

Ram Nath and Others

Vs

Dy. Director of Consolidation and Others

Civil Miscellaneous Petition No. 1483 of 1987 in Civil Appeal No. 573 of 1974

(Sabyasachi Mukharji, G. L. Oza JJ)

10.11.1987

ORDER

1. The appeal was listed on May 7, 1987 before a bench consisting of Hon'ble Mr. Justice G. L. Oza and the Hon'ble Mr. Justice K. N. Singh. The order recited : "Heard learned counsel for the respondent for sufficient time. No one appears for the appellants. The appeal is, therefore, dismissed in default".

2. This CMP was subsequently filed for recalling the order on the ground that the learned counsel was busy in the Delhi High Court on that date. It was further stated there : "But when after arguing two cases viz. Company Petition No. 110 of 1983 Ishwar Singh v. Dharam Singh (final hearing) and also other regular matter Suit No. 49 of 1976 A. C. Tamra v. Mercury Production (part-heard) in the High Court of Delhi at New Delhi he (meaning thereby the counsel for the appellant) came to this Hon'ble Court, he came to know that this appeal had reached for hearing and was dismissed for default." This petition is signed not by the appellant but by M/s. Bagga & Co., advocates for the appellant. It is verified by an affidavit of one P. K. Bajaj who states that he had been instructed to appear and argue the appeal. We are not sure as to who is making this application and whether the appellant is at all aware of these events. We find no justification for recalling the order on the plea that the counsel was busy somewhere. We were not inclined to act upon this kind of plea but on the basis that otherwise the appellant would suffer loss for no fault of his, we have decided to hear the counsel. This practice should not be permitted in this Court any further.

3. On perusal of the judgment of the High Court we find no merit in this appeal. By the impugned judgment of the High Court of Allahabad, writ petition was allowed and the order of the Deputy Director of Consolidation dated October 25, 1967 was quashed.

4. The learned Judge has recorded that the respondents herein have been held to be in possession in 1958 when the case started under Section 145 of the Code of Criminal Procedure and their date of occupation could not be later than May 8, 1958 with the result that the six years' period of limitation for a suit for their eviction under Section 209 of the Zamindari Abolition and Land Reforms Act would start to run from July 1, 1958 and would expire on June 30, 1964 i.e. before the consolidation operations commenced.

5. It was, however, contended on behalf of the appellants herein that there was a break in the possession of the respondents between May 8, 1958 and January 29, 1960, but it was obvious that though the land was in the custody of the criminal court during that period the court must be deemed to have been holding possession on behalf of the person eventually found to be entitled to possession. We are of the opinion that the learned Judge was right in so holding. It was argued that

there was no justification for treating the respondents to be entitled for possession of the land as they had occupied the land as mere trespassers but it was found that they had matured their title by adverse possession and there could be no warrant for denying them the status of rightful owners. The learned Judge in the absence of any finding by a competent court negating the respondents' claim was of the opinion that they must be deemed to have been in (sic) persons entitled to possession of the disputed plots with the result that during the period between May 8, 1958 and January 29, 1960 the criminal court must be held to have been possession of the land. In that view of the matter there was no break in the possession of the respondents and they must be held to have been in continuous occupation at least from May 1958. In that view of the matter the other contentions urged before the High Court need not be noticed.

6. In that view of the matter the appeal fails and is dismissed accordingly.

7. No one appears for the respondent. Therefore, there is no question of costs. We, however, direct the Registry to transmit a copy of this order to the appellant directly at the costs of advocate for the appellant.

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