

Suraj Mal and Another

Vs

Ram Singh and Others

Civil Appeals Nos. 273-74 of 1972

(O. Chinnappa Reddy, M. M. Dutt JJ)

07.08.1986

JUDGMENT

DUTT, J. –

1. These two appeals by special leave have been preferred by the appellants against the judgment of a learned Single Judge of the Allahabad High Court. By the said judgment the learned Judge set aside the order of the District Judge, Meerut, passed by him on appeal under Section 39 of the Arbitration Act, 1940, upholding the order of the First Civil Judge, Meerut, and the award of the Arbitrator made under Section 12 of the UP Consolidation of Holdings Act, 1953, hereinafter referred to as 'the Consolidation Act'.

2. One Kurey was the owner of the zamindari property in khewat Nos. 23 and 34 and also in khewat No. 2, comprising the disputed plots of land in village Daha. On his death, the zamindari property devolved upon his daughter, Sona Devi. By a registered deed of sale dated December 21, 1935, Sona Devi sold the zamindari property to one Hoshiara, the predecessor in interest of the appellants, and also to one Abhey Ram. Out of the consideration of Rs 3,150, Sona Devi was paid only Rs 1300 in cash before the Sub-Registrar and the balance of consideration money was kept in deposit with the purchasers for payment under three usufructuary mortgage deeds executed by Kurey in favour of some of his creditors. Sona Devi had no son when she executed the sale deed, but subsequently three sons, namely, the respondents 3, 4 and 5 were born to her. She died in 1944 leaving behind her the said respondents who were all minors at the time of her death.

3. The respondents 3 to 5, the sons of Sona Devi, filed a suit being Suit No. 1503 of 1950 in the court of the munsif, Meerut against the appellants and others for a declaration that Sona Devi had only a life interest in the zamindari property purported to have been transferred by her by the sale deed dated December 21, 1935, and that the transfer not having been supported by any legal necessity, was not binding upon the respondents. The respondents also prayed for recovery of possession of the property and for mesne profits.

4. The learned Munsif by his judgment dated January 18, 1953 decreed the suit. Both the parties preferred appeals against the said judgment and decree of the learned Munsif. During the pendency of the appeals, village Daha, in which the disputed land is situate, was notified for consolidation operations under the Consolidation Act. In view of Section 5 of the Consolidation Act, all further proceedings of the said appeals were stayed.

5. In the consolidation proceedings that were started in the village, the names of the appellants were recorded in the revenue papers as bhumidhars in respect of the disputed land. The respondents filed

objections under Section 12 of the Consolidation Act, as it stood at the relevant time in November, 1956. As the objections raised questions of title regarding the disputed land, the Consolidation Officer referred the matter under sub-section (4) of Section 12 to the statutory Arbitrator. The learned Arbitrator came to the findings that Sona Devi had only a life interest in the disputed land, that the sale deed executed by her on December 21, 1935 was neither for legal necessity nor for the benefit of the estate of her deceased father, that the transfer of the disputed land by the said sale deed was not binding on the respondents, the sons of Sona Devi, and that, accordingly, the said respondents were entitled to recover possession of the disputed land purported to have been transferred by the said sale deed. In view of the above findings, the learned Arbitrator made an award in favour of the respondents.

6. The appellants filed two petitions of objection to the award under Section 30 of the Arbitration Act which were dismissed by the learned First Civil Judge, Meerut, by his order dated November 8, 1967.

7. Being aggrieved by the order of the learned First Civil Judge, Meerut, dismissing the petitions of objection, the appellants filed two appeals to the Additional District Judge, Meerut, under Section 39 of the Arbitration Act. The learned Additional District Judge took the view that as the sons of Abhey Ram, who was also one of the transferees under the said sale deed dated December 21, 1935, were not made parties in the proceedings, the reference to the Arbitrator was illegal and the award made by him was invalid. Further, it was held by the learned Additional District Judge that the Arbitrator was guilty of legal misconduct inasmuch as he had committed an error of law apparent on the face of the award. Upon the said findings, the learned Additional District Judge set aside the order of the learned First Civil Judge, Meerut, and also the award of the learned Arbitrator. Both the appeals preferred by the appellants were, accordingly, allowed.

8. The respondents, being aggrieved by the said order of the learned Additional District Judge, filed two revision petitions under Section 115 of the Code of Civil Procedure before a learned Single Judge of the Allahabad high Court. The learned Judge, as aforesaid, set aside the order of the learned Additional District Judge, Meerut, and restored that of the learned First Civil Judge, Meerut, and also the award of the learned Arbitrator. Hence these two appeals by special leave.

9. Before we proceed further we may dispose of two applications which have been filed by the appellants in the two appeals. It has been alleged in the applications that during the pendency of the appeals in this Court, a notification dated June 27, 1981 under Section 4-A of the Consolidation Act was issued declaring that village Daha might again be brought under the consolidation operations. In view of that notification, a further notification was issued under sub-section (2) of Section 4 by the State Government deciding to start consolidation operations in village Daha. It is alleged that since the issuance of the notification under Section 4(2), the consolidation operations have been going on in that village.

10. It is Submitted that by virtue of sub-section (2) of Section 5 of the Consolidation Act, the consequence of the publication of a notification under Section 4(2) is that the present appeals along with other proceedings out of which the appeals arise, stand abated. The parties affected will, however, be entitled to agitate their right or interest in dispute in the said proceedings before the appropriate consolidation authorities under and in accordance with the provisions of the Consolidation Act and the rules made thereunder, as provided in clause (b) of Section 5(2) of the Consolidation Act. Accordingly, it has been prayed in the said application that an order of abatement of the instant appeals and also of other proceedings including the arbitration proceedings,

should be made under Section 5(2) of the Consolidation Act.

11. In order to consider the contentions of the appellants as to the abatement of the appeals and the other proceedings out of which the appeals arise, we may refer to some of the provisions of the Consolidation Act. Sub-section (1) of Section 52 of the Consolidation Act provides for the issuance of a notification by the State Government declaring the closure of the consolidation operations in the unit whereupon the village or villages forming a part of the unit shall cease to be under consolidation operations. Sub-section (2) of Section 52 provides that notwithstanding anything contained in sub-section (1), any order passed by a court of competent jurisdiction in cases of writs filed under the provisions of the Constitution of India, or in cases or proceedings pending under the Consolidation Act on the date of issue of the notification under sub-section (1), shall be given effect to by such authorities, as may be prescribed and the consolidation operations shall, for that purpose, be deemed to have not been closed.

12. Under Section 4-A(1) of the Consolidation Act, where the State Government is of the opinion that in the case of a district or part thereof in respect of which a notification has already been issued under Section 52, it is expedient in public interest so to do, it may make a declaration by notification in the Gazette that such district or part thereof may again be brought under consolidation operation. Under the proviso to Section 4-A(1), no such declaration shall be issued within ten years from the date of the notification referred to in the said section. Section 5 provides for the effect of a notification under Section 4(2). Sub-section (2) of Section 5 runs as follows :

5(2) Upon the said publication of the notification under sub-section (2) of Section 4, the following further consequences shall ensue in the area to which the notification relates, namely -

(a) 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 proceedings 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 suit or proceeding is pending, stand abated :

Provided that no such order shall be passed without giving to the parties notice by post or in any other manner and after giving them an opportunity of being heard :

Provided further that on the issue of the notification under sub-section (1) of Section 6 in respect of the said area or part thereof, every such order in relation to the land lying in such area or part, as the case may be, shall stand vacated :

(b) 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 on this Act and the rules made thereunder.

Explanation. - For the purposes of sub-section (2), a proceeding under the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 or an uncontested proceeding under Sections 134 to 137 of the U. P. Zamindari Abolition and Land

Reforms Act, 1950, shall not be deemed to be a proceeding in respect of declaration of rights or interest in any land.

13. It is manifestly clear that where consolidation proceedings have been held and closed, a notification under Section 4(2) of the Consolidation Act can be made only after the expiry of ten years from the date of the notification under Section 52. When the consolidation proceedings are over, the State Government issues a notification declaring that the consolidation operations have been closed in the unit whereupon the village or village or villages forming a part of the unit shall cease to be under consolidation operations. Thus, at the time the notification under Section 4-A is made, the consolidation operations in respect of any district or part thereof have been closed ten years before and there is no consolidation operation in the district or part thereof to which the notification under Section 4-A relates.

14. By virtue of sub-section (2) of Section 52 of the Consolidation Act even though a notification under sub-section (1) of Section 52 is made declaring that the consolidation operations have been closed in respect of the unit, yet it shall be deemed to have not been closed for the purpose of giving effect by the prescribed authorities to the following two cases :

(i) Any order passed by a court of competent jurisdiction in cases of writs filed under the provisions of the Constitution of India.

(ii) In cases or proceedings pending under the Consolidation Act on the date of issue of the notification under sub-section (1).

15. Thus, in regard to the two cases mentioned above, the consolidation operations shall be deemed to have not been closed. As noticed already, Section 4-A will apply only where the consolidation operations remained closed for a period of ten years from the date of the notification under Section 52(1). But, in view of sub-section (2) of Section 52 of the Consolidation Act, the consolidation operations shall be deemed to have not been closed in respect of the two cases mentioned above, and so Section 4-A will have no application to these two cases. Consequently, the provision of Section 4 as also the provision of Section 5 will not apply to these two cases. The object of sub-section (2) of Section 52 is that when an order has been passed by a court under the provisions of the Constitution of India or in cases or proceedings pending under the Consolidation Act, the right or interest involved in such order or in the pending cases or proceedings under the Consolidation Act, should not be again subjected to the consideration in the consolidation proceedings started by virtue of a notification under Section 4-A of the Consolidation Act.

16. It may be noticed that suit and proceedings referred to in Section 5(2)(a) are different from the cases and proceedings mentioned in sub-section (2) of Section 52. While cases or proceedings referred to in sub-section (2) of Section 52, the order passed in writ cases under the Constitution of India apart, must be pending under the Consolidation Act, under clause (a) of Section 5(2) the proceedings which will stand abated upon an order being passed in that behalf by a court or authority, are either a pending suit or pending proceedings, but such proceedings are not pending under the Consolidation Act.

17. The proceedings out of which the instant appeals arise are proceedings under the Consolidation Act and, therefore, Section 5(2)(a) will have no application to the proceedings out of which the present appeals arise. In any event, in view of the sub-section (2) of Section 52 of the Consolidation Act, the notification issued under Section 4-A and the subsequent notification under Section 4(2)

and the consequence thereof as provided under Section 5(2) of the Consolidation Act, will have no application to or affect the proceedings giving rise to the instant appeals.

18. The applications are, therefore, misconceived and are dismissed.

19. We may now come to the merits of the appeals. It is urged by Mr J. P. Goyal, learned counsel appearing on behalf of the appellants in both these appeals, that the High Court should have held that as the sons of Abhey Ram, one of the transferees under the sale deed dated December 21, 1935, were not made parties in the arbitration proceedings, it was invalid. This contention challenging the maintainability of the reference and the invalidity of the arbitration proceedings, was raised for the first time before the learned Additional District Judge who, as stated already, upheld the same. In our opinion, the High Court was right in overruling the contention on the ground that the learned Additional District Judge should not have entertained the objection to the maintainability of the reference itself at that stage. The High Court has pointed out that before the learned Arbitrator all the parties concerned appeared and no objection to the competency of the reference was raised and that the proper stage for raising such an objection was when the reference was made under Section 12 of the Consolidation Act. The contention of the appellants is, accordingly, rejected.

20. It is next contended on behalf of the appellants that the High Court was not justified in setting aside the finding of the learned Additional District Judge that the learned Arbitrator was guilty of legal misconduct. It has been held by the learned Additional District Judge that there was an error apparent on the face of the award inasmuch as the learned Arbitrator failed to properly consider the provision of Section 18 of the U. P. Zamindari Abolition and Land Reforms Act, 1950, hereinafter referred to as 'the Zamindari Abolition Act', and to give effect to the rights conferred upon the appellants under the said provision. It is submitted that the learned Additional District Judge was, therefore justified in holding that the learned Additional District Judge was, therefore justified in holding that the learned Arbitrator was guilty of legal misconduct.

21. Let us now consider whether the Arbitrator has committed any error of law in not giving effect to the provision of Section 18 of the Zamindari Abolition Act in favour of the appellants. Section 18 confers on the intermediaries and certain cultivators the right to retain land in their possession, as bhumidhars. The appellants claim that they are intermediaries in possession of the disputed land and, accordingly, they are entitled to retain the disputed land as bhumidhars under the provision of Section 18. In our opinion, this claim of the appellants is without any foundation. It is true that by the sale deed dated December 21, 1935 the appellants purported to have acquired the proprietary interest of Sona Devi in the land. The sale deed has, however, been held by the learned Arbitrator as invalid inasmuch as it was not supported by any legal necessity. The appellants, therefore, had not acquired any interest in the disputed land under the sale deed and, as such, they had no intermediary interest in the disputed land on the date immediately preceding the date of vesting under the Zamindari Abolition Act. The appellants not being intermediaries or persons of any category as mentioned in Section 18, they are not entitled to retain the disputed land under the provisions of Section 18. There is, therefore, no substance in the contention made on behalf of the appellants that their possession in the disputed land is protected by the provision of Section 18.

22. It is, however, urged by Mr Goyal that in any event the appellants are entitled to the benefit of Section 3 of the Uttar Pradesh Land Reforms (Supplementary) Act, 1952. Sub-section (1) of Section 3 of the said Act provides as follows :

3. Persons in cultivatory possession in 1359 Fasli to be adhivasis or asamis. - (1)

Every person who was in cultivatory possession of any land during the year 1359 fasli but is not a person who as a consequence of vesting under Section 4 of the U. P. Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act 1 of 1951) (hereinafter referred to as the said Act), has become a bhumidhar, sirdar, adhivasi or asami under Sections 18 to 21 of the said Act shall be and is hereby declared to be, with effect from the appointed date -

(a) if the bhumidhar or sirdar of the land was, or where the land belongs jointly to two or more bhumidhars or sirdars, all of them were, on the appointed date person or persons referred to in items (i) to (vi) of sub-section (2) of Section 10 of the said Act, an asami from year to year, or

(b) if the bhumidhar or sirdar was not such a person, an adhivasi,

and shall be entitled to all the rights and be subject to all the liabilities conferred or imposed upon an asami or an adhivasi, as the case may be, by or under the said Act.

Explanation. - A person shall not be deemed to be in cultivatory possession of the land, if he was cultivating it as a mortgagee with possession or a the kedar, or he was merely assisting or participating with a bhumidhar, sirdar, adhivasi or asami concerned in the actual performance of agricultural operations.

23. It is submitted by the learned counsel for the appellants that as the appellants had been in cultivatory possession of the disputed land during the year 1359 Fasli, they have acquired the status of adhivasi and are entitled to all the rights conferred upon an adhivasi under the Zamindari Abolition Act. This contention is based on the assumption that the appellants were in cultivatory possession during the year 1359 Fasli. In view of the findings of the learned Arbitrator, as noticed above, the appellants did not acquire any interest in the disputed land by virtue of the sale deed executed by Sona Devi. In view of the facts already noticed and stated hereafter for convenience, we are unable to accept the contention of the appellants that they have acquired title to the disputed land by adverse possession. After the death of Sona Devi in 1944, the possession of the disputed land by the appellants became illegal and adverse to respondents 3 to 5. But before such possession could ripen into title after the lapse of twelve years, respondents 3 to 5 instituted a suit in 1950, that is, within six years of such possession, in the court of the munsif at Meerut for the recovery of possession of the disputed land from the appellants. The suit was decreed by the learned Munsif against the appellants. Both the appellants and respondents 3 to 5 filed appeals against the decree, but in view of Section 5 of the Consolidation Act, all further proceedings of the said appeals were stayed. Thereafter, the consolidation proceedings were started and the present appeals arise out of such proceedings. Thus, the appellants have not acquired any title to the disputed land by adverse possession.

24. Section 3 of the Uttar Pradesh (Supplementary) Act, 1952 does not confer any right on a person whose possession of the land in question during the year 1359 Fasli was illegal. In our opinion, it is not the intention of the legislature to protect the possession of a trespasser under Section 3(1). The explanation to Section 3(1) gives sufficient indication that a person not having any lawful right in the land, cannot claim to be in cultivatory possession of such land.

25. The Allahabad High Court in *Ram Krishna v. Bhagwan Baksh Singh* (1961 All LJ 301) and in *Badri v. Juthan Singh* (1969 All LJ 411), has rightly held that a trespasser cannot be said to be in

cultivatory possession within the meaning of Section 3 of the U.P. Land Reforms (Supplementary) Act, 1952. The appellants were not, therefore, in cultivatory possession of the disputed land during the year 1359 Fasli and, consequently, they are not entitled to the benefit of Section 3(1). No other point has been urged on behalf of the appellants.

26. For the reasons aforesaid, both the appeals are dismissed with costs assessed at a consolidated sum of Rs 3000.

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