

Bhubaneshwar Prasad Narain Singh and Others

Vs

Sidheswar Mukherjee and Others

Civil Appeal No. 2588 of 1966

(G. K. Mitter, A. N. Ray JJ)

02.02.1971

JUDGMENT

MITTER, J. -

1. The only question involved in this appeal is, whether the direction of the High Court that the partition suit launched in 1943 should be allowed to proceed in view of the provisions of Section 6 of the Bihar Land Reforms Act, 1950, which came into force on 25th September, 1950, is correct.
2. The suit had a chequered career. It was instituted against a number of persons the main relief asked for being partition of four annas Milkiat interest in Touzi No. 702, Tappa Haveli, Pargana Maheshi, District Champaran, Bihar. The Subordinate Judge of Motihari made a preliminary decree for partition declaring the first respondent's share in the property as claimed by him. The High Court in appeal modified the decree reducing the plaintiff's share to Re. 0-1-4 interest only. In further appeal to this Court the Trial Court's preliminary decree was upheld on October 5, 1953. In the meanwhile the Bihar Land Reforms Act of 1950 effecting far-reaching changes in the incidents of land tenure and land holdings had been passed. The first appellant made an application to the Trial Court in June 1958 praying that the proceedings for final decree be treated as having abated in view of the vesting of all estates in land in the State of Bihar. This was accepted by the Subordinate Judge by an order, dated July 12, 1958. The High Court allowed the appeal with the direction abovementioned which the appellants now seek to have set aside.
3. The bone of contention between the parties is the extensive 'Bakasht' lands in the aforesaid Mouza. The appellants contend that under Section 6(1) of the Act all these lands vested in the State and came to be held by the persons in "Khas possession" thereof as Raiyats under the State. To appreciate the plea it is necessary to make a brief reference to some of the provisions of the Act.
4. As is well known the object of the Act was to cause transference to the State of the interest of proprietors and tenure-holders in land as also of the mortgagees and lessees of such interests including interests in tress, forests, fisheries, Jalkars, ferries, Hats, Bazars, mines and minerals and to provide for certain consequences following therefrom and connected therewith. Section 3 of the Act enabled the State Government to declare by notification that the estates or tenures of a proprietor or tenure-holder specified therein would pass to and become vested in the State. The consequences of such vesting are set forth in Section 4. Under clause (a) :

"Such estate or tenure including the interests of the proprietor or tenure-holder in any building or part of a building comprised in such estate or tenure and used primarily as office or Cutchery for the collection of rent of such estate or tenure, and his

interest in trees, forests, fisheries, Jalkars, Sairati interest as also his interest in all sub-soil including any rights in mines and minerals whether discovered or undiscovered, or whether being worked or not, inclusive of such rights of a lessee of mines and minerals, comprised in such estate or tenure (other than the interests of Raiyats or under-Raiyats) shall, with effect from the date of vesting, vest absolutely in the State free from all incumbrances and such proprietor or tenure-holder shall cease to have any interest in such estate or tenure, other than the interests expressly saved by or under the provisions of the Act."

Section 6 of the Act provides for such saving and the relevant portion thereof runs as follows :

"(1) On and from the date of vesting all lands used for agricultural or horticultural purposes, which were in Khas possession of an intermediary on the date of such vesting, including -

(a) (i) proprietor's private lands let out under a lease for a term of years or under a lease from year to year.....

(ii) landlord's privileged lands let out under a registered lease for a term exceeding one year or under a lease, written or oral, for a period of one year or less, referred to in Section 43 of the Chota Nagpur Tenancy Act, 1908,

(b) lands used for agricultural or horticultural purposes and held in the direct possession of a temporary lessee of an estate or tenure and cultivated by himself with his own stock or by his own servants or by hired labour or with hired stock, and

(c) lands used for agricultural or horticultural purposes forming the subject-matter of a subsisting mortgage on the redemption of which the intermediary is entitled to recover Khas possession thereof;

shall..... be deemed to be settled by the State with such intermediary and he shall be entitled to retain possession thereof and hold them as a Raiyat under the State having occupancy rights in respect of such lands subject to the payment of such fair and equitable rent as may be determined by the Collector in the prescribed manner.

.. . . . "##

The broad proposition which was advanced before the High Court and rejected by it and reiterated before us is that the consequence of Section 6 was to put an end to the character of the possession of the Bakasht lands to the Malik by causing them to vest in the State and simultaneously creating a tenancy in favour of the person in Khas possession thereof. There is no dispute that Bakasht lands fall under categories (b) and (c). We are not here concerned with category (c) and have quoted it to appreciate some decisions relied on where there are references to that category.

5. This question has engaged the attention of the Patna High Court more than once and it would appear that the views expressed in different cases have not been uniform. So far as the said High Court is concerned the point was settled by a decision of the Full Bench in Mahanth Sukhdeo Das v. Kashi Prasad Tewari v. Shrideo Misra v. Ramsewak Singh. (ILR 37 Pat 918 : AIR 1958 Pat 630.) The main questions before the Full Bench were whether on the vesting of an estate which was

mortgaged at the material time the Bakasht lands therein which are deemed to be settled with the ex-proprietor in Khas possession would form substituted security for the purpose of the mortgage, and whether a co-sharer proprietor not in actual possession of such lands had any claim thereto on the basis of his constructive possession. The High Court answered both the above in the affirmative.

6. One of the cases in which this Court had to interpret Section 6 of the Act was that of Suraj Nath Ahir v. Prithinath Singh. ((1963) 3 SCR 290 : AIR 1963 SC 454 : (1963) 2 SCJ 140.) There the question which engaged the attention of this Court was whether the appellants who had originally gone into possession on the strength of a mortgage lost their right to continue in possession even if they claimed to be trespassers after the redemption of their mortgage by reason of the estate vesting in the State on the passing of the Act. Although the case is not directly in point, it bears upon the identical provisions of law which have to be applied to the facts of the case before us. The facts in that case were that the appellants had entered into possession of Kasht lands of the mortgagors on the strength of a mortgage deed. The mortgagors thereafter executed another mortgage with respect to their Milkiat (proprietary) interest in favour of certain persons. The plaintiff-respondents bought the Milkiat rights together with "Kasht" lands from the mortgagors and entered into possession of the Milkiat property and subsequently redeemed the mortgage deeds in 1943. The appellants however did not make over possession of the lands in dispute even after the redemption of the mortgage. It was held by this Court that the respondents could not take advantage of Section 6(1)(c) of the Act as no mortgage subsisted on the date of vesting and the mere fact that the proprietor had a subsisting title to possession over certain land on the date of vesting could not amount to that land being treated as under his "Khas possession" for the purposes of the Act. Referring to the definition of "Khas possession" in Section 2(k) of the Act as meaning :

"the possession of such proprietor or tenure-holder by cultivating such land or carrying on horticultural operations thereon himself with his own stock or by his own servants or by hired labour or with hired stock."

it was held that in order that the respondents could take advantage of the provision of Section 6(1)(c) of the Act they had to establish subsisting mortgage on the date of vesting which was inclusive of the land subject to their right of redemption. On the question of possession of the lands it was observed :

"On the date of vesting, the appellants were not in possession as mortgagees. The mortgages had been redeemed in 1943. Thereafter, the possession of the appellants was not as mortgagees. It may be as trespassers or in any other capacity. The land in suit, therefore, did not come within clause (c) of Section 6 of the Act."

Rejecting the construction put on the expression 'Khas possession' by the High Court in Brijnandan Singh v. Jamuna Prasad (AIR 1958 Pat 589 : 1958 BLJR 122 : ILR 37 Pat 339.) it was said :

"The mere fact that a proprietor has a subsisting title to possession over certain land on the date of vesting would not make that land under his 'khas possession'."

The full Bench decision of the Patna High Court came up for consideration by this Court in Ram Ran Bijai Singh v. Behari Singh alias Bagandha Singh. ((1964) 3 SCR 363 : AIR 1965 SC 524 : (1965) 1 SCJ 83.) There the appellants before this Court were the plaintiffs who had filed a suit for a declaration that a certain plot of land was their Zeraiti land and that the persons impleaded as the defendants 1st and 2nd parties had no right or title thereto and for recovery of possession of the said

land by dispossessing them therefrom. It was argued that in view of the concurrent findings of the Courts below that the lands were the Zeraiti lands of the plaintiffs they would not vest in the State because of the saving in Section 6 of the Act and the appellant should be deemed to have been in Khas possession of the land under Section 6(1)(c). The respondents contended that it was not a case of a mortgagee remaining in possession after payment of the debt without anything more but of tenants who claimed to remain in possession by asserting a title which was as much against the mortgagors as against the mortgagees. Reference was made in the course of arguments to the Full Bench decision in Sukhdeo Das's case (supra) and it was submitted that a mortgagee continuing in possession of the mortgaged property after payment of the mortgage amount must hold the same on behalf of the mortgagor and in trust for him. Counsel further relied on certain observations in the judgment of the Full Bench in aid of his proposition and submitted on the basis thereof that even the possession of a trespasser who had not perfected his title by adverse possession for the requisite period of time under the Limitation Act should be considered as in Khas possession of the true owner. Turning down this submission it was observed by this Court (p. 378) :

"We consider that this equation of the right to possession with 'Khas possession' is not justified by principle or authority. Besides this is also inconsistent with the reasoning of the Full Bench by which constructive possession is treated as within the concept of Khas possession."

The Court went on to add that :

"The possession of the contesting defendants in the present case was in their own right and adverse to the plaintiffs, even on the case with which the appellants themselves came to Court."

7. Nothing the statement of the plaintiffs in their plaint that the mortgagees had fulfilled their obligations and the obstruction to possession was put forward only by persons who claimed occupancy rights this Court concluded that, in the circumstances of the case, it was not possible for the appellants to contend that these tenants (defendants 1st and 2nd parties) were in possession of the property on behalf of the mortgagor or by virtue of any right through the mortgagor. The case is not therefore an authority for the proposition that a co-sharer's constructive possession is to be ignored under Section 6(1)(c) of the Act.

8. Counsel for the appellants also referred us to a recent decision of this Court in *S. P. Shah v. B. N. Singh*, ((1969) 3 SCR 908 : AIR 1969 SC 971 : (1970) 1 SCJ 101.) in aid of his contention that the true effect of Section 6 of the Act was to create a new right of tenancy in favour of the person in Khas possession and consequently even if the plaintiff in the partition suit had a right to ask for demarcation of his Re. 0-4-0 share of the Bakasht lands before the passing of the Land Reforms Act, he could not pursue his claim by a prayer that he be considered a tenant along with those who were in actual Khas possession.

9. In our view the above decision is no authority for this broad proposition. In that case the appellants who were mortgagees of an estate including Bakasht lands and other lands filed a suit on their mortgage and tried to follow up the preliminary decree which was obtained before the Act came into force by a petition for passing a final decree. One of the questions before this Court was whether the mortgage decree had become unexecutable in view of the provisions of the Act. It was held that the net effect of Sections 3, 4 and 6 was that although on the vesting of the lands in the State a settlement was deemed to be effected with the person in Khas possession in law, there were

two different transactions and the deemed settlement was in effect a separate transaction creating new rights. The Court came to the conclusion that the only remedy open to the decree-holders was that provided in Chapter IV of the Act, i.e., a claim under Section 14 before the Claims Officer for determining the amount of debt legally and justly payable to each creditor in respect of his claim.

10. The Court was there dealing with the rights of the mortgage creditors after the Act had come into force. Chapter IV of the Act made special provisions for dealing with the rights of secured creditors and Section 4(1)(d) expressly provided for the abatement of all suits and proceedings for the recovery of any money through proceedings which might be pending on the date of vesting arising out of securities created by mortgage or a charge on an estate or tenure. Here however we are not dealing with the claims of mortgagees under Chapter IV. In this case we have to consider whether the appellants had laid a claim which a co-sharer could not put forward except by pleading ouster or any other independent ground. Even if they were in actual Khas possession within the meaning of Section 2(k) of the Act it must be held that the plaintiff who was a co-sharer was in constructive possession through the appellants as "under the law possession of one co-sharer is possession of all the co-sharers". We see no reason to hold that the observations of this Court to the above effect in *P. L. Reddy v. L. L. Reddy* (1957 SCR 195 at 202 : AIR 1967 SC 314 : (1957) SCJ 248.) are not applicable to the case before us. The appellants do not claim to be trespassers on the property : neither did they claim any title to the lands adversely to the plaintiff-respondent. The deeming provision of Section 6 must therefore ensure for the benefit of all who in the eye of law would be regarded as in actual possession. It follows that the plaintiff had not lost his share in the Bakasht lands and had a right to them though not as tenure-holder or proprietor but certainly as a Raiyat under the provisions of the Land Reforms Act. The appeal must therefore be dismissed with costs.

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