

Munshi Muqbool Raza

Vs

Hasan Raza

Civil Appeal No. 2336 of 1960

(CJI Y. V. Chandrachud, P. K. Goswami, P. N. Shinghal JJ)

21.03.1977

JUDGMENT

Chandrachud, J

1. The appellant filed suit 275 of 1949 in the Munsif's Court, Badaun, against the respondent for recovering possession of plots Nos. 231 and 289 admeasuring about 7 bighas and situated in the village of Khakholi, District Badaun. The suit was filed on the allegation that Mst. Aqila Khatoon, who was the original owner of the plots, had leased them out to the appellant but that the respondent trespassed on the plots by procuring a false, entry in the village records in the year 1356 Fasli. The suit was resisted by the respondent on the plea that he was in possession of the plots as a tenant since 1352 Fasli, and therefore, the plaintiff had no right to evict him from the plots. The U. P. Zamindari Abolition and Land Reforms Act, I of 1951, came into force during the pendency of the suit upon which the respondent raised an additional contention that he was in possession of the plots as a sub-tenant.
2. The trial Court decreed the suit for possession and for damages holding that the respondent had no right to remain in possession of the plots. That judgment was confirmed in appeal by the learned District Judge Badaun. Stated briefly, the learned Judge held that the entries in the Revenue record, which purported to show that the respondent was in possession of the plots, did not reflect a true state of affairs, and, therefore, the respondent was liable to be evicted.
3. The respondent then filed second appeal 431 of 1955 in the Allahabad High Court, which was allowed on February 27, 1968. This appeal by special leave is directed against that judgment.
4. It appears that in consequence of the decree passed by the District Court on November 22, 1954 confirming the judgment of the trial Court, the appellant obtained possession of other suit plots sometime in December, 1954. The Special Leave Petition, filed by the appellant shows that after he obtained possession of the plots, the respondent filed a suit under the Act of 1951 in the Revenue Court, alleging that he, the respondent, was an Adhivasi of the plots and, therefore, the decree of the Civil Court dispossessing him was illegal and without jurisdiction. That suit was decreed by the Revenue Court on June 17, 1955 which held that the decree passed by the Civil Court was a nullity and, therefore, the respondent was entitled to restoration of possession.
5. If further appears that in 1959, the area in which the plots are situated came under the purview of the U. P. Consolidation of Holdings Act, 5 of 1954, and thereupon the respondent made an application that his name should be recorded as a Sirdar in respect of the disputed plots. In those proceedings also, the Consolidation Authorities held that the civil Court had wrongly assumed

jurisdiction in the suit filed by the appellant and that the decree passed therein was not binding on the Consolidation Authorities. Those Authorities held on an application filed by the respondent that he had become an Adhivasi under Section 3 of the Zamindari Abolition act, 1951 and that, therefore, he was entitled to remain in possession of the plots. Having exhausted the duly appointed remedies before the Consolidation Authorities, the appellant filed writ petition 3106 of 1962 in the High Court of Allahabad, which was dismissed by a full bench of that Court on September 11, 1967.

6. By reasons of the various developments to which we have referred above, the appellant cannot claim possession of the suit property from the respondent. The first difficulty in the ways of the appellant is that Section 5 of the U. P. Consolidation of Holdings Act, as amended by Act 21 of 1966, provides by sub-section (2) (a) that every suit in respect of any right or interest in any land in the area in regard to which proceedings can or ought to be taken under the Act, pending before any Court or Authority whether of the first instance or of appeal, shall stand abated. Upholding the validity of that section, this Court in *Ram Adhar Singh v. Ramroop Singh* [(1968) 2 SCR 95 : AIR 1968 SC 714], accepted the contention that the appeal pending before it had abated by reason of Section 5 (2) (a). Thus, the suit filed by the appellant stands abated.

7. The other difficulty in the way of the appellant is that he was directed by the High Court to take recourse to Consolidation Authorities in regard to his alleged rights, while the second appeal was pending in the High Court. He exhausted those remedies, challenged the ultimate decision by filing a writ petition in the High Court and even that writ petition failed. He cannot, then, reagitate the same questions once over again in the second appeal. Those questions stand finally concluded by the decision recorded in the writ petition.

8. Section 231 read with Section 234 of the Act of 1951 furnishes an additional ground for the respondent to resist the appellant's claim. By Section 231, in so far as it is relevant, an Adhivasi continues to have all the rights and liabilities which he possessed on the date immediately preceding the date of vesting, except as provided in Sections 233 and 234. We are not concerned in the instant case with Section 233, but Section 234 provides that an Adhivasi shall be liable to ejection from the land held by him on the grounds mentioned in that section. By reason of the provisions contained in Section 235 and Adhivasi is liable to be ejected on the ground mentioned in Section 234 only and on no other grounds.

9. For these reasons, in addition to the others, which the High Court has given, this appeal must fail and is accordingly dismissed. There will be no order as to costs.

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