

Bachan and Another

Vs

Kankar and Others

Civil Appeal No. 1167 of 1967

(A. N. Ray, M. H. Beg J J )

26.07.1972

JUDGMENT

RAY, J. -

1. This is an appeal by Special leave from the judgment, dated 13 July, 1965 of the High Court of Allahabad dismissing Special Appeal No. 314 of 1965.
2. The respondents in the present appeal confined their relief in the High Court to Plots Nos. 573 and 1039 of village Hathawra, Pargana and Tehsil Saidpur, District Ghazipur.
3. The facts in the present appeal are these. The respondents made an application under Article 226 of the Constitution for quashing the order of the Deputy Director of Consolidation, dated September 7, 1963 dismissing the revision petition of the respondents against the order of the Settlement Officer (Consolidation), Ghazipur, dated June 22, 1963 ordering the entry of the names of the appellants in respect of the plots in dispute in the present appeal.
4. The circumstances under which the names of the appellants were entered and the names of the respondent were expunged by the appropriate authorities are as follows.
5. Litigation concerning the plots in dispute had gone on. Ram Dhari, father of the appellants claimed to be sub-tenants of Math Sri Chand in respect of the said plots. The respondents on the other hand claimed possession of the plots and also claimed adhivasi sirdari rights on the basis of being occupants. Mansa Ram Sarbarakar of the Math made an application under Section 145 of the Criminal Procedure Code against the respondents. The respondents brought civil suit in the year 1953 against Math Sri Chand and claimed tenancy rights by adverse possession. The parties entered into a compromise of the suit. The respondents as a result of the compromise were held to be sirdars of the plots in dispute. The proceedings under Section 145 of the Criminal Procedure Code also ended in favour of the respondents.
6. Ram Dhari and his sons the present appellants were not parties either to the suit filed by the respondents or the proceedings under Section 145 of the Criminal Procedure Code brought by Mansa Ram against the respondents. Ram Dhari, father of the appellants filed a suit in the year 1953 against the respondents and Mansa Ram. On December 21, 1955 there was a decree in favour of Ram Dhari. The decree was upheld on appeal on July 21, 1958. The respondents filed a second appeal in the High Court. The second appeal was strayed because of consolidation proceedings.
7. The respondents were recorded under Section 8 of the U.P. Consolidation of Holdings Act as

sirdars in respect of the said plots by expunging the name of Ram Dhari, father of the appellants. The appellants' mother thereafter made an application against the said order passed by the Assistant Consolidation Officer under Section 8 of the Act. The Assistant Consolidation Officer ordered that the order might be re-agitated subsequently under Section 12 of the Act. The appellants filed an objection under Section 12 of the Act. The appellants claimed that they had acquired adhivasi and sirdari rights and that their names had been recorded. The objection was dismissed on May 8, 1960 by the Consolidation Officer. The appellants filed an appeal against the judgment dated May 8, 1960. The appeal was dismissed by the Settlement Officer (Consolidation) on July 4, 1960.

8. The appellants thereafter filed a revision petition before the Deputy Director of Consolidation. He remanded the same to the Consolidation Officer for further enquiry. Before the remand order was passed by the Deputy Director the statement of the proposal had been published under Section 20(1) of the Consolidation Act, 1953. The appellants did not file objections under Section 20(2) of the Act. Eventually, the allotment of the plots was confirmed in favour of the respondents. Possession was delivered to the respondents on March 29, 1961. New revenue records were finally prepared and published. On February 20, 1963 the Consolidation Officer, Ghazipur dismissed the objections of the appellants. The appellant filed an appeal under Section 12 of the U.P. Consolidation of Holdings Act. The appeal was allowed on June 22, 1963. The Settlement Officer accepted the appeal and allowed the objection of the appellants and directed that the names of the respondents be expunged and that the names of the appellants be entered on records. The respondents filed a revision application under Section 48 of the Consolidation of Holdings Act, 1953. The Deputy Director of Consolidation dismissed the revision application on September 7, 1963.

9. The respondents thereafter filed a writ petition in the High Court. The respondents asked for quashing the order of the Deputy Director of Consolidation, dated September 7, 1963 and of the Settlement Officer (Consolidation) dated 22 June, 1963.

10. The learned Single Judge quashed the orders, dated September 7, 1963 and June 22, 1963. The order was maintained by the Bench decision of the High Court.

11. The respondents' contentions in the High Court were these. The name of Deep Chand, father of the respondents was recorded as Kabiz (meaning thereby in possession) in the remarks column of the khasra and khatauni of 1356 Fashi. The respondents therefore claimed that Deep Chand was an adhivasi under Section 20(b)(i) of the U.P. Zamindari Abolition and Land Reforms Act. The respondents further contended that they became sirdars in the year 1954 and therefore their claims were rightly recorded as sirdars in the revenue records.

12. The appellants' contentions in the High Court were these. Ram Dhari, father of the appellants and other villagers in the year 1947 made complaints against the Patwari of the village. The Sub-divisional Officer on May 22, 1947 made an order punishing the Patwari. The Settlement Officer in the consolidation proceedings rightly allowed the objection of the appellants and directed that the names of the respondents be expunged and that the names of the appellants be entered on record. The Deputy Director of Consolidation in the order dismissing the respondents' revision application treated the finding of the Settlement Officer against the village Patwari as a finding that the entry in favour of Deep Chand, father of the respondents was fictitious.

13. The High Court held that though the entry in favour of the respondents was motivated by hostility of ill-will against the appellants it was made by the Patwari in discharging his duties. The High Court then said that though it might have been an incorrect entry and the incorrectness was on

account of hostility of the Patwari against Ram Dhari, father of the appellants yet the entry could not be said to be fictitious or forged or fabricated. The High Court held that the entry in favour of Deep Chand, father of the respondents under Section 20(b)(i) of the U.P. Zamindari Abolition and Land Reforms Act was not a fictitious entry. The learned Single Judge as well as the Division Bench held that the respondents were entitled to Adhivasi rights merely on account of the entry and it was wholly irrelevant whether the entry was correct or not.

14. The High Court fell into the error of treating the entry as irreproachable. A fictitious entry is one which is not genuine. It is an unreal entry.

15. This Court in *Sonawati and Others v. Sri Ram and Another* ((1968) 1 SCR 617 : AIR 1968 SC 466.), said that Section 20 of the U.P. Zamindari Abolition and Land Reforms Act, 1951 conferred certain rights upon persons whose names were recorded in the revenue records in respect of agricultural land. In *Sonawati's* case (*supra*) this Court found that there was strong evidence which was relied on by the Revenue Court that the name of Pritam Singh predecessor-in-interest of the appellants was surreptitiously entered in the Khasra. The first appellate Court there did not at all consider that evidence. The surreptitious entry in *Sonawati's* case (*supra*) was held by this Court to disentitle the appellants to any adhivasi right under Section 20 of the U.P. Zamindari Abolition and Land Reforms Act.

16. This Court recently in *Ram Das and Another v. Deputy Director of Consolidation, Ballia and Others* (AIR 1971 SC 673 : (1971) 1 SCC 460.), dealt with the contention of the appellants on the one hand who were recorded as Sir Khudkasht-holders of the plots in dispute and the contention of the respondents on the other who were entered as sub-tenants in respect of those plots in the year 1356 Fasli. Suits were filed between the parties. A compromise was entered into the suits. It was admitted by the respondents that the appellants were Bhoomidars and that the respondents had no interest. The further admission in the compromise was that the entry in the revenue records in favour of the respondents was fictitious. The respondents subsequently applied for setting aside the compromise decrees on the ground that they had been obtained fraudulently. During the pendency of the suits consolidation of proceedings under U.P. Consolidation of Holdings Act, 1953 commenced. The Consolidation Authorities held that the suits were not maintainable because on the date on which the suits were filed the respondents had become sirdars. The appellants filed a writ petition under Article 226 challenging the order of the Consolidation Authorities. The High Court held in that case relying on the earlier decisions of that Court that even if the entry was fictitious the respondents who were recorded as occupants would, under Section 20(b) of the U.P. Zamindari Abolition and Landed Reforms Act, 1951 become adhivasi of the disputed land. This Court relying on the earlier decision in *Sonawati's* case (*supra*) held that there was evidence to show that the entry was fictitious and the person whose name was entered on the record on the material date could not claim the right of an adhivasi.

17. The rulings of this Court establish that the decision of the learned Single Judge as well as that of the Division Bench of the Allahabad High Court is erroneous. Section 20 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 speaks of a person recorded as occupant to become adhivasi of the land and will be entitled to take or retain possession as mentioned in the section. One of the principal matters mentioned in the section is that the Khasra or Khatauni of 1356 Fasli is to be prepared under Section 28 and 33 of the U.P. Land Revenue Act, 1901. The U.P. Land Records Manual in Chapter A-V in Paragraphs A-55 to A-67 lays down the manner in which the Khasra or the field book showing possession is to be prepared by the Patwari in the areas to which Zamindari Abolition and Land Reforms Act, 1950 applies. There are detailed instructions about the manner in

which the enquiry should be carried out about actual possession and change in possession and corrections in the map and field book, the form in which the khasra is to be prepared. The form of khasra is given in Paragraph A-80. The form shows that the Lekhpal has to prepare a consolidated list of entries after partial or proper investigation. Again, Paragraphs A-70 to A-73 to the U.P. Zamindari Abolition and Land Reforms Act show how entries have to be made in khataunis every year showing the nature of tenure of each holder. The khatauni is meant to be a record of tenure-holders. The manner of changes to be made there is laid down in Paragraphs A-82 to A-83. Entries are to be checked. Extract has to be sent to the Chairman, Land Management Committee as contemplated in Paragraph A-82(iii). In this context Section 20(b)(i) of the U.P. Zamindari Abolition and Land Reforms Act which speaks of the record "as occupant" in the khasra or khatauni of 1355 Fasli refers to the khasra or khatauni being prepared in accordance with the provisions of the Land Revenue Act, 1961. Khasra is the field book provided for by Section 28 of the Land Revenue Act. Khatauni is an annual register prepared under Section 32 of the Land Revenue Act 1951. It has to be emphasised that the entry under Section 20(b)(i) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 in order to enable a person to obtain adhivasi rights must be in entry under the provisions of law.

18. This Court has held that entries which are not genuine cannot confirm adhivasi rights. The High Court wrongly held that though the entry was incorrect in could not be said to be fictitious. It is too obvious to be stressed that an entry which is incorrectly introduced into the records by reason of ill-will or hostility is not only shorn of authenticity but also becomes utterly useless without any lawful basis.

19. The learned Single Judge of the Allahabad High Court held that the Deputy Director of Consolidation did not have the jurisdiction while dismissing the revision application in the consolidation proceedings to hold that the entry was fictitious. The Deputy Director of Consolidation pointed out that the entry was held to be fictitious by a Civil Court also. The Settlement Officer was the final court of fact. The order of the Settlement Officer found that the entries relied on by the respondents were mala fide, contrary to rules and false. The view of the learned Single Judge confirmed by the Division Bench is antithetic to the basic principles that fraudulent or mala fide actions have no legal sanction.

20. The High Court erred in quashing the order of the Deputy Director of Consolidation and the order of the Settlement Officer. The High Court overlooked the evidence. The High Court relied on surreptitious entry as lawful entry. A fabricated entry is obviously a fictitious entry. In the present case, the entry was introduced by the Patwari by devious methods. Such entry is mendacious.

21. For these reasons, the order of the High Court is set aside. The court-fees payable by the appellants shall be recovered from the respondents and their advocate's fee shall be taxed and paid by the respondents. The appellants shall be entitled to their costs of this appeal.

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