

Deokinandan and Others

Vs

Surajpal and Others

Civil Appeal No. 9869 of 1995

(K. Ramaswamy, B. L. Hansaria JJ)

30.10.1995

ORDER

1. This Court had given time on 1-9-1995 to Mr K.K. Gupta, Advocate, to file counter-affidavit within four weeks from that date and on failure to do the same, it was stated that he would forfeit the right to file the counter-affidavit and the matter would be disposed of on merits without reference to any counter-affidavit. The petitioner had already served the notices on all the other respondents and dasti service also was effected. Notices accordingly have been served, but counter-affidavit has not been filed till today. The right to file counter-affidavit is forfeited.

2. Leave granted.

3. The controversy is no longer res integra. Admittedly, the suit lands are governed by the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1951 (for short 'the Act'). The appellant had raised the objection to the jurisdiction of the civil court in his defence in the trial court. He pleaded thus :

"The suit is barred under the provisions of Section 331 of U.P. Zamindari and Land Reforms Act. The sale is not barred under the provisions of Section 168-A of Zamindari Abolition Act. The plaintiff's suit is liable to be dismissed with costs."

4. In the appellate court also the same point has been reiterated but negated. The second appeal was dismissed by the High Court in limine. Thus this appeal by special leave.

5. This Court in Chandrika Misir v. Bhaiya Lal [(1973) 2 SCC 474 : (1974) 1 SCR 290] had to deal with the same question. It was held that : (SCR Headnote p. 290)

"Sections 209 and 331 of the U.P. Zamindari Abolition and Land Reforms Act, 1951, when read together, showed that a suit, like the present one, had to be filed in a Special Court created under the Act within a period of limitation specially prescribed under the Rules made under the Act, and the jurisdiction of the ordinary Civil Courts to entertain the suit was absolutely barred.

Since the Civil Court which entertained the suit suffered from an inherent lack of jurisdiction because of special provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1951, the present appeal filed by the appellants had to be dismissed."

6. The above ratio applies to the facts in this case. As pointed earlier, the lands are covered by the

provisions of the Act and express objection as to the jurisdiction of the civil court was raised. The appellant had purchased 0.7 acre of land out of 2.17 acres. The abadi site comprises one kutcha kotha and ghar having boundary walls. Since the lands are admittedly covered by the provisions of the Act, the civil court inherently lacked jurisdiction to go into the question of title.

7. The appeal is accordingly allowed and the suit stands dismissed insofar as it relates to 0.7 acre of land purchased by the appellant. No costs.