

Mst. Bibi Rahmani Khatoon and Others

Vs

Harkoo Gope and Others

Civil Appeal No. 1359 of 1981

(D.A. Desai, Baharul Islam JJ)

22.04.1981

JUDGMENT

DESAI, J. –

1. Mst. Bibi Rahmani Khatoon and others filed Title Suit 3 of 1970 in the Court of the Additional Subordinate Judge I, Gaya, for declaration of their title and for recovery of possession of agricultural lands admeasuring 4 acres 29 gunthas comprised in two holdings bearing khata Nos. 458 (nakdi) and 459 (Bhouli) in Touzi No. 7535 situated in village Parsain. The defendants in the suit were the present respondents and three others, defendants 5, 6 and 7. One Brahmadeo was defendant 7 claiming an interest in khata No. 458 on the basis of a sale deed executed on March 31, 1959, by one Deonandan Singh who was defendant 5 in the trial Court. It must be made distinctly clear that Brahmadeo claimed interest in khata No. 458 while the present respondents claimed interest in khata No. 459 only. The trial Court decreed the suit declaring that the plaintiffs were the owners of both the khatas and were entitled to recover possession of the same.

2. Title Appeal 7 of 1974 was preferred in the Court of District Judge, Gaya and it was heard by the learned Fourth Additional District Judge as per his judgment and decree dated July 12, 1974. The learned Additional District Judge dismissed the appeal and affirmed the decree of the trial Court.

3. Present respondents alone preferred Second Appeal 697 of 1974 in the High Court of Judicature of Patna. It must be specifically mentioned that neither defendant 7 Brahmadeo who died pending the appeal before the District Court and whose legal representatives were not not impleaded, nor anyone claiming under him either came to be substituted in the appeal pending in the District Court nor any of them preferred appeal to the High Court. This has some relevance to the disposal of the appeal before us and, therefore, it has been categorically set out.

4. Harkoo Gope and three others who claimed interest in khata No. 459 only, preferred second appeal against the dismissal of their appeal by the learned District Judge. When the second Appeal 697 of 1974 was pending in the High Court, an affidavit was filed on behalf of the appellants (respondents in this Court) on November 16, 1978 drawing attention of the court to a notification under section 3 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 ('Act' for short) and further intimating to the court that the village in which the disputed khatas were situated was taken up for consolidation of holding and, therefore, the appeal pending in the High Court would abate in view of the provision contained in Section 4 of the Act. The High Court accepted the submission and disposed of the appeal by its order dated August 18, 1979, the operative portion of which reads as under :

The appeal abates and the judgments and decrees of both the courts below are hereby set aside as having abated.

Original plaintiffs having been dissatisfied by the High Court not only abating the second appeal preferred by the respondents but also setting aside the judgments and decrees of the trial Court and the first appellate Court as having abated, have preferred this appeal by special leave.

5. Shri B.P. Singh, learned counsel who appeared for the appellants contended that even if the second appeal abates by virtue of the provision contained in Section 4, on issue of a notification under Section 3 of the Act, the High Court cannot set aside the judgments and decrees of the trial Court and the first appellate Court as according to him when an appeal abates the judgment and decree of the court against which the appeal is preferred becomes final. The second contention of the learned counsel is that in any view of the matter as the present respondents had no interest in khata No. 458 and as Brahmadeo on sale to him by Deonandan Singh alone claimed interest in khata No. 458 and since the death of Brahmadeo, when the first appeal was pending and his heirs and legal representatives having not been substituted, the appeal quo him in respect of khata No. 458 had abated and the present respondents could not have preferred appeal in respect of khata No. 458 and, therefore, the High Court not have set aside the decree in respect of khata No. 458.

6. Section 3 of the Act confers power on the State Government to make a declaration of its intention to frame a scheme for consolidation of holdings. When the State Government entertains an intention to make a scheme for consolidation of holdings in a given village, it has to issue a notification declaring its intention to make a scheme for the consolidation of holdings in specified area. Section 4 provides that upon the publication of a notification under sub-section (1) of section 3, the consequences enumerated in Section 4 shall ensue. One such consequence is as set out in sub-clause (c) which reads as under :

(As substituted by Bihar Consolidation of Holdings and Prevention of Fragmentation (Amendment) Act, 1973) 4. Effect of notification under Section 3(1) of the Act - Upon the publication of the notification under sub-section (1) of Section 3 in the official Gazette the consequences, as hereinafter set forth, shall, subject to the provisions of this Act, from the date specified in the notification till the close of the consolidation operation, ensue in the area to which the notification relates, namely -

(c) every proceeding for the correction of records and every suit and proceeding in respect of declaration of rights or interest in any land lying in the area or for declaration or adjudication of any other right in regard to which proceeding can or ought to be taken under this Act, pending before any court or authority whether of the first instance or of appeal, reference or revision, shall, on an order being passed in that behalf by the court or authority before whom such or proceedings is pending, stand abated.

There are as many as 5 provisions to clause (c) of Section 4 but only one is material which reads as under :

Provided further that such abatement shall be without prejudice to the rights of the persons affected to agitate the right or interest in dispute in the said suits or proceedings before the appropriate consolidation authorities under and in accordance with the provisions of this Act and the rules made thereunder.

7. Present appeal arises out of a suit filed by the present appellants, who were plaintiffs, for a declaration of their title and consequential relief of possession meaning that it was a suit concerning agricultural land to which title was claimed and disputed. This suit was pending in second appeal at the instance of the respondents when the notification under Section 3(1) came to be issued. Accordingly, Section 4(c) would be attracted and the necessary consequence statutorily prescribed, must ensue. Therefore, it is incontrovertible that the second appeal would abate. Shri Singh, learned counsel for the appellants does not dispute this legal consequence.

8. The grievance of Shri Singh is that the High Court while making an order declaring that the second appeal has abated, was in error in setting aside the judgments and decrees of the trial Court as well as of the first appellate Court which were in favour of the present appellants on the ground that those proceedings have also abated. At first blush this argument is very attractive but if accepted it has a potentially of doing irreparable harm.

9. When a scheme of consolidation is undertaken, the provides for adjudication of various claims to land involved in consolidation by the authorities set up under the Act. In order to permit the authorities to pursue adjudication of rival claims to land unhampered by any proceedings in civil courts, a wholesome provision was made that the pending proceedings involving claims to land in the hierchy of civil courts, may be in the trial Court, appeal or revision, should abate. This provision was made with a view to ensuring unhampered adjudication of claims to land before the authorities under the Consolidation Act without being obstructed by proceedings in civil courts or without being hampered or impeded by decisions of the civil courts in the course of consolidation of holdings. In order to avoid conflict consequent upon rival jurisdictions the legislature provided that the proceedings involving the claims to land put in consolidation should be exclusively examined by the authorities under the Consolidation Act and all rival jurisdiction would be closed. Simultaneously it was necessary to deal with the pending proceedings and that is why the provision for abatement of such proceedings.

10. The concept of abatement is known to civil law. If a party to a proceedings either in the trial Court or any appeal or revision dies and the right to sue survives or a claim has to be answered, the heirs and legal representatives of the deceased party would have to be substituted and failure to do so would result in abatement of proceedings. Now, if the party to a suit dies and the abatement takes place, the suit would abate. If a party to an appeal or revision dies and either the appeal or revision abates, it will have no impact on the judgment, decree or order against which the appeal or revision is preferred. In fact, such judgment, decree or order under appeal or revision would become final. Such is not the scheme of abatement as conceived by Section 4 of the Act. Here, if the abatement as conceptually understood in the Code of Civil Procedure is imported, it will do irreparable harm. To illustrate, if an appeal abates rendering either the trial Court judgment or the judgment in first appeal final and binding, the consolidation authorities would also be bound by it and the party whose appeal or revision abated would lose its chance of persuading the appellate or revisional authority to accept its case which may result in interfering with or setting aside the judgment, order or decree in appeal. Such was not and could not be the intention of Section 4. This becomes manifestly clear from the proviso to clause (c) of Section 4 extracted here in above which shows that such abatement shall be without prejudice to the rights of the person affected to agitate the rights or interest in dispute in the suit or proceeding before the appropriate consolidation authorities under and in accordance with the provisions of the Act. No one would, therefore, stand to suffer on account of the abatement because there is a special forum carved out for adjudication of the rights which were involved in proceedings which would abate as a consequence of the notification under Section 3. If the construction as canvassed for were to be adopted it would result in irreparable harm

and would be counter-productive. The consolidation work would be wholly hampered and a party whose appeal is pending would lose the chance of convincing the appellate Court which, if successful, would turn the tables against the other party in whose favour the judgment, decree or order would become final on abatement of the appeal. Therefore, the legislature intended that not only the appeal or revision would abate but the judgment, order or decree against which the appeal is pending would also become non est as they would also abate and this would leave consolidation authority free to adjudicate the claims of title or other rights or interest in land involved in consolidation. In our opinion, therefore, the High Court was right in not only holding that the second appeal pending before it abated but also the judgment decree of the trial Court and first appellate Court would stand abated along with those proceedings. We reach this conclusion on the language of Sections 3 and 4 and the scheme of the Act but the view which we are taking is also borne out some decisions though in none of them this position was directly canvassed.

11. In *Ram Adhar Singh v. Ramroop Singh* ((1968) 2 SCR 95 : AIR 1968 SC 714), this Court examined the effect of a provision in pari materia in a parallel statute, namely, Section 5 of the Uttar Pradesh Consolidation of Holdings Act, 1953 ('U.P. Act' for short). Section 5 provided for the consequences of a declaration of intention to prepare a scheme for consolidation of holding made under Section 4. As the section stood prior to its amendment in 1966, it did not provide for abatement of proceedings pending in civil courts at the commencement of consolidation proceedings. By the Amending Act 21 of 1966, Section 5 was amended introducing sub-section (2)(a) to provide for abatement of pending proceedings. This section is in pari materia with Section 4(c) of the Act. At the time of the issue of the notification an appeal by special leave was pending in this Court and a notice of motion was taken out requesting the Court to pass an order abating the appeal after taking note of sub-section (2)(a) introduced by the Amending Act of 1966. After negating the contention challenging the constitutional validity of the Amending Act, this Court held that the suit out of which the appeal came to the court would stand abated in view of sub-section (2)(a) introduced in Section 5. The emphasis is that not only would the appeal pending in this Court abate but the suit as a whole abated. True it is that no contention was taken whether only the appeal would abate keeping the judgment under appeal intact or the suit as a whole would abate, but the observation of this Court will clearly indicate that in the opinion of this Court the suit as such would abate rendering the appeal pending before this Court infructuous. This decision in *Ram Adhar Singh* case ((1968) 2 SCR 95 : AIR 1968 SC 714) was in terms followed in *Chattar Singh v. Thakur Prasad Singh* ((1975) 4 SCC 457 : AIR 1975 SC 1499). The appeal in *Chattar Singh* case ((1975) 4 SCC 457 : AIR 1975 SC 1499) related to a suit which had a reference to a claim to the land in respect of which a notification was issued under the U.P. Act as amended by Act 21 of 1966. The notification was issued when the appeal was pending before this Court. The appellants moved for passing an order of abatement. Granting the motion, this Court held that the suit and the appeals stood abated, leaving it open to the parties to work out the rights before the appropriate authorities under the U.P. Act. Both the aforementioned decisions were noticed in *Satyanarayan Prasad Sah v. State of Bihar* (1980 Supp SCC 474 : AIR 1980 SC 2051). In that case upon the issue of a notification under Section 3 of the Act at a time when the matter was pending in the High Court an order was made under Section 4(c) abating the proceeding as also the suit from which the proceeding arose. Writ petitions were filed in this Court under Article 32 of the Constitution questioning the constitutional validity of Section 4 of the Act as being violative of Articles 14 and 19 of the Constitution. After repelling the challenge to the vires of Section 4, this Court affirming the decisions in *Ram Adhar Singh* ((1968) 2 SCR 95 : AIR 1968 SC 714) and *Chattar Singh* ((1975) 4 SCC 457 : AIR 1975 SC 1499) cases, held that may be that the High Court should not have nullified the decree of the trial Court but should have merely declared that the proceeding stood

abated which this Court understood to mean that the civil proceeding comes to a naught. In other words, the proceedings from its commencement abate and no decision in the proceeding at any stage would have any impact on the adjudication of claims by the parties under the Act.

12. Accordingly, both on principle and precedent it is crystal that where a notification is issued bringing the land involved in a dispute in the civil proceeding under a scheme of consolidation, the proceedings pending in the civil court in the trial Court, appeal or revision, shall abate as a consequence ensuing upon the issue of a notification and the effect of abatement would be that the civil proceeding as a whole come to a naught. Therefore, the order of the High Court impugned in this appeal is legal and said so far as not only directed abatement of the appeal pending before the High Court but also abating the judgments and decrees of the trial Court and the first appellate Court because the entire civil proceeding came to naught.

13. The next contention of Shri Singh was that the High Court ought not to have nullified the decree with regard to khata No. 458 in which Brahmadeo and Deonandan Singh, defendants 7 and 5 respectively, alone were interested and the present respondents had no interest in khata No. 458. Learned counsel who appeared for the respondents conceded that the present respondents have no interest in khata No. 458. It also transpires that Brahmadeo claimed interest in khata No. 458 alleging that he had purchased the land involved in the khata from Deonandan Singh, defendant 5. The suit proceeded ex parte against defendants 5 and 6 and Brahmadeo, defendant 7 contested the suit in respect of khata No. 458. The trial Court negated the contention of defendant 7 Brahmadeo and accepted plaintiff's title. Defendant 7 Brahmadeo along with other defendants preferred an appeal to the District Court. When the appeal was pending in the District Court, Brahmadeo, the appellant died. His legal representatives were not substituted. Since defendant 7 Brahmadeo as appellant claimed separate, specific and exclusive right to khata No. 458, on his death his legal representatives ought to have been substituted. He was the appellant. No one was substituted on his behalf. Obviously, therefore, the appeal preferred by Brahmadeo abated. It may also be made clear that legal representatives of Brahmadeo have not preferred second appeal. Second appeal was preferred by the present respondents who claimed interest in khata No. 459 only. Accordingly, when the appeal preferred by the present respondents abated, it only abated with reference to khata No. 459 and in no case it would have any impact on the title of present appellants which become established under a decree of the trial Court which become final on the appeal of Brahmadeo having abated before the notification under Section 3, and it could not at all be dealt with by the High Court. To that extent this appeal will have to be allowed and an appropriate modification would have to be made.

14. Accordingly, this appeal succeeds in part. Proceedings with regard to khata No. 459 (Bhouli) in Touzi 7535, village Parsain were rightly abated by the High Court and the civil proceeding with regard to khata No. 459 as a whole would abate leaving the parties to get their rights adjudicated before the authorities under the Act. The title of the appellants declared by the trial Court in respect of khata No. 458 (nakdi) has become unchallengeable at the hands of Brahmadeo or anyone claiming through him and the abatement of the second appeal will have no impact on the title of the appellants to khata No. 458. The declaration made by the trial Court in respect of khata No. 458 is restored. In the circumstances of the case there will be no order as to costs.

</html