

Irshad Ali Khan (dead) by Lrs. and Others

Vs

State of U. P. and Others

Civil Appeals Nos. 812-14 of 1981

(Syed M. Fazal Ali, V.B. Eradi JJ)

25.02.1981

JUDGMENT

FAZAL ALI, J. -

1. After having heard learned counsel for the parties we are of the opinion that neither the District Judge nor the prescribed authority seems to have gone into the real question in the case as to whether Mumtaz Ali, who was the original owner of properties comprising 103 Bighas, 16 Biswas and 9 Biswansis, continued to be in cultivatory (sic) possession of the land until his death which occurred long after the coming into force of the Act. The District Judge as also the prescribed authority have merely relied on the notice under Section 10(2) issued by the prescribed authority where it was mentioned that Mumtaz Ali continued to be in possession. This fact was seriously controverted by the appellants before the prescribed authority as also before the District Judge but there is no clear finding by any of these authorities regarding the question of possession. The definite case of the appellants was that Mumtaz Ali and Irshad Ali had separated each getting half other total land. It was also alleged that the grandsons of Mumtaz Ali, namely the four sons of Irshad Ali - Mukarram Ali, Zafar Ali, Kanwar Ali and Anwar Ali - had purchased the lands from Mumtaz Ali as far back as 1957. This plea also does not appear to have been noticed by the authorities concerned. However, the dominant question to be decided by the authorities would be whether Mumtaz Ali continued to be in cultivating possession of the lands in dispute held by him in 1971.

2. Another argument addressed to us was regarding the grove. This however, is concluded by findings of fact and does not called for any interference by this Court.

3. In these circumstances, therefore, we allow this appeal and remit the case to the prescribed authority for considering the question as to whether or not Mumtaz Ali was in cultivating possession of the land in 1971 when the Ceiling Act came into force after examining the contentions raised by the appellants before him. The prescribed authority will also determine possession of the lands claimed by them in 1971. The parties are directed to appear before the prescribed authority on March 25, 1981.

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