

Wali Mohammad (Deceased) By Lrs

Vs

Ram Surat and Others

Civil Appeal No. 1443 of 1972

(M. H. Kania, S. Ranganathan JJ)

21.09.1989

JUDGMENT

KANIA, J. –

1. The appellants before us are the heirs and legal representatives of one Wali Mohammad. Respondents 1 and 2 are the sons of one Ram Kumar. Respondent 1 and 2 are the sons of one Ram Kumar. Respondent 3 is the Board of Revenue, Allahabad.
2. On May 22, 1928 Wali Mohammad executed a usufructuary mortgage in favour of Ram Kumar Shiv Kumar in respect of two plots. According to Wali Mohammad, he redeemed the said mortgage and took possession of the said plots in the beginning of Fasli Year 1354 (period from July 1, 1946 to June 30, 1947) and continued to be in possession thereof. On December 28, 1953 Ram Kumar moved an application under Section 232 of U. P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as "the said Act"), for getting possession of the said two plots from Wali Mohammad on the ground that his name was recorded in the Khasra and Khatauni of 1356 Fasli and, therefore, he was the Adhivasi of the said plots. This was contested by Wali Mohammad. The Sub-Divisional Officer found that Wali Mohammad was in possession of the said plots since the redemption of the said mortgage and dismissed the suit of Ram Kumar. That decision was confirmed by the Additional Commissioner on appeal holding that the entry in the Khasra relied on by Ram Kumar was fictitious. On second appeal, the Board of Revenue set aside the decision of the Sub-Divisional Officer and the Additional Commissioner and held that the entry in the Khasra to the effect that Ram Kumar was the occupant of the said plots in Khasra Fasli Year 1356 was sufficient to confer Adhivasi rights on him and no further inquiry was called for to ascertain whether the said entry was correct or wrong. Wali Mohammad filed a writ petition in the Allahabad High Court, challenging the aforesaid decision of the Board of Revenue. The learned Single Judge of the High Court, after hearing the arguments in the said writ petition, allowed the same and quashed the order of the Board of Revenue on the ground that the Board of Revenue had committed an error of jurisdiction. Ram Kumar preferred a Letters Patent appeal against the said decision of the learned Single Judge. The said appeal was allowed by a Division Bench of the said High Court. The Division Bench set aside the order of the learned Single Judge, holding that the entry in the revenue records was enough to confer rights of Adhivasi under Section 20(b) of the said Act. That decision is challenged before us in this appeal by special leave granted on the application of Wali Mohammad. Wali Mohammad died during the pendency of the present appeal and his heirs and legal representatives have been brought on record in his place.
3. The relevant provision which falls for considerations is clause (i) of sub-section (b) of Section 20 of the said Act. The relevant part of Section 20 runs as follows :

"20. Every person who -

#(a) \* \* \* \* \*###

(b) was recorded as occupant, -

(i) of any land other than grove land or land to which Section 16 applies or land referred to in the proviso to sub-section (3) of Section 27 of the U. P. Tenancy (Amendment) Act, 1947 in the Khasra or Khatauni of 1356 F. prepared under Sections 28 and 33 respectively of the U. P. Land Revenue Act, 1901 (U. P. Act 3 of 1901), or who was on the date immediately preceding the date of vesting entitled to retain possession thereof under clause (c) of sub-section (1) of Section 27 of the United Provinces Tenancy (Amendment) Act, 1947 (U.P. Act 10 of 1947), or

#(ii) \* \* \* \* \*###

shall, unless he has become a bhumidhar of the land under sub-section (2) of Section 18 or an assami under clause (h) of Section 21, be called Adhivasi of the land and shall, subject to the provisions of this Act, be entitled to take or retain possession thereof."

4. The said section deals with the question as to who is entitled to take or retain possession of the land in question. The plain language of the aforesaid clause (i) of sub-section (b) of Section 20 of the said Act suggests that this question has to be determined on the basis of the entry in the Khasra or Khatauni of 1356 Fasli Year prepared under Sections 28 and 33 respectively of the U.P. Land Revenue Act, 1901. An analysis of the said section shows that under sub-section (b) of Section 20 the entry in the Khasra or Khatauni of the Fasli Year 1356 shall determine the question as to the person who is entitled to take or retain possession of the land. It is, of course, true that if the entry is fictitious or is found to have been made surreptitiously then it can have no legal effect as it can be regarded as no entry in law but merely because an entry is made incorrectly that would not lead to the conclusion that it ceases to be an entry. It is possible that the said entry may be set aside in appropriate proceedings but once the entry is in existence in the Khasra or Khatauni of Fasli Year 1356, that would govern the question as to who is entitled to take or retain possession of the land to which the entry relates.

5. It was submitted by learned counsel for the appellants that if the entry was not correct, It could not be regarded as an entry made according to law at all the right to take or retain possession of the land could not be determined on the basis of an incorrect entry. He placed reliance on the decision of this Court in *Bachan v. Kankar* ((1972) 2 SCC 555 : (1973) 1 SCR 727 : AIR 1972 SC 2157). In that judgment the nature of the entries in Khasra or Khatauni is discussed and it is also discussed as to how this entry should be made. This Court held that entries which are not genuine cannot confer Adhivasi rights. It has been observed that an entry under Section 20(b) of the said Act, in order to enable a person to obtain Adhivasi rights, must be an entry under the provisions of law and entries which are not genuine cannot confer Adhivasi rights. In that judgment it has been stated that the High Court was wrong when it held that though the entry was incorrect, it could not be said to be fictitious. That observation, however, has to be understood in the context of what follows, namely, that an entry which is incorrectly introduced into the records by reason of ill-will or hostility is not shorn of authenticity but also becomes utterly useless without any lawful basis. This judgment, in our view, does not lay down that all incorrect entries are fictitious but only lays down that a wrong

entry or incorrect entry which has been made by reason of ill-will or hostility cannot confer any right under Section 20(b) of the said Act. This decision is clarified by a subsequent judgment of this Court in *Vishwa Vijay Bharati v. Fakhul Hassan* ((1976) 3 SCC 642 : 1976 Supp SCR 519 : AIR 1976 SC 1485), where it has been held as follows : (SCC p. 645, para 14)

"It is true that the entries in the revenue record ought, generally, to be accepted at their face value and courts should not embark upon an appellate inquiry into their correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent, entries. The distinction be fine but it is real. The distinction is that one cannot challenge the correctness of what the entry in the revenue record states but the entry is open to the attack that it was made fraudulently or surreptitiously. Fraud and forgery rob a document of all its legal effect and cannot found a claim to possessory title."

6. Coming to the present case, although the Additional Commissioner has held that the entry was fictitious, that conclusion seems to have been arrived at merely on the basis that Wali Mohammed was in possession in fasli year in question, with the result that the entry in the Khasra or Khatauni showing Ram Kumar as the occupant could not be correct. There is nothing to show that the said entry was fictitious or was made fraudulently or was incorrectly introduced by reason of ill-will or hostility towards Wali Mohammad. In these circumstances, the entry may not be correct but it could not be said to be correct but it could not be said to be fictitious or regarded as non-est. Merely because the entry might be incorrect, that would not make any difference to the determination of the question as to who is entitled to be declared to be the Adhivasi of the land under the provisions of Section 20(b) of the said Act. We agree with the conclusion and reasoning of the High Court.

7. In the result, the appeal fails and is dismissed with costs.

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