

Ram Bhawan Singh and Others

Vs

Jagdish and Others

Civil Appeals No. 1002 and 1003 of 1976

(N. M. Kasliwal, Smt. M. S. Fathima Beevi JJ)

22.08.1990

JUDGMENT

M. FATHIMA BEEVI, J. -

1. These appeals by special leave are directed against the judgments of the High Court of Allahabad. The land in plots Nos. 6385 and 6386 measuring 5 bighas and 4 biswas had been in the possession of Ram Dayal as mortgage under Baijnath who was the original tenant. Respondents 1 to 3 are the descendant of Ram Dayal. They made an application under Section 9 of the U.P. consolidation of Holding Act, 1954 before the Consolidation Officer. They claimed tenancy rights on the basis of the deed dated July 30, 1945 and they stated that their names had been recorded in the Khatauni of 1359 Fasli; they are in cultivatory possession and have become adhvavis and subsequently sirdars. They alleged that the name of the appellants herein have been wrongly entered in the Khatauni of 1353 Fasli and that the appellant have no right or possession over the land. The respondents prayed for entering their names as sirdars and scoring off the name of the appellants.
2. This application was allowed by the Consolidation Officer by order dated July 23, 1967. The order was reversed by the Settlement Officer (Consolidation). The Deputy Director of Consolidation dismissed the revision filed by the respondents. However, the writ petition filed by the respondents as C.M.W.P. No. 2726 of 1970 was allowed by the High Court by its judgment dated October 3, 1972 and the orders of The appellate and the revisional authorities were quashed thereby maintaining the order of Consolidation Officer. Civil Appeal No. 1002 of 1976 is directed against the judgment dated October 3, 1972 of the High Court.
3. The appellants had filed a special appeal on November 30, 1972 against the judgment dated October 3, 1972 of Single Judge of the High Court in C.M.W.P. No. 2726 of 1970. However, the said Letters Patent Appeal was not maintainable and ultimately dismissed in view of the U.P. High Courts (Abolition of Letters Patent Appeal Amendment) Ordinance, 1972 which came into force on June 30, 1972. This completes the narration of the fate of the Writ petition No. 2726 of 1970 which finally culminated in favour of the respondents by order dated October, 3, 1972.
4. The appellant did not challenge the order of the High Court dated October 3, 1972 by taking any further steps of filing any special leave petition before this Court. On the contrary, on some mistaken and totally wrong advice of some counsel the appellants again initiated fresh proceedings by moving an application on July 6, 1973 before the Settlement Officer Consolidation. That application was rejected on October 30, 1974. A revision was filed against that order before the Deputy Director of Consolidation which was also rejected by order dated July 21, 1975. Thereafter the appellants filed. C.M.W.P. No. 9943 of 1975 before the High Court on August 7, 1975 against

the order of the Deputy Director Consolidation. This writ petition came to be dismissed by order dated September 18, 1975. This judgment of the High Court is challenged in Civil Appeal No. 1003 of 1976. When the High Court in the earlier Writ petition No. 2726 of 1970 on the same subject matter had finally decided the matter in favour of the respondents by dated October 3, 1972, there was no question of giving any advice by any counsel in good faith to start proceedings afresh by moving a fresh application before the consolidation authorities. No counsel could have given such advice in good faith to start proceedings afresh before the consolidation authorities and then to claim benefit of such period under Section 14 of the Limitation Act. It was elementary for any counsel of whatever standing to have known that none of the authorities of the Settlement or Consolidation Department could have any right or jurisdiction to set aside the order of the High Court dated October 3, 1972. The Settlement Officer (Consolidation) as such was justified in dismissing the application by this order dated October 30, 1974, and thereafter the revision by the Deputy Director (Consolidation) by order dated July 21, 1975. The appellants then under the same mistaken advice not in good faith filed C.M.W.P. No. 9943 of 1975 which came to be dismissed by the High Court on September 18, 1975. The second judgment of the High Court is now challenged in Civil Appeal No. 1003 of 1976.

5. Both the appeals had been filed after the expiry of the period of limitation. The appellants had applied for condonation of delay on the appellants had been prosecuting the prior proceedings in good faith on legal advice and the period of more than three years taken in prosecuting the proceedings is liable to be excluded in computing the period of limitation under the provision of Section 14 of the Limitation Act, 1963. The respondents had filed counter to the application and opposed the same.

6. This Court granted special leave vide order dated September 2, 1976 in both matters subject to the right of the respondents to argue the question of limitation and the applicability of Section 14 of the Limitation Act at the hearing of the appeals.

7. The first question that we have to decide is that of limitation. The delay of 1198 days according to the appellants had occurred unwillingly and the appellants had been prosecuting with due diligence the earlier proceedings before the appellate and the revisional authorities and on the basis of the advice given by their counsel. There is no proper affidavit of either the appellants or the counsel in support of the application for condonation of delay. There is also no other material to indicate that the appellants had exercised due diligence in working out their remedies and sought proper advice in the matter. When the party had no right of appeal, the proceedings instituted before the High Court challenging the judgment in the writ petition cannot be considered to be one in good faith. The subsequent proceedings are also not legal or valid. When the decision of the High Court in the writ petition was one quashing the orders of the appellate and the revisional authorities, the party could not proceed on the basis that the matter was resorted to the lower authorities for fresh decision. We are therefore not satisfied that there is any merit in the ground urged by the appellants for getting over the bar of limitation. The appeals are liable to be dismissed as time barred.

8. We find that even on the merits, the appellants cannot succeed. The respondents based their claim on the patta in their favour under the deed of July 30, 1945. The Consolidation Officer accepted the genuineness of the deed and found title with the respondents. The appellants had claimed right under the subsequent document of August 2, 1945 in continuation of an earlier deed of November 23, 1943. The land was admittedly in the possession of Baijnath, the original tenant and he was dispossessed in execution of the decree obtained by the landlord in 1944. The tenancy in favour of Baijnath was subsisting when the deed of November 23, 1943 was executed. The creation of

tenancy during the subsistence of the earlier one could not confer any right. Before the deed of August 2, 1945 patta was already granted in favour of the respondents. The circumstances under which the same was granted also weighed in finding title in favour of the respondents. The landlord had obtained a decree against Baijnath when the land was mortgaged in favour of Ram Dayal. The mortgagee later on obtained the decree against the landlord for an amount of Rs. 214 being the value of the crops in the land. An agreement was subsequently entered into between the landlord and the respondents settling the claim under the decree and granting patta in favour of the respondents. These facts have been found in favour of the respondents by the Consolidation Officer. The High Court in quashing the orders of the appellate and the revisional authorities was of opinion that there was apparent error on the face of the record. The appellate authority was found to be wrong in its conclusion that the respondents lost their right by the continued possession of the appellants. The High Court noticed that even before the Consolidation Office, the appellants did not press their claim on the basis of the patta of 1943 and has also found that the deed of November 23, 1943 was not a valid settlement inasmuch as the land was in the possession of the sitting tenant. It was also noticed that soon after the deed of August 2, 1945, dispute arose regarding possession, that the appellants had been dispossessed on the basis of the decree obtained by the respondents setting aside the order of a criminal court. Before the decree became final pending litigation, the U.P. Zamindari Abolition Act came into force. In view of the subsequent legislation, the respondents have proceeded under the U.P. Consolidation Act and the proceedings culminated in the present appeals.

9. In the light of the definite findings of the competent authority that the respondents have derived valid title as tenants under the deed of July 30, 1945 and the apparent mistake in the proceedings of the appellate and the revisional authorities as found by the High Court, it is not now open to the appellants to contend that they are rightfully tenants entitled to possession of the land. Though the claim based on deed of November 23, 1943 had not been pressed before the lower authorities, it had been contended before us that the appellants have a case on the principle contained in Section 43 of the Transfer of Property Act. The learned counsel for the appellants maintained that even if the deed of November 23, 1943 was inoperative or was not valid for the reason that the landlord had no possession since they obtained possession on June 30, 1944, the appellants acquired tenancy right and that has been confirmed by the deed of August 2, 1945. The argument, though attractive, is not acceptable.

10. Section 43 of the Transfer of Property Act embodies the rule of estoppel by deed. The section enables the transferee to whom a transfer is made on fraudulent or erroneous representation to lay hold at his option of any interest which the transferor may subsequently acquire in the property provided by doing so he does not adversely affect the right of any subsequent purchaser for value without notice. Thus when a lessor erroneously represents that he is authorised to lease a property and creates a lease of it and afterwards acquires that property, the lessee is entitled to have the property from the lessor. This principle has no application if the transfer is invalid. The transfer under the deed on November 23, 1943 became inoperative not on account of any fraudulent or erroneous representation. The settlement was invalid and inoperative on account of the subsisting lease in respect of the land and as the landlord could not superimpose a second lease in respect of the tenanted property, no interest could be created in favour of the appellants under that document and, therefore, there is no question of feeding the estoppel. The execution of the deed dated July 30, 1945 in favour of the respondents negatives the claim of the appellants having acquired any right after the property was taken delivery of in 1944. We therefore reject the contention.

11. We accordingly hold that there is no valid ground to interfere with the decision of the High

Court. We therefore dismiss the appeals. In the facts and circumstances of the case, we direct the parties to bear their respective costs.

</html