

Sri Vidya Sagar

Vs

Smt. Sudesh Kumari and Others

Civil Appeal No. 1537 of 1974

(A. Alagiriswami, P.K. Goswami, N. L. Untwalia JJ)

08.10.1975

JUDGMENT

GOSWAMI, J. -

1. The short question that arises for consideration in this appeal by special leave against the judgment of the Allahabad High Court is whether a decree for pre-emption obtained prior to the enforcement of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (U. P. Act No. 1 of 1951) survives for execution after the enforcement of the Act in the particular area in which the land is situated.

2. Briefly the facts are as follows :

2A. The plaintiff (appellant herein) and defendants Nos. 5 and 6 were cosharers in proprietary interest of lands in khata khewat No. 1 of village Nayagaon Chandan Singh Bandobasti pargana Bhabarkota, tehsil Kaldhungi, district Nainital. Defendants Nos. 5 and 6 sold by registered sale deed a certain share of the land in that khata khewat in favour of defendants Nos. 1 to 4 (respondents herein). The plaintiff thereupon filed a suit for pre-emption and obtained a decree which was affirmed by the High Court in second appeal on April 27, 1970. The plaintiff also deposited the consideration of the sale deed in court on August 20, 1969, as ordered. The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (briefly the Act) was brought into force in the force in the district Nainital where the property is situated with effect from July 1, 1970. The appellant instituted an execution proceeding after the enforcement of the Act in the area. An objection was taken by the judgment-debtors (respondents herein) under Section 47, Civil Procedure Code, on various grounds including that with which we are now concerned, namely, that the decree has become inexecutable in view of the provisions of the Act. An objection was raised under Section 336 of the Act which provides for extinguishment of the right of pre-emption in the area to which the Act applies. The High Court repelled this objection and we are now not concerned with the said question in this appeal.

3. The only submission of the learned Counsel appearing on behalf of the appellant before us is that the High Court is wrong in holding that the decree is inexecutable in view of Section 4 and Section 6 of the Act.

4. As the preamble shows the Act provides for -

the abolition of the zamindari system which involves intermediaries between the tiller of the soil and the State in Uttar Pradesh and for the acquisition of their rights, title and interest and to reform

the law relating to land tenure consequent upon such abolition and acquisition and to make provision for other matters connected therewith.

5. We may now read a few sections which are material for deciding the issue :

Section 4 (1) : As soon as may be after the commencement of this Act, the State Government may, by notification, declare that, as from a date to be specified, all estates situate in Uttar Pradesh shall vest in the State and as from the beginning of the date so specified (hereinafter called the date of vesting), all such estates shall stand transferred to and vest, except as hereinafter provided, in the State free from all encumbrances.

Section 6 : Consequences of the vesting of an estate in the State - When the notification under Section 4 has been published in the Gazette, then, notwithstanding anything contained in any contract or document or in any other law for the time being in force and save as otherwise provided in the Act, the consequence as hereinafter set forth shall, from the beginning of the date of vesting, ensue in the area to which the notification relates, namely -

(a) all rights, title and interest of all the intermediaries -

(i) In every estate in such area including land (cultivable or barren), grove-land, forests whether within or outside village boundaries, trees (other than trees in village abadi, holding or grove), fisheries, tanks, ponds waterchannels, ferries, pathways, abadi sites, hats, bazars and melas [other than hats, bazar and meals held upon land to which clauses (a) to (c) of sub-section (1) of Section 18 apply], and

(ii) in all sub-soil in such estates including rights, if any, in mines and minerals whether being worked or not,

shall cease and be vested in the State of Uttar Pradesh free from all encumbrances.

Section 18 : Settlement of certain lands with intermediaries or cultivators as bhumidhars. - (1) Subject to the provisions of Sections 10, 15, 16 and 17, all lands -

(a) in possession of or held or deemed to be held by an intermediary as sir, khudkasht or an intermediary's grove

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on the date immediately preceding the date of vesting shall be deemed to be settled by the State Government with such intermediary lessee, tenant, grantee or grove-holder, as the case may be, shall subject to the provisions of this Act, be entitled to take or retain possession as bhumidhar thereof.

6. It is strenuously contended by the learned Counsel for the appellant that a decree cannot be made inexecutable unless there is a provision in the Act itself that such a decree is no longer valid. He submits that in absence of any express provision declaring the decree to be void of inexecutable, the rights under the decree cannot be taken away. He draws out attention to a Single Bench decision of the Allahabad High Court in *Paltu v. Joti Prasad* ((1958) 56 All LJ 31 : AIR 1958 All 544) in

support of his submission. We are unable to accept as correct the submission and the ratio of the above decision.

7. The position has to be looked from an altogether different stand - point. It is true that the appellant obtained the pre-emption decree prior to the enforcement of the Act in the area in question and he duly deposited the requisite money in court according to law. Having deposited the money it is true that the decree-holder got substituted for the vendee in respect of the share in the property. It is, therefore, clear that on August 20, 1969, when the appellant had deposited the money in court, his name stood substituted in law in place of the vendees. Since, however, the vendees were in possession after the purchase, it was still necessary for the decree-holder to obtain possession of the land. For this purpose he had to institute the execution case for delivery of possession. The appellant in execution sought for possession basing his right under the decree. The decree was on the basis that he was a cosharer of certain intermediary's interest in the land in question along with the vendors, namely, his cosharers. Since, however, on and from July 1, 1970, all rights and title in that proprietary land ceased to exist and vested in the State, the decree to that extent became devoid of substance inasmuch as the proprietary interest with regard to which alone the decree was passed had vested in the State and nothing survived in favour of the erstwhile proprietors, the appellant or the vendors. The appellant could execute the decree for delivery of possession only on the basis that he had the proprietary right in the land on the basis of which, as a cosharer therein, he had obtained the decree of pre-emption. Now, since there is vesting of the property under the Act and emergence of a new species of property, which was not even the subject-matter of the decree, the present decree becomes incapable of execution. The intermediary and for the matter of that the decree-holder lost the property as known earlier to law with a bundle of proprietary rights. There was a vacuum on cessation of the proprietary interest of the zamindars and all intermediaries and the entire land then vested in the State. There is, therefore, no substance in the contention that this decree is till executable in absence of an express provision voiding the decree or taking away the rights under the decree by operation of law. The old property became extinct and the proprietors including the appellant had nothing left with them after the vesting in the State and necessarily, therefore, the decree cannot be executed for that reason. It would have been possible to execute the decree only if the interests in the land as such survived in the proprietors. Land can be understood only with reference to the rights in the land and when the old rights give place to the emergence of new rights, a decree with reference to the old rights cannot be executed when that has already lapsed under the Act.

8. In this connection we may refer to a decision of this Court in *Rana Sheo Ambar Singh v. Allahabad Bank Ltd.*, Allahabad ((1962) 2 SCR 441 : AIR 1961 SC 1790) which was also relied upon by the learned Counsel with reference to Section 6 (h) of the Act. We do not see how this decision helps the appellant. This was a case in which the appellant's father, a talukdar of the estate of Khajurgaon, executed a simple mortgage of his proprietary interest in the estate consisting of sixty-seven village to the Allahabad Bank Ltd. While execution proceedings were pending, the U. P. Zamindari Abolition and Land Reforms Act, 1950, came into force from July, 1952. As a result the zamindari rights of the appellant judgment-debtor were abolished and it was no longer possible for the bank to sell these rights in the 67 villages. The bank applied to the executing court praying for sale of the substituted bhumidhari rights which the zamindar acquired under the Act. Repelling the contention this Court held as follows :

All lands therefore whether cultivable or barren or grove lands vested in the State on the notification under Section 4 having been made save as otherwise provided in this Act. Therefore, proprietary rights in sir and khudkasht land and grove land would vest in the State on the coming into force of

the notification under Section 4 unless there was some provision otherwise in the Act. The contention of the respondent therefore that sir and khudkasht land and grove had continued to be property of the appellant and would therefore remain liable to be sold in execution proceedings would fail in view of the notification under Section 4, unless of course there is a provision otherwise in the Act.

The Court further held that

the proprietary right in sir and khudkasht land and grove land which were mortgaged would be extinguished and the bhumidhari right which is created by Section 18 would be a new right altogether and would not therefore be considered to be included under the mortgage in this case.

9. The learned Counsel very much relied upon the discussion in the decision with reference to Section 6 (h) of the Act which provides that

no claim or liability enforceable or incurred before the date of vesting by or against such intermediary for any money, which is charged on or is secured by a mortgage of such estate or part thereof shall, except as provided in Section 73 of the Transfer of Property Act, 1882, be enforceable against his interest in the estate.

Dealing with the question this Court observed as follows :

Therefore, Section 6 (h) read with Section 73 directs that the mortgagee shall proceed in the manner provided in Section 73, namely, follow the compensation money, and there is no other way possible for him in view of Section 6 (h) with respect to the property which has been acquired under the Act. We have held that sir and khudkasht land and grove land have been acquired under the Act and have vested in the State; therefore the mortgagee is relegated to enforce his rights against the mortgagor in the manner provided in Section 73 of the Transfer of Property Act and in no other way.

But for the provision under Section 6 (h) the mortgagee would have had nothing to follow upon under the mortgage decree as the proprietary interests in the land yielded to new bhumidhari rights under the Act, and the mortgage decree had reference only to the earlier proprietary rights.

10. This decision is a complete answer to the submission of the learned Counsel. The above case of this Court was followed in *Shivashankar Prasad Shah v. Baikunth Nath Singh* ((1969) 3 SCR 909 : (1969) 1 SCC 718).

11. The learned Counsel, however, drew out attention to a decision of this Court in *Kailash Rai v. Jai Jai Ram* ((1973) 1 SCC 527) where this Court had to deal with the expression 'possession' under Section 18 (1)(a) of the Act. This Court held that

the expression 'possession' in clause (a), in our opinion, takes in not only actual physical possession, but also constructive possession that a person has in law.

This decision was cited by the learned Counsel in order to get some assistance from Section 18 of the Act. We are, however, not required to deal with the nature of rights, if any, which Section 18 may confer upon the appellant with regard to the land comprised in the erstwhile intermediary's interest which may be available to the vendees. These rival claims with regard to the rights in the

land conferred under Section 18 of the Act will have to be worked out by the parties, if they are so advised, in appropriate proceedings and we express no opinion on that aspect of the case in this appeal.

12. We are, therefore, clearly of opinion that the decree for pre-emption in this case was not capable of execution. In the result the appeal fails and is dismissed, but we make no order as to costs.

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