

Jitendra Pratap Singh and Others

Vs

Additional District Judge (Tenth) Allahabad and Others

Civil Appeal No. 1127 of 1981

(Syed M. Fazal Ali, R.B. Misra JJ)

27.03.1981

### JUDGMENT

1. The only point pressed in this appeal by special leave is that the courts below came to the conclusion that the declaratory decree was held to be collusive without there being any material to prove the same. The High Court was greatly influenced by the fact that in the remarks column possession of appellant Jitendra Pratap Singh was not shown. In our opinion, the Prescribed Authority ought to have gone into this question in detail in view of there being a declaratory decree under Section 229(b) of the U.P. Zamindari Abolition and Land Reforms Act as to whether or not the decree was a collusive one. Normally, a decree passed by a competent court is presumed to be a valid decree unless it is shown to be collusive. In the instant case, however, there are two important considerations which seem to have been overlooked by the courts below : (1) that the decree was passed long before the amendment of 1972 in the Ceiling Act, and (2) that the declaratory decree was also passed on July 14, 1966 and in the mutation register Jitendra Pratap Singh under the decree was shown as a co-tenure holder with the main tenure holder. Another important circumstance which is ignored by the Prescribed Authority was that the Lekhpal who had made a sort inspection clearly found that Jitendra Pratap Singh was in possession of the share allotted to him under the declaratory decree. Neither the District Judge nor the Prescribed Authority appear to have considered the effect of this important circumstance.
2. In these circumstances therefore we remit the case to the Prescribed Authority and direct that he should, after hearing the parties and after taking such evidence as is offered by them, come to a clear finding whether or not the declaratory decree was collusive or meant merely to evade the provisions of the Ceiling Act and whether Jitendra Pratap Singh was in cultivating possession before the amendment of 1972. After giving his findings on these points, the Prescribed Authority shall submit a report to this Court within a month from today. The parties are directed to appear before the Prescribed Authority on April 9, 1981, failing which the Prescribed Authority will report the matter to this Court for necessary action. If the parties appear on April 9, 1981, the Prescribed Authority will give only a week's time to the parties to produce evidence and send his report containing his opinion within the time indicated above.
3. After the report is received by this Court, the matter would be put up before us for final orders. In case the appellant Jitendra Pratap Singh, his lawyer or agent does not appear before the Prescribed Authority on the date fixed, namely, April 9, 1981, this appeal shall stand dismissed without further reference to this Court.

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