Gurdit Singh and Others

Vs

State of Punjab and Others

Civil Appeal No. 1897 of 1967

(A. Alagiriswami, K. K. Mathew JJ)

10.04.1974

JUDGMENT

MATHEW, J. -

1. The first appellant is the father of appellants 2 and 3. The property in question belonged to the father of first appellant. By a will executed by him, he bequeathed the property to appellants 2 and 3. After the death of the testator, mutations in favour of appellants 2 and 3 were effected in the revenue records in the year 1996 B.K. (1939). The first appellant managed to get the mutation of the land in his name in 1944 for the reason that he wanted to get licence for a gun. In 1955, when the Pepsu Tenancy and Agricultural Lands Act (hereinafter referred to as the Act) came into force, the first appellant was shown to be the owner of the land in the revenue records. Chapter IV-A of the Act was inserted by Pepsu Act No. 15 of 1956 on October 30, 1956 and by Section 32A of this chapter, ceiling was placed on the holding of land.

2. A suit was filed by appellants 2 and 3 for a declaration that the land belonged to them, that the mutation of the land in the name of the first appellant in the revenue records was for the purpose of enabling him to obtain a gum licence and that there was no transfer of the land to first appellant. The first appellant was the only defendant in the suit. He did not contest the suit and it was decreed on February 14, 1961. A few weeks later, the question of declaration of the surplus area of the land in the hands of the first appellant came up for consideration before the Collector of Bhatinda. On the basis of the judgment and decree passed by the civil court that there was no transfer of the land to the first appellant, the Collector, by his order dated March 28, 1961, declared that there was no surplus land in the ownership and possession of the first appellant.

3. The Act was amended by Act No. 16 of 1962 and Section 32-DD was introduced into the Act with retrospective effect from October 30, 1956. That section reads :

> 32-DD. Future tenancies in surplus area and certain judgments etc. to be ignored - Notwithstanding anything contained in this Act, for the purposes of determining the surplus area of any person -
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> (a) a tenancy created after the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, in any area of land which could have been declared as the surplus area of such person; and
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> (b) any judgment, decree or order of a court or other authority, obtained after the commencement of that Act and having the effect of diminishing the area of such

person which could have been declared as his surplus are shall be ignored.

4. The Collector thereupon made a reference presumably under Section 15 of the Punjab Land Revenue Code for sanction to the Commissioner of Patiala to review his order dated March 28, 1961, as it omitted to include the land in question in the holding of the first appellant on the basis of the judgment and decree. The sanction was given the Collector reviewed the order and he refused to give effect to the judgment and decree by ignoring them as enjoined by Section 32-DD and included the land in the holding of the first appellant.

5. The appellants filed a writ petition in the High Court of Punjab to quash this order. Before the High Court, three contentions were raised by the appellants : (1) that the Collector had no jurisdiction to review his order dated March 28, 1961 : (2) that the order in review was passed without notice to the appellants; and (3) that, in any event, the judgment of the civil court only made a declaration as regards rights of the parties on the date of the suit and it was not, therefore, a judgment of the nature contemplated by Section 32-DD. The High Court over ruled all the contentions and held that the order of the Collector was rendered null and void by virtue of the provisions of Section 32-DD and, therefore, the Collector had the power to determine by his order dated May 20, 1963, the surplus area after ignoring the judgment and decree. The High Court said that since mandatory provisions of Section 32-DD which has retrospective operation were not taken into consideration, the order passed by the Collector on March 28, 1961 was non est as being one made without jurisdiction and that, the order dated May 20, 1963, must be deemed to be the order determining the holding of the first appellant for the purpose of the Act as amended.

6. We are no satisfied that this is a correct approach to the question. The Collector purported to act under Section 15 of the Land Revenue Code, which, obviously, has no application. The High Court did not rest its decision on Section 15 of the Punjab Land Revenue Code for holding that Collector had jurisdiction to pass the order dated May 20, 1963. When the Collector passed the order dated March 28, 1961 determining the surplus area in the hands of the first appellant, he took into consideration the effect of the judgment of the civil court declaring that the mutation of the name of the first appellant in the revenue record was effected only to enable him to obtain a gun licence. That order of the Collector dated March 28, 1961 was a perfectly valid one when it was passed. Not one challenged that order and it become final for all purposes. It was only when Section 32-DD was incorporated in the Act with retrospective effect from October 30, 1956 that the question arose whether that order was valid. The Collector could not have anticipated the enactment of the section with retrospective effect and passed the order conforming to its provisions. It is rather curious that the draftsman of the amending Act No. 16 of 1962 did not incorporate a provision for re-opening orders already passed before Section 32-DD came to be enacted as that section was made retrospective. We cannot subscribe to the view that the order of the Collector passed on March 28, 1961 became null and void merely because he failed to take into account the provisions of Section 32-DD even if by virtue of the fiction it is to be assumed that the section was on the statute book when he passed it. We are aware that in Anisminic Ltd. v. Foreign Compensation Commission ((1967) 3 WLR 382) the House of Lords has held that even if a tribunal had jurisdiction to enter upon an enquiry, the fact that it overlooked an applicable mandatory provision in the course of the enquiry would denude it of its jurisdiction; but we doubt whether that principle has any application in a case when the provision overlooked was not in actual existence at the time when the inquiry was conducted and the order was passed. In other words, we do not think that we can extend the ratio of the decision in that case to a case where the provision overlooked during the course of the inquiry was not on the statute book but was begotten and brought into being subsequently, though with retrospective vitality. The imagination sometimes has to boggle before stark reality. The order

of the Collector dated March 28, 1961, cannot therefore, be regarded as null and void. It was a valid order when it was passed, and there was no provision in the amending Act which enabled the Collector to review it. We cannot stretch the fiction so far as to make the order null and void without further ado.

7. We are also not satisfied that the Collector was acting in consonance with the principles of natural justice when he passed the order dated May 20, 1963, as he gave no opportunity to appellants 2 and 3 of being heard. The fact that the first appellant was heard before that order was passed is of no moment because the persons who were vitally concerned in re-opening the case were appellants 2 and 3. Admittedly, no notice of the proceedings to re-open the case was given to them. It is not for us to speculate what defences were available to them and whether the defences available would have materially effected the destiny of the decision. We do not think it necessary to decide in this case whether the failure to observe the rule audi alteram partem would per se vitiate an order or whether it is also necessary to show prejudice to the person affected resulting from the failure to observe the rule. Suffice it to say that in the present case we are of the view that if notice had been given to appellants 2 and 3, they could, at any rate, have shown the true nature and character of the judgment of the civil court upon which they relied.

8. It is relevant to note that the judgment itself was not challenged as collusive by the respondents. We are quite aware that the defendant in the suit in which the judgment was obtained, namely, the first appellant, did not put forward any contention. But it would be rash to jump to the conclusion from the mere fact that no defence was put forward by the first appellant in the suit that the decree was obtained collusively. Under Section 43 of the Evidence Act, a person who is not a party to a judgment can show that it was obtained by fraud or collusion. No such attempt was made in this case.

9. Nor are we satisfied that every judgment which has the apparent effect of diminishing the area of land of a person would be within the ambit of Section 32-DD (b). Generally speaking, a judgment adjudicates on the rights of the parties as they existed before the suit in which it was obtained.

10. A judgment is an affirmation of a relation between a particular predicate and a particular subject. So, in law, it is the affirmation by the law of the legal consequences attending a proved or admitted state of facts. It is always a declaration that a liability, recognised as within the jural sphere, does or does not exist. A judgment, as the culmination of the action, declares the existence of the right, recognises the commission of the injury, or negatives the allegation of one or the other (See Black on Judgments, Vol. 1, 2nd ed., pp. 1-2).

11. A judgment of a court is an affirmation, by the authorised societal agent of the state, speaking by warrant of law and in the name of the state, of the legal consequences attending a proved or admitted state of facts. Its declaratory, determinative and adjudicatory function is its distinctive characteristic. Its recording gives an official certification to a pre-existing relation or establishes a new one on pre-existing grounds (See Borchard, "Declaratory Judgments", 2nd ed., pp. 8-10).

12. The judgment of the civil court with which we are concerned, adjudicated on the rights of the parties as they existed before the suit and when it declared that the mutation was effected not with the idea of transferring the property to the first appellant but for some other reason, the effect of the declaration was that there was no real transfer of the property in favour of the first appellant and that the property remained always in the ownership of appellants 2 and 3, notwithstanding the purported transfer evidenced by the mutation in the revenue records. It is impermissible to give the

wide language employed in clause (b) of Section 32-DD an unconfined operation. When a transfer or mutation is made on account of fraud or mistake and if a suit is filed for a declaration that the transfer or mutation was made on account of fraud or mistake and a judgment obtained, certainly the judgment would not have the effect of diminishing the area of a person which could have been declared as a surplus area within the meaning of Section 32-DD. The legal effect of such a declaration would be that the transferee or the person in whose name the mutation was effected had no right in the property. The land must have belonged to the first appellant prior to the judgment in order that it might be postulated that the judgment has the effect of diminishing the total area in his hands. To put it differently, prior to the judgment, the land must have belonged to him in order that it may be said that the effect of the judgment is to diminish the area of his holding. If the effect of the judgment is only to declare that the land never belonged to the first appellant, it has not the effect of diminishing the area of land in his possession. We are aware that the object of this provision in an Act like the one under consideration is to prevent circumvention of its provisions by dubious and indirect methods. But that is no reason why we should put a construction upon the section which its language can hardly bear. It would have been open to the respondents to allege and prove that the judgment was obtained collusively. But that could have been done only after notice to appellants 2 and 3 and after giving them an opportunity of being heard. Therefore, to say, as the High Court has said, that no prejudice was caused to appellants 2 and 3 for want of an opportunity to them of being heard, is neither here nor there. We think the High Court went wrong in assuming that the Collector was right when he ignored the judgment by his order dated May 20, 1963 on the ground that it had the effect of diminishing the area of the first appellant which could have been declared as his surplus.

13. We, therefore, set aside the order of High Court and allow the appeal. We make no order as to costs.

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