

Mirdad and Others

Vs

Board of Revenue and Others

Civil Appeal Nos. 486 and 719 Of 1973

(CJI A.N. Ray, M.H. Beg, P.N. Shinghal JJ)

19.10.1976

JUDGMENT

BEG, J. –

1. The appellants before us by certificate of fitness of the case for appeal to this Court form the judgment of a Division Bench of the Allahabad High Court are the purchasers of the interest in some land of Smt. Bhagwani who died during the course of the long litigation before several authorities. Her adopted son Kesho Ram and then the appellants before us, as transferees of rights and interests of Kesho Ram, came into the picture after her death.
2. Smt. Bhagwani had let out, on February 14, 1944, for five years, the land in dispute on an annual rent of Rs. 264. After the expiry of the period of the lease, she instituted a suit for ejection of respondents under Sections 175/179 of the U. P. Tenancy Act, 1939. The respondents had alleged that the transaction was, in substance, a mortgage. They claimed to be entitled to remain in possession until the loan of Rs. 2,000, with interest, had been paid off. They also claimed rights of hereditary tenancy on the ground that Smt. Bhagwani paid more than Rs. 25 as "abwab" of land in dispute which was claimed by her to be her zemindari "sir" land. The suit for the ejection of defendants was decreed on March 8, 1949.
3. The defendants (respondents before us) appealed. During the pendency of this appeal, the U. P. Zamindari Abolition and Land Reforms Act (hereinafter referred to as 'the Act') came into force on July 1, 1952. The defendants, therefore, took up the plea that they have become "Adhivasis" under Section 20(a) (1) of the Act. The Additional Commissioner, who heard the appeals, upheld this plea, allowed the appeal, and dismissed the suit for ejection on August 6, 1953. Thereafter, Smt. Bhagwani filed a second appeal in the Board of Revenue, on the ground that, she being a woman, was entitled to the benefit of the provisions of Section 21(1) (h) read with Section 10(2) (i) of the Act so that the respondents before us could only have the rights of "Asamis". The Board of Revenue remanded the case to the Additional Commissioner on August 17, 1954, for hearing on merits after holding that Smt. Bhagwani was entitled to the benefit of an exemption due to her disability as a woman.
4. The law was, however, amended, with retrospective effect, on October 10, 1954, so that Smt. Bhagwani could be entitled to the benefit of the exception only if her husband was disabled from cultivating. The Additional Commissioner, therefore, remanded the whole case to the trial Court on March 22, 1955, to take evidence on the question whether the husband of Smt. Bhagwani was disabled. No one questioned the legality or propriety of this order of remand as the law had been retrospectively amended. The trial Court, after taking evidence decreed the suit of Smt. Bhagwani.

But, the Additional Commissioner allowed an appeal against it and dismissed Smt. Bhagwani's suit on July 11, 1956, after holding that her husband was not disabled. The rights of the defendants as "Adhivasis" were thus upheld. The suit had been dismissed on a pure finding of fact and this decision remained unchallenged for a period long beyond the time required to give respondents additional rights by virtue of their undisturbed possession.

5. Ten years later, Smt. Bhagwani applied to the Additional Commissioner for setting aside the dismissal of her suit on July 11, 1956, by an application which was dismissed on November 21, 1966. She again applied on March 30, 1967, under Section 151 Civil Procedure Code, for the setting aside of the decree against which she had not appealed at all. The ground for this application was that a notification under Section 4 of the U. P. Consolidation of Holdings Act of 1954, had been issued on June 26, 1954. On August 10, 1967, the Additional Commissioner recalled the order of July 11, 1956, dismissing the plaintiff's suit, eleven years earlier, and, substituted for it an order holding that the rights of parties must be decided in accordance with the results in consolidation proceedings which were in progress so that the proceedings in the appeal before the Additional Commissioner had to be stayed. Against this interim order Smt. Bhagwani had again appealed to the Board of Revenue. That appeal was still pending when the jurisdiction of the High Court under Article 226 was invoked by Smt. Bhagwani by means of a writ petition.

6. In the mean time, proceedings under the U. P. Consolidation of Holdings Act had been going on. There, the Consolidation Officer had held that the defendants were "Asamis". In appeal, the Settlement Officer set aside this finding and held the defendants to be "Adhivasis". On a Revision Application, the Assistant Director of Consolidation took the view that the Consolidation authorities could not go behind what was to be decided in the appeal pending before the Board of Revenue in which the correctness of the Additional Commissioner's view, that the ordinary revenue Courts had to stay their hands pending a decision by the Consolidation authorities had been questioned. Smt. Bhagwani was, it appears, directed to apply to the Settlement Officer after obtaining a decision of the Board of Revenue on the rights of the parties. In the records, the defendants respondents were shown as "Adhivasis" and they have continued to be so recorded.

7. In 1958, Smt. Bhagwani applied to the Sub-Divisional Officer for correction of consolidation records, but, this application was dismissed on August 12, 1959, on the ground that the village had been de-notified on November 1, 1958, under Section 52 of the U. P. Consolidation of Holdings Act, so that no jurisdiction was left for correction in the course of consolidation proceedings. He took the view that the remedy, if any, of the aggrieved parties, lay only through a declaration of rights by a competent Court. In other words, what was entered in revenue records in the course of consolidation proceedings could only be corrected, if at all, on the results of a regular trial and decision by an appropriate authority.

8. The area of the contest between the two sides was then shifted to compensation proceedings under Chapter IX-A of the Act where Smt. Bhagwani had objected that the respondents should have been entered only as "Asamis" and not as "Adhivasis". These objections were rejected by the Sub-Divisional Officer on July 11, 1960. An appeal against that, and then a second appeal filed by Smt. Bhagwani against the appellate Court's order were dismissed on merits. After that, Smt. Bhagwani had filed a writ petition in the Allahabad High Court. Shri Kesho Ram and then his transferees had continued this litigation on behalf of Smt. Bhagwani who died on November 27, 1962. The writ petition of Smt. Bhagwani was dismissed on September 19, 1962. That dismissal by a learned single Judge was the subject-matter of what is known as a "Special Appeal" in the Allahabad High Court which was heard and dismissed by a Division Bench on January 18, 1972. The judgment of that

bench is under appeal before us.

9. It appears that Smt. Bhagwani and her adopted son Kesho Ram had filed another suit also for the ejectment of the defendants under Section 202/209 of the Act. This was decreed by the trial Court and this decree was affirmed by the Additional Commissioner on appeal on September 11, 1967, against which the defendants had gone up to the Board of Revenue in second appeal. That second appeal was placed before the Board of Revenue together with an earlier appeal. The Board of Revenue held, by its order dated July 30, 1970, that findings in proceedings under Chapter IX-A were material and admissible for purposes of deciding questions of right in regular suits. It, however, stayed the hearing of this appeal as well as another appeal pending before it in connected proceedings the nature of which is not quite clear to us as the record is not before us. It is, however, clear that the stay order of the Board of Revenue was intended to operate only during the pendency of the two special appeals which were heard together by the High Court and disposed of by the judgment under appeal now before us. It is also clear from the judgment under appeal that the learned Counsel for the appellants before us had challenged the findings recorded in Chapter IX-A by the Board of Revenue whereas the learned Counsel for the respondents had submitted that the Revenue Courts had no jurisdiction at all to decide, in compensation proceedings under Chapter IX-A of the Act, whether a person is an "Adhivasis" or "Asami" and hence, Smt. Bhagwani's objection in those proceedings, raising a question of right of title, was not maintainable at all.

10. In *Sukhram Singh v. Smt. Harbheji* (1969) 3 SCR 752 : (1969) 1 SCC 609, this Court held that compensation proceedings, under Section 240H contained in Chapter IX-A of the Act, could, in accordance with the procedure for reference on a question of title, cover also decisions on questions of right.

11. On the special facts and circumstances of this case, the High Court sent for all the records, in various proceedings, from the Board of Revenue and took upon itself to dispose them of after deciding the crucial and decisive question on which the parties were at issue according to amended provisions of Section 21(1) (h) of the Act. The decision of the High Court was in line with the view of this Court in *Sukhram Singh's* case. As the decision of the High Court was correct on merits on the decisive question, the contention advanced on behalf of the appellants that only the Board itself could set aside its own remand order and that the amended law could not be taken into account by authorities subordinate to it does not seem to us to be substantial enough to deserve consideration as a ground of interference under the exceptional powers of this Court under Article 136. Even if any objections could be taken to the propriety of the procedure adopted by the High Court in sending for all the records of connected matters also pending before the Board of Revenue, by consent of both sides, and deciding them with others before it in order to put an end to an unnecessarily long and tortuous litigation, we cannot be induced to interfere. Apart from the fact that applications for writs of certiorari can sometimes be made to remove proceedings from one Court to another, the unusual procedure adopted does not affect the merits of the case on what is really decisive. We think that the High Court had rightly applied the amended law to patent facts of the case on the finding the Smt. Bhagwani's husband was not disabled so that she had lost the right to regain possession. The defendants respondents had also been in possession long enough to acquire immunity from eviction at the instance of Smt. Bhagwani or her representatives in interest who had slept over their rights too long to be permitted to re-litigate the question again after ten years from July 11, 1956. Consequently, we dismiss these appeals and Civil Miscellaneous Petition 7220 of 1976, but, in the circumstances of the case, we make no order as to costs. The amount deposited by the respondents under order of this Court will be returned to them.

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