

Chandrika Singh and others

Vs

Raja Vishwanath Pratap Singh and another

Civil Appeal No. 3785 of 1983

(Smt. M. S. Fathima Beevi, S. C. Agrawal JJ)

22.04.1992

JUDGEMENT

S.C. AGRAWAL, J.:-

1. This appeal by special leave is directed against the judgement of the Allahabad High Court dated April 2, 1980. It raises the question whether the civil court has jurisdiction to decide the issue whether the land in dispute in a suit or proceeding before it is a abadi land or some other land. It involves the interpretation of Section 331-A of the U. P. Zamindari Abolition and Land Reforms Act, 1950 (U. P. Act No. 1 of 1951), hereinafter referred to as 'the Act'.

2. The dispute relates to a plot of land bearing settlement No. 141/176-177 situate within the limits of Municipal Corporation of Varanasi. The said land consists of a residential house, Shiwala (temple), pucca well and open land enclosed by a boundary wall. In the municipal records, it is numbered as 18/106, Mohalla Sarang Talab, Varanasi. Respondents Nos. 1 and 2 filed a suit (No. 157 of 1973) for possession of the said property in the court of Civil Judge, Varanasi against the appellants wherein it was alleged that Aparbal Singh, father of appellant No. 1, and Chandra Deep Singh (deceased), who was appellant No. 2, in the appeal and is now represented by his legal representatives, was in possession of the said property as a caretaker and he was managing the same on behalf of the plaintiffs and after the death of Aparbal Singh, appellants Nos. 1 and 2 continued in possession of the same but they did not vacate the said property in spite of promises and on the other hand, they got their names entered in the records in respect of the said property. The plaintiffs sought a decree for ejectment as well as pendente lite and future damages for use and occupation. The said suit was contested by the defendants. In the written statement, it was claimed that the suit was not maintainable in the civil court inasmuch as it related to agricultural land. It was stated that the total area of the disputed property is 4 Bighas 10 Biswas (2.92 acres) out of which the residential house, pucca well and the land appurtenant to the house cover an area of 10 Biswas and the rest of the land measuring about 4 Bighas was being cultivated by the defendants. It was also claimed that the entire area comes within the definition of 'land' since no declaration was made under Section 143 of the Act. It was also claimed that Aparbal Singh and Alpanath Singh, father of defendants Nos. 3 and 4, having equal share in the land became sirdars and after the death of Aparbal Singh, Alpanath is in possession as owner Sirdar of the said land. In view of the said pleadings, the Civil Judge framed Issues Nos. 5 and 6 which are as under:

Issue No. 5: Is suit land agricultural land as defined in U. P. Act, 1951?

Issue No. 6: Is the suit triable by this Court so far as suit land is concerned?

3. The said issues were tried as preliminary issues and were decided in favour of the plaintiffs-respondents and against the appellants by the Civil Judge-I, Varanasi by his order dated September 14, 1973. The Civil Judge held that in the written statement dated September 31, 1983 it has been alleged by the defendants-appellants that about 23 years back, the disputed house was in a very dilapidated condition and that Aparbal Singh and Alpanath Singh invested about Rupees 15,000/- and made the house habitable. On the basis of the said allegation in the written statement, the Civil Judge held that the disputed property had a house, though in a dilapidated condition, before July 1, 1952 the date of the enforcement of the Act and he considered the matter in the light of the provisions contained in the U.P. Tenancy Act, 1939. After referring to the definition of 'land' contained in Section 3(1)(o) of the said Act the Civil Judge observed that the land occupied by building or appurtenant thereto was excluded from the said definition and, therefore, the disputed property did not come within the definition of land as defined in the U. P. Tenancy Act and was abadi and it was not land as defined in the Act and the revenue courts have got no jurisdiction and the suit could be entertained by the Civil Court. The defendants-appellants produced extractor Khatauni for the year 1377 Fasli (Ex.A1) wherein the plaintiffs have been recorded as bhumidar of the suit property. The copies of the revenue record (Exs. 2 to 5) were also produced. The Civil Judge held that the said entries were useless and no reliance could be placed on them. It appears that the property in dispute was also inspected by the Amin, who prepared a map and submitted his report wherein it was stated that the suit property is enclosed by a boundary wall and land appurtenant to the building has been shown as being used for agricultural purposes also. While dealing with the said report of the Amin, the Civil Judge observed that under law if the land appurtenant to a building is being used for agricultural purposes, it will not lose its nature of being land appurtenant to building. Feeling aggrieved by the said order of the Civil Judge, the appellants filed a revision in the High Court which was dismissed by the High Court. Agreeing with the Civil Judge the High Court has held that the suit land was appurtenant to a building and a Shiwala and was not being held or occupied for purposes connected with agriculture, horticulture or animal husbandry and hence, prima facie, it was not land as defined in the Act and, therefore, Section 331-A had no application. The High Court also observed that the lower Court had rightly refused to rely on the revenue records from 1960 onwards which showed that the land was recorded as the plaintiffs' bhumidari because on the defendants' own pleadings the land was appurtenant to a house and was rightly held to be abadi property in respect of which civil court continued to retain jurisdiction and try disputed title.

4. By order dated April 4, 1983 leave to appeal has been limited to the question whether the court had jurisdiction to decide the issue whether the land is abadi land or some other land.

5. The expression "land" is defined in clause (14) of Section 3 as follows:

" 'Land' except in Sections 109, 143 and 144 and Chapter VII means land held or occupied for purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming"

Section 143 provides as under:

"143. Use of holding for industrial or residential purpose-

(1) Where a bhumidhar with transferable rights uses his holding or part thereof for a

purpose not connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming, the Assistant Collector in charge of the sub division may, suo motu or on an application, after making such enquiry as may be prescribed, make a declaration to that effect.

(I-A) Where a declaration under sub-section (1) has to be made in respect of a part of the holding the Assistant Collector in charge of the sub divisions may in the manner prescribed demarcate such part for the purposes of such declaration.

(2) Upon the grant of the declaration mentioned in sub-section (1) the provisions of this Chapter (other than this section) shall cease to apply to the bhumidar with transferable rights with respect to such land and he shall thereupon be governed in the matter of devolution of the land by personal law to which he is subject."

6. Section 144 provides for making of a similar declaration where land held by a bhumidhar which is not used for purposes connected with agriculture, horticulture or animal husbandry has become land used for such purposes.

7. The bar to the jurisdiction of Civil Court is, contained in Section 331(1) which provides as under:

"331. Cognizance of suits, etc. under this Act- (1) Except as provided by or under this Act no court other than a court mentioned in Column 4 of Schedule II shall, notwithstanding anything contained in the Civil Procedure Code, 1908 (V of 1908), take cognizance of any suit, application, or proceedings mentioned in Column 3 thereof, or of a suit, application or proceedings based on a cause of action in respect of which any relief could be obtained by means of any such suit or application."

Provided that where a declaration has been made under Section 143 in respect of any holding or part thereof, the provisions of Schedule II insofar as they relate to suits, applications or proceedings under Chapter VIII shall not apply to such holding or part thereof.

Explanation:- If the cause of action is one in respect of which relief may be granted by the revenue court, it is immaterial that the relief asked for from the civil court may not be identical to that which the revenue court would have granted.

8. Section 331-A prescribes the procedure to be followed by the Court when a plea that the land is not being used for purposes connected with agricultural, horticulture or animal husbandry arises or is raised in any suit relating to land held by a bhumidhar. It reads as under:

"331-A. Procedure when plea of land being used for agricultural purposes is raised in, any suit-

(1) If in any suit, relating to land held by a bhumidhar, instituted in any Court, the question arises or is raised whether the land in question is or is not used for purposes connected with agriculture, horticulture or animal husbandry, which includes pisciculture and poultry farming, and a declaration has not been made in respect of such land "under Section 143 or 144, the court shall frame an issue on the question and send the record to the Assistant Collector in-charge of the sub-division for the decision of that issue only:

Provided that where the suit has been instituted in the court of Assistant Collector in-charge of the sub-division, it shall proceed to decide the question in accordance with the provisions of Section 143 or 144, as the case may be.

(2) The Assistant Collector in-charge of sub-division after reframing the issue, if necessary, shall proceed to decide such issue in the manner laid down for the making of a declaration under S. 143 or 144 as the case may be, and return the record together with his finding thereon to the court which referred the issue.

(3) The Court shall then proceed to decide the suit accepting the finding of the Assistant Collector in-charge of the sub-division on the issue referred to it.

(4) The finding of the Assistant Collector in-charge of the sub-division on the issue referred to it shall, for the purposes of appeal, be deemed to be part of the finding of the court which referred the issue."

9. The aforesaid provisions show that under Section 331(1) exclusive jurisdiction in respect of suits, applications and proceedings referred to in Schedule II of the Act has been conferred on the courts specified in the said Schedule and the said proceedings, suits and applications cannot be entertained by the civil courts. The proviso to S. 331(1) lifts the said bar in relation to any holding or part thereof where a declaration has been made under Section 143. Section 143 empowers the Assistant Collector after making such enquiry as may be prescribed, to make a declaration that a holding or part thereof is being used or held by a bhumidhar for purposes not connected with agriculture, horticulture or animal husbandry. Where such a declaration is made in respect of a part of the holding, the Assistant Collector is required to demarcate the said part. The effect of the grant of such a declaration is that the provisions of Chapter VIII (except S. 143) cease to apply to the bhumidhar with transferable rights with respect to such land.

10. Section 331-A deals with a situation where a suit relating to land held by a bhumidhar has been instituted in any court and a question arises or is raised whether the land in question is used or is not used for purposes connected with agriculture, horticulture or animal husbandry and a declaration has not been made in respect of such land under S. 143 or 144 of the Act. Since there is no declaration under Section 143 the proviso to sub-section (1) of Section 331 would not be applicable and the bar to the jurisdiction of the Court placed under sub-section (1) of Sec. 331 would be operative. Section 331-A is intended to serve the same purpose as Section 143 and this is done by requiring the Court to frame an issue on the said question and send the record to the Assistant Collector in charge of the sub-division for the decision on that issue only and by laying down that the Assistant Collector shall decide the said issue in the manner laid down for making a declaration under S. 143 or S. 144, as the case may be. The court in which the suit is pending has to decide the suit accepting the finding recorded by the Assistant Collector in charge of the sub-division on the issue referred to it but the said finding can be challenged in appeal against the decision of the said Court. This would mean that when there is no declaration under Section 143 the bar to jurisdiction of courts placed under sub-section (1) of Section 331 can be lifted by following the procedure laid down in Section 331A.

11. In respect of Abadi land it is implied that the land is not being used for purpose connected with agriculture, horticulture or animal husbandry and in view of the definition of 'land' contained in Section 2(14) of the Act such land is not land for the purpose of the Act. In order to exclude the applicability of the Act on the ground that the land is Abadi land it is necessary to determine whether the said land is or is not being used for purposes connected with agriculture, horticulture or

animal husbandry. Such a determination is envisaged by Sections 143 and 144 and where such a determination has not been made in accordance with those provisions and this question arises before a court in a suit, it is required to be determined in accordance with the provisions of S. 331 -A. The scheme of the provisions contained in S. 143, S. 144 and S. 331 -A is that the question whether a particular land is or is not used for the purposes connected with agriculture, horticulture or animal husbandry has to be determined either under S. 143 or S. 144 and where no such determination has been made, it should be determined by following the procedure laid down in S. 331-A. It is not open to a Court dealing with a suit in which the said question arises to by pass the provisions of Section 331 -A and to proceed to determine the said question itself.

12. In order that S.331-A may be invoked the following conditions must be satisfied:

- i) the suit must relate to land held by a bhumidhar;
- ii) the question whether the land in question is or is not used for purposes connected with agriculture, horticulture or animal husbandry should arise or be raised in the said suit; and
- iii) a declaration has not been made in respect of such land under S. 143 or S. 144.

13. Shri J. P. Goyal, the learned counsel appearing for the appellants, has submitted that in the present case all the three conditions are fulfilled. The respondents are recorded as Bhumidhar in respect of the suit land and, therefore, the said land is held by a bhumidhar. The question whether the land in question was used or not used for purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming arises for consideration in the suit filed by the respondents because the respondents claim that it is Abadi land. No declaration has been made in respect of that suit land under S. 143 or S. 144. Shri Goyal has urged that in the circumstances, it was incumbent upon the Civil Judge to frame an issue on the question and send the same to the Assistant Collector in charge of the subdivision for the decision on that issue as required by sub-section (1) of section 331-A and the Civil Judge could not himself decide the said question while dealing with issues Nos. 5 and 6. Shri Goyal has, therefore, contended that the order passed by the Civil Judge deciding issues Nos. 5 and 6 was an order passed without jurisdiction and the High Court has erred in not interfering with the same in revision. Shri Goyal has also urged that presumption of correctness attaches to record or rights under Section 44 of the U. P. Land Revenue Act 1901 and that the Civil Judge and the High Court were not justified in ignoring the entry in the khatauni for 1377 F (Exh. A-1) and copies of the entries in the revenue record (Exh. 2 to Exh. 5).

14. Shri Yogeshwar Prasad, the learned Counsel appearing for the plaintiffs-respondents has laid stress on the expression "relating to land" in sub-sec. (1) of S. 331-A and has urged that the term 'land' has to be given the meaning as contained in S. 2(14) of the Act and it was competent for the Civil Judge to consider whether the suit land is land as defined in S. 2(14) of the Act and it could, therefore, go into the question whether the land in dispute was held or occupied for purposes connected with agriculture, horticulture or animal husbandry. The submission of Shri Yogeshwar Prasad is that admittedly there is a building on the land in dispute, and since the land surrounding the building is appurtenant to the building the entire area has been rightly held to be abadi by the Civil Judge as well as the High Court.

15. We are unable to agree with the said submission of Shri Yogeshwar Prasad. In our opinion, the question as to whether a particular land is "land" under Section 2(14) to which the provisions of the

Act are applicable would require determination of the question whether the land is held or occupied for purposes connected with agriculture, horticulture or animal husbandry and that is a matter which has to be determined either in accordance with the provisions of Ss. 143 and 144 and if such a determination has not been made and such a question arises or is raised in a suit before a court, the procedure laid down in S. 331-A must be followed by the Court. This would be so even in a case where a building exists on the land and the land is claimed to be appurtenant to the building because in such a case it will be necessary to determine the extent of the land that is appurtenant to the building, i.e. whether the entire land or only a part of it is so appurtenant to the building and for that reason is not held or occupied for purposes connected with agriculture, horticulture or animal husbandry. This determination has to be made in accordance with the provisions of Sections 143 and 144 or Sec. 331-A of the Act.

16. In the instant case we find that the conditions for applicability of the provisions of Section 331-A were fulfilled. In view of entry in the Khatauni for the year 1377 F (Ex. A-1) which must be presumed to be correct in view of Section 44 of the U. P. Land Revenue Act, 1901, the said land was held by the respondents as Bhumidhar. The question whether the suit land is or is not held for purposes connected with agriculture arises in the suit filed by the respondents. There is no declaration in relation to land in dispute under Section 143 of the Act.

17. It was, therefore, not open to the Civil Judge to decide, on its own, the question whether the said land was held or occupied for purposes connected with agriculture, horticulture or animal husbandry and after holding that it is not so held refuse to follow the procedure laid down in S. 331-A on the ground that the said provision has no application to the land in dispute. The only course which was open to the Civil Judge was to frame an issue on the question whether the land in dispute is or is not used for purposes connected with agriculture, horticulture or animal husbandry and send the record to the Assistant Collector in charge of the subdivision for decision on that issue and decide the suit in the light of the finding recorded by the Assistant Collector on that issue. By deciding this question himself the Civil Judge has exercised jurisdiction not vested in him by law and in not following the procedure laid down in Section 331-A he has committed illegality in exercise of his jurisdiction which error was required to be rectified by the High Court in exercise of its revisional jurisdiction under Section 115, C.P.C.

18. The appeal is, therefore, allowed. The judgment and order of the High Court of Allahabad dated April 2, 1980 and the order dated September 14, 1978 passed by the Civil Judge-I, Varanasi are set aside and the Civil Judge is directed to frame an issue on the question whether the suit land is or is not used for purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming and after framing the said issue send the record to the Assistant Collector in charge of the sub-division for the decision on that issue. There will be no order as to costs. Appeal allowed.

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