

Ramdass and Another

Vs

Dy. Director of Consolidation and Others

Civil Appeal No. 1190 of 1970

(CJI J. C. Shah, S. K. Hegde, A. N. Grover JJ)

07.01.1971

JUDGMENT

GROVER, J. -

1. This is an appeal from a judgment of the Allahabad High Court dismissing a writ petition which had been filed by the appellants. The facts lie in a narrow compass. The appellants were recorded as Sir Khudkasht holders of the plots in dispute. Respondents 4 to 6 were entered as sub-tenants in respect of those plots in the year 1356 Fasli. The appellants filed a suit for a declaration that the respondents were Adhivasis. The suit was decreed ex parte. The ex parte order, however, was set aside upon the application of the respondents. The suit was subsequently withdrawn with liberty to file a fresh suit. It appears that in 1960 three suits were filed. The principal allegation in the suits was that the entry in the revenue records on the basis of which the respondents claimed Adhivasi rights was fictitious. The parties then entered into a compromise in which it was admitted by the respondents that the appellants were Bhoomidars and that the respondents had no interest in the disputed property. It was also admitted that the entry in the revenue records in favour of the respondents was fictitious. The suits were consequently decreed. Subsequently the respondents applied for setting aside the decrees on the ground that they had been obtained fraudulently. These applications were pending when proceedings commenced for the consolidation of holdings under the U. P. Consolidation of Holdings Act, 1953, hereinafter called the "Act". The consolidation authorities held that the suits under Section 229(c) of the U.P. Zamindari Abolition and Land Reforms Act, 1951, hereinafter called the "Zamindar Act" were not maintainable because on the date on which the suits were filed the respondents had become Sirdars. In the alternative it was held that the admission of the respondents that they were not Adhivasis could not operate against the statute inasmuch as Section 20(b) of the aforesaid Act provided that a person recorded as an occupant in the year 1356 Fasli would become an Adhivasi. The appellants filed a petition under Article 226 of the Constitution challenging the orders made by the consolidation authorities.

2. A learned single Judge of the High Court following a Bench decision of Desai and Baig, JJ. in *Hukam Singh and Others v. Board of Revenue, U.P. and Others* (W.P. No. 508 of 1956, decided on 1-5-1957.) held that even if any entry was fictitious it would be ignored for the purpose of applying Section 20(b) of the Zamindari Act. The only conclusion possible, therefore, was that the respondents, who were recorded as occupants in Khasras and Khataunis of 1356 Fasli, became Adhivasis of the disputed land. If they were Adhivasis then the land was held in that capacity and on October 30, 1954 the appellants ceased to be Bhoomidars by reason of Section 240(a) of the Zamindari Act. The appeal against the judgment of the learned single Judge to a Division Bench was dismissed in limine.

3. The appeal must succeed on the short ground that the view of the Allahabad High Court mentioned above is not longer good law. In *Sonavati and Others v. Sri Ram and Another* ((1968) 1 SCR 617 : AIR 1968 SC 466 : (1968) 2 SCJ 225.) this Court had occasion to deal with the scope and ambit of Section 20(b) of the Act. According to this decision the entry in the record alone is relevant for the purpose of the aforesaid statutory provision but an exception appears to have been made in a case where the name has been entered surreptitiously or fraudulently. In other words if there was evidence which showed that the entry was fictitious the person whose name was entered on the record on the material date could not claim the right of an Adhivasi. Following that decision the judgment of the High Court must be set aside.

4. An objection was raised on behalf of the contesting respondents that all the legal representatives of Sheo Tahal, who had been impleaded as a respondent but who had died, had not been impleaded. A Civil Miscellaneous Petition, dated April 20, 1970, was filed by the appellants saying that two of the daughters of Sheo Tahal, namely, Smt. Biafi and Smt. Maini who were living in the village where he died had already been impleaded as the legal representatives of the deceased but that Smt. Parmeshwari, the third daughter was living elsewhere and information was not available in time about her and therefore she could not be impleaded earlier. It was prayed that she might be added as a party. When two of the legal representatives of the deceased were already on the record the name of the third legal representative could certainly be brought on the record. In our opinion the appeal could not be dismissed as having abated for Smt. Parmeshwari not having been impleaded in time.

5. In the result the appeal is allowed and the judgment of the High Court is hereby reversed. The matter shall go back to the High Court for a fresh decision in accordance with law. Costs shall abide the event.

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