 180 and 191 of the Act. The relevant Rules are 6 to 8. These Rules envisaged preparation of declaration forms by the revenue authorities without any application from any party. The declaration forms are based on the entries in the revenue records and, having been prepared on their basis, the declaration forms are issued to the persons who, under the forms, are held to be entitled to be declared as Bhumidars. These Rules, thus, do not envisage any application under Section 11 or Section 13 at

this early stage. Rule 8(4) lays down that anyone, who challenges the correctness of entries in the forms of declaration, shall, except where it refers to a clerical omission or error, be directed by the Revenue Assistant to file a regular suit within two months of the date of issue. Obviously, this sub-rule has to be interpreted in conformity with Section 185 and Item 4 of the First Schedule to the Act, so that the scope of this sub-rule must be confined to institution of suits in respect of matters not covered by Item 4 of the First Schedule. This sub-rule would not stand in the way of an application being made by any person claiming to be Bhumidar under Item 4 of the First Schedule.

5. The Rules were examined by Khanna, J., in *Lal Singh v. Sardara and Another* (ILR (1964) Vol. 17(2) pb., 428) and, in our opinion, he rightly held that a persual of the Rules goes to show that there is no provision for giving notice to different interested parties before a declaration of Bhumidari rights is made and the whole thing is done in more or less a mechanical way. That being the position, it becomes obvious that an application for declaration of a Bhumidari right under Item 4 of Schedule I of the Act is intended to be made even in cases where a declaration may have been previously granted under Section 11 or Section 13 in accordance with the Rules. The scheme of the Act appears to be that, initially, a declaration of Bhumidari right can be granted under Section 11 or Section 13 without calling for objections and without hearing contesting parties in favour of the person who appears to the revenue authorities to be entitled to the declaration on the basis of the records maintained by them. Thereafter, any person aggrieved and claiming Bhumidari rights is expected to move an application before the Revenue Assistant who is to adjudicate upon the rights after following the usual judicial procedure. The order made by the Revenue Assistant in such a proceeding will then have to be given effect to and would over-ride the declarations earlier issued in accordance with the Rules. This shows that any person, who is aggrieved by a declaration of Bhumidari right issued in favour of another person, can appropriately seek his remedy by moving an application before the Revenue Assistant under Item 4 of the First Schedule, whereupon, if he succeeds, he will obtain a declaration that he is the Bhumidar. Such a declaration will automatically supersede the declaration issued by the authorities in accordance with the Rules without any adjudication of rights and without notice to interested parties.

6. Khanna, J., in the case of *Lal Singh v. Sardara and Another* (supra) correctly interpreted the scope and purpose of the Rules under which forms of declaration of Bhumidari rights are issued, but, in our opinion, incorrectly inferred that, since there is effectual adjudication of rights by the revenue authorities while declaring Bhumidari rights, their declaration must be subject to the due adjudication of rights which, in the absence of anything to the contrary, can only be by a Civil Court. It is true that the declaration made by the revenue authorities without going through the judicial procedure are subject to due adjudication of rights; but such adjudication must be by an application under Item 4 of Schedule I and not by approach to the Civil Court. The jurisdiction of the Civil Court is clearly barred by Section 185 of the Act read with the various items of the First Schedule mentioned above. If a Bhumidar seeks a declaration of his right, he has to approach the Revenue Assistant by an application under Item 4, while, if a Gaon Sabha wants a clarification in respect of any person claiming to be entitled to any right in any land, it can institute a suit for a declaration under Item 28 and the Revenue Assistant can make a declaration of the right of such person. So far as suits for possession are concerned, we have already held earlier that Section 84, read with Item 19 of the First Schedule gives the jurisdiction to the Revenue Assistant to grant decree for possession, and that the suit for possession in respect of agricultural land, after the commencement of the Act, can only be instituted either by a Bhumidar or an Asami or the Gaon Sabha. There can be no suit by any person claiming to be a proprietor, because the Act does not envisage a proprietor as such continuing to have right after the commencement of the Act. The First Schedule and Section 84 of the Act provide full remedy for suit for possession to persons who can

hold rights in agricultural land under the Act.

7. The High Court, in this connection, referred to Section 186 of the Act under which any question raised regarding the title of any party to the land, which is the subject-matter of a suit or proceeding under the First Schedule, has to be referred by the Revenue Court to the competent Civil Court for decision after framing an issue on that question. Inference was sought to be drawn from this provision that questions of title could be competently agitated by a suit in the Civil Court, as the jurisdiction of the Civil Court was not barred. It appears to us that there is no justification for drawing such an inference. On the contrary, Section 186 envisages that questions of title will arise before the Revenue Courts in suits or proceedings under the First Schedule and, only if such a question arises in a competent proceeding pending in a Revenue Court, an issue will be framed and referred to the Civil Court. Such a provision does not give jurisdiction to the Civil Court to entertain the suit itself on a question of title. The jurisdiction of the Civil Court is limited to deciding the issue of title referred to it by the Revenue Court. This clearly implies that, if a question of title is raised in an application for declaration of Bhumidari rights under Item 4 of Schedule I of the Act, that question will then be referred by the Revenue Assistant to the Civil Court; but a party wanting to raise such a question of title in order to claim Bhumidari right cannot directly approach the Civil Court. The Act is a complete Code under which it is clear that any one, wanting a declaration of his right as a Bhumidar, or aggrieved by a declaration issued without notice to him in favour of another, can approach the Revenue Assistant under Item 4 of the First Schedule and this he is allowed to do without any period of limitation, because he may not be aware of the fact that a declaration has been issued in respect of his holding in favour of another. A declaration by a Gaon Sabha of the right of any person can also be sought without any period of limitation. If there is dispute as to possession of agricultural land, the remedy has to be sought under Section 84, read with Item 19 of the First Schedule. All the reliefs claimed by the respondent in the present suit were, thus, within the competent jurisdiction of the Revenue Assistant, and the Civil Court had no jurisdiction to entertain the suit.

8. In the result, the appeal is allowed, the decree passed by the High court is set aside and the suit of the respondent is dismissed. The appellant will be entitled to his costs in this Court, while costs in other Courts will be borne by the parties themselves.

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