

Vishwanatha (Dead) By Lr.

Vs

Chandra Bhan and Others

Civil Appeal No. 157 of 1978

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

13.12.1995

ORDER

1. The only question in this appeal is whether the High Court in its order dated 12-1-1976 made in Civil Miscellaneous Writ No. 7483 of 1971 is correct in law. The admitted position is that one Hanuman Singh, the brother-in-law of Gulab Singh (sister's husband), as a guardian had executed a mortgage of the lands in Plots Nos. 120, 122, 145/1 and 145/2 situated in Village Kanjauli Uparhar and Village Janjauli Kachhar, Tappa Chaurasi, PO Khairagarh, District Allahabad in favour of the respondent. After the U.P. Zamindari Abolition and Land Reforms Act, 1950 (for short 'the Act') was brought into force with effect from 26-1-1951, the appellant laid the suit under Section 209 of the Act for ejectment of the respondent. All the courts including the Board of Revenue concurrently held, which was also upheld by the High Court, that Hanuman Singh is neither a natural guardian nor a property guardian appointed to manage the estate of the minor Gulab Singh. Therefore, the mortgage is a void mortgage.

2. The respondent contended that he had perfected his title by adverse possession. That contention was rejected. He also contended that he became an 'asami' under the Act and thereby he is not liable to be rejected. That contention too was rejected. When he filed the writ petition, the High Court, for the first time, held that since the respondent came into possession of the aforesaid lands in his title as a mortgagee, until a suit for redemption of the mortgage and eviction of the respondent is filed in the civil court, the proceedings under Section 209 of the Act are not maintainable. Therefore, the learned Judge allowed the writ petition with the above and set aside the orders passed by all the tribunals referred to hereinbefore. Thus, this appeal by special leave.

3. The only question is whether the tribunals have jurisdiction to have the respondent ejected from the lands. This Court in Rana Sheo Ambar Singh v. Allahabad Bank Ltd. had held that after Act has come into force, the mortgage stood extinguished and the bhumidhari rights acquired under the Act cannot be burdened with any liability to redeem the mortgage debt which was statutorily extinguished creating an encumbrance on the land. It was held :

"... that the intention of the U.P. Zamindari Abolition and Land Reforms Act was to vest the proprietary rights in the Sir and Khudkast land and grove land in the Estate by virtue of Section 6(a)(i) and resettle it on the intermediary not as compensation but by virtue of his cultivatory possession of lands comprised therein and on a new tenure and confer upon the intermediary a new and special right of bhumidhari, which he never had before, by Section 18 of the Act.

The proprietary rights in Sir, Khudkast land and grove land which were mortgaged

were extinguished, and the bhumidhari right which was altogether a new right could not be considered to be included under the mortgage.

The mortgagee could only enforce his rights against the mortgagor in the manner as provided by Section 6(h) of the Act read with Section 73 of the Transfer of Property Act and follow the compensation money; and so far as the Sir, Khudkast land and grove land were concerned, he could not enforce his rights under the mortgage by the sale of Bhumidhari rights created in favour of the mortgagor against them as a substituted security."

4. As a consequence the liability to redeem the mortgage having been statutorily extinguished and the mortgage being void, the appellant is not obliged to file a suit for redemption of the mortgage. The question then is whether the proceedings in the courts below is validly instituted and the courts have jurisdiction to order ejectment. Section 209 of the Act envisages that :

"209. Ejectment of persons occupying land without title. - (1) A person taking or retaining possession of land otherwise than in accordance with the provisions of the law for the time being in force, and -

(a) where the land forms part of the holding of a bhumidhar or asami without the consent of such bhumidhar, or asami;

(b) where the land does not form part of the holding of a bhumidhar, or asami without the consent of the Gaon Sabha,

shall be liable to ejectment on the suit in cases referred to in clause (a) above of the bhumidhar, or asami concerned, and in cases referred to in clause (b) above, of the Gaon Sabha and shall also be liable to pay damages."

5. It, therefore, postulates that a person taking or retaining possession of land otherwise than in accordance with the provisions of the law for the time being in force, where the land forms part of the holding or a bhumidhar without his consent, shall be liable to be ejected, in cases referred to in clauses referred to above and shall also be liable to pay damages.

6. Sub-section (1) of Section 331 of the Act postulates that :

"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 obtain by means of any such suit or application."

7. The Court constituted under the Act, therefore, is empowered to take cognizance of the suits under the Act, despite the provisions contained in Section 9, CPC. In other words, the jurisdiction of the civil court to take cognizance of the cause of action under Section 9 of the CPC stands excluded and the courts constituted under the Act get exclusive jurisdiction to take cognizance and deal with the matters referred to under the Act, since Section 209 of the Act expressly referred to a person taking or retaining possession of land from a bhumidhar otherwise than in accordance with the provisions of law. Any other person who has taken possession of the land without his consent is

liable to be ejected. Schedule II of the Act clearly mentions in Items 24 that cognizance could be taken in respect of Section 209 and the competent court has been enumerated in the Schedule as Assistant Collector. So, the Assistant Collector had jurisdiction to take cognizance and he ordered ejection of the respondent which was upheld on appeal and revision by the Board of Revenue.

8. Though the learned counsel for the appellant sought to rely on Section 331(1)(a) which enjoins to take an objection at the earliest and precludes the respondent to raise the issue of jurisdiction of the court at any subsequent stage of the proceedings, it is not necessary for us to deal at length with that contention. Suffice it to state that under Section 209, the trial court has jurisdiction, as referred to earlier, to order eviction of the respondent and it was upheld by all the courts.

9. The appeal is accordingly allowed. The order of the High Court is set aside and that of the tribunals below under the Act stand restored. But, in the circumstances, there shall be no order as to costs.