

Muneshwar (dead) by Lrs.

Vs

Raja Mohammad Khan and Others

Civil Appeal No. 2057 of 1984

(M. K. Mukherjee, D. P. Wadhwa JJ)

20.08.1998

JUDGMENT

D. P. WADHWA, J.

The appellant is aggrieved by judgment dated 2-12-1980 of the Allahabad High Court rejecting his objections filed by him under Section 9 of the U.P. Consolidation of Holdings Act, 1953 (for short "the Consolidation Act") which objections had been upheld by the authorities under that Act.

2. Consolidation proceedings were taken up in the village of the appellant under Sections 8 and 8-A of the Consolidation Act. Thereafter, notices were issued inviting objections to the records so prepared. The land in question in the records was shown in the names of the respondents to which the appellant filed objections. Under Section 9-A of the Consolidation Act, the Consolidation Officer by judgment dated 12-7-1972 upheld the objections of the appellant and the names of the respondents were removed from the records and the name of the appellant was entered as "Sirdar". The respondents took up the matter in appeal before the Settlement Officer (Consolidation), who dismissed the same by order dated 27-9-1972. The matter was yet further taken in revision by the respondents and by order dated 12-4-1973, the Deputy Director, Consolidation dismissed the revision. The respondents thereafter filed writ petition under Article 226 of the Constitution in the Allahabad High Court which by impugned judgment dated 2-12-1980 quashed the orders of all the three authorities. The result was that the disputed land stood in the names of the respondents in the revenue records under the Consolidation Act.

3. To understand the rival contentions, we may briefly refer to the background of the case :

The appellant claimed that he was the sole heir of his father Baldev, who was having tenancy rights in the land and after the death of his father, the appellant inherited the tenancy rights. The appellant said that Shivrati, who claimed to be his brother, was not in fact his brother and that when his father remarried, his second wife was already having a son named Shivrati. However, in the revenue record, the names of both the appellant and Shivrati were entered as their being heirs of Baldev which entries according to the appellant were false made by the Patwari of the village in collusion with Shivrati. Baldev died sometime in 1945 and the appellant claimed that he had been in exclusive possession of the land as owner irrespective of the entries in the revenue records.

4. In 1959, Shivrati filed a suit for partition under Section 176 of the U. P. Zamindari Abolition and Land Reforms Act, 1950 (for short "the Zamindari Abolition Act"). The case set up by the appellant that Shivrati was not his brother was negatived and on 24-2-1961, final decree was passed for partition in favour of Shivrati. An appeal against the judgment and decree thus passed was taken by

the appellant but that was dismissed by judgment dated 17-7-1961. The decree for partition became final. It is, however, the admitted case of the parties that this decree was never executed and that the appellant always remained in possession of the land since the death of his father which, as stated above, was sometime in 1945.

5. During the pendency of the appeal against the decree of partition, Shivrati, it would appear, deposited ten times of the land revenue and on 1-5-1961 obtained "Bhumidhari sanad" of the land in his name. Shivrati, thereafter, executed two sale deeds dated 4-5-1961 and 20-6-1961 in favour of the respondents in respect of the land of his share under the decree.

6. In 1962, the respondents filed a suit against the appellant in the Court of Additional Munsif claiming Rs. 500 as damages on the ground that Shivrati had transferred the possession of the land in question to them in 1961 and that the respondents had sown crop of wheat etc. in the land and that the appellant unauthorisedly harvested the crop on 10-3-1962 while the respondents were themselves in the process of harvesting the same. The respondents said that in that process they suffered a loss of Rs. 800 but they limited their loss to Rs. 500 and filed the suit for recovery of the same. The appellant contested the suit. He denied that the respondents were ever in possession of the land or that they had grown any crop there. Various issues were framed in the suit. The Court held that the plea of the respondents that they were in possession of the land was not true and that the possession of the land always remained with the appellant. As a matter of fact, the Court noted that Respondent 1 had admitted that possession of the land was never delivered to Shivrati or to any of the respondents in consequence of final decree of partition passed in favour of Shivrati. The Court said it was hard to believe that when possession had not been obtained through execution of the decree, Shivrati would have delivered possession of his own share to the respondents. As a matter of fact, the Court remarked that Shivrati appeared to be a tool in the hands of the respondents. The Court by judgment dated 25-5-1964 dismissed the suit of the respondents holding that possession of the land always remained with the appellant and that it was he who was growing his crop there. For some years, the respondents kept quiet and then on 19-6-1968 filed a suit for possession under Section 209 of the Zamindari Abolition Act. On 10-10-1969, this suit abated in view of the provisions of Section 5 of the Consolidation Act. By that date, notification under Section 4 of the Consolidation Act had been issued for bringing the land in the district under consolidation operations. Clause (a) of sub-section (2) of Section 5 of the Consolidation Act provided that every proceeding for correction of records in every suit and proceeding in respect of declaration of rights or interest in any land lying in the area, or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under the Act, pending before any court or authority, whether of the first instance or of appeal, reference or revision, shall, on an order being passed in that behalf by the court or authority before whom such suit or proceeding is pending stand abated. Then in pursuance of Section 9 of the Consolidation Act, the appellant brought proceedings before the Consolidation Officer that the disputed land was wrongly entered in the names of the respondents and that the appellant was in possession of the land for the last twenty years. The case of the appellant was that he had acquired rights in the whole of the land as owner and in any case, he became entitled to the land falling to the share of Shivrati on the basis of adverse possession and he also took up the plea that Shivrati was not the son of Baldev, his father. Issues were framed and the parties led evidence. The Consolidation Officer by judgment dated 12-7-1972, held that it was the appellant who was in possession of the land and that the ownership of the respondents came to an end. He held that the appellant became "Sirdar" on the basis of the adverse possession and since the respondents did not file any suit in time for possession. The Zamindari Abolition Act recognises three classes of tenure-holders, namely, "Bhumidhar", "Sirdar", and "Asami". (Section 129) Accordingly the names of the respondents were removed from the record

and that of the appellant was entered as "Sirdar" regarding the disputed land under Section 210 of the Zamindari Abolition Act. The Settlement Officer, Consolidation, in appeal filed by the respondents, also held that it was the appellant (before us) who was in possession of the whole land, which was proved from the records and entries. Again, in the revision filed by the respondents before the Deputy Director, Consolidation, the same view was taken. The operative portion of the order in revision dated 12-4-1973 reads as under :

"After evaluating the above-mentioned facts and evidence from the judgments of the courts below, it is clear that the possession of land in dispute remained with Muneshwar continuously and Shivrati and Raja Mohd. never had possession. In the absence of the formal mutation, I am of the opinion that Muneshwar never lost his possession of the land in dispute. Raja Mohd. etc. did not obtain possession even after the sale deed and so the sale deed never got executed. Hence the decision of the lower court is legal and hence the revision petition is dismissed."

7. The High Court, however, in the writ petition filed by the respondents observed that the suit by the respondents in 1968 was filed within limitation and it abated because of the start of consolidation operations and that it could not be said that "sirdari" rights accrued in favour of the appellant. The High Court said that Section 210 specifically provided that if decree under Section 209 was not executed within a particular period "sirdari" rights would accrue in favour of the judgment-debtor but there was no corresponding section in the Zamindari Abolition Act to the same effect in the case of a decree for partition. The High Court, therefore, was of the view that since a suit under Section 209 of the Zamindari Abolition Act was filed within the period of limitation, the consolidation authorities committed an error in holding that "sirdari" rights accrued in favour of the appellant and further that even if the respondents could not get the possession after the final decree, no rights accrued in favour of the appellant within that period and as such the High Court quashed the order passed by the consolidation authorities. The view taken by the High Court is now being challenged by a the appellant before us.

8. We may, at this stage, refer to the relevant provisions of law :

U. P. Consolidation of Holdings Act, 1953

"9-A. Disposal of cases relating to claims to land and partition of joint holdings. - (1)
The Assistant Consolidation Officer shall -

(i) where objections in respect of claims to land or partition of joint holdings are filed, after hearing the parties concerned, and

(ii) where no objections are filed after making such enquiry as he may deem necessary,

settle the disputes, correct the mistakes and effect partition as far as may be by conciliation between the parties appearing before him and pass orders on the basis of conciliation.

#(2) * * *##

(3) The Assistant Consolidation Officer, while acting under sub-section (1) and the Consolidation Officer, while acting under sub-section (2), shall be deemed to be a

Court of competent jurisdiction, anything to the contrary contained in any other law for the time being in force notwithstanding."

U. P. Zamindari Abolition and Land Reforms Act, 1950

"176. Holding of a bhumidhar or sirdar divisible - (1) A bhumidhar or sirdar may sue for division of his holding.

(2) To every such suit the Gaon Sabha concerned shall be made a party.

209. Ejectment of persons occupying land without title. - 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, sirdar or asami without the consent of such bhumidhar, sirdar or asami;

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

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

210. Failure to file suit under Section 209 or to execute decree obtained thereunder. - If a suit is not brought under Section 209 or a decree obtained in any such suit is not executed within the period of limitation provided for the filing of the suit or the execution of the decree, the person taking or retaining possession shall -

(i) where the land forms part of the holding of a bhumidhar, or sirdar, become a sirdar thereof and the rights, title and interest of an asami, if any, on such land shall be extinguished,

(ii) where the land forms part of the holding of an asami on behalf of the Gaon Sabha, become an asami holding from year to year,

(iii) in any case to which the provisions of clause (b) of Section 209 apply, become a sirdar or asami holding from year to year as if he had been admitted to the possession of the land by the Gaon Sabha."

U. P. Zamindari Abolition and Land Reform Rules, 1952

"338. The suit applications and other proceedings specified in Appendix a III shall be instituted within the time specified therein for them, respectively."

Appendix III Entry 53-----
-Sr.No. Section Description of suit, application Period of Time from of the and other proceeding limitation which period Act begins to run-----
-----21 176 Suits for partition of holding of None None.
bhumidhar or sirdar30 209 Suit for ejectment of a person taking or retaining

possession of the land unlawfully and for damages : (i) If the person was in Three From the date possession of the land on years of vesting. the date of vesting and the period of limitation for his ejection specified in the U.P Tenancy Act, 1939, had not expired. (ii) In case of Three From the date occupants referred to in years of declaration Section 144. under Section 144. (iii) In cases where Six years From 1st of land whose possession is July following taken or retained the date of unlawfully, occupation forms a part of the holding of a bhumidhar, sirdar or asami. (iv) In any other case - (a) Where action Twelve From the date under Rule 115-C has years of the order been started before the under Rule expiry of the period of 115-E. limitation under sub item (b). (b) In other cases. Twelve From the 1st years of July following the date of occupation.53 ... For the execution of any One year The date of decree other than a money final decree decree in the case.-----

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Limitation Act, 1963

"27. Extinguishment of right to property. - At the determination of the period hereby limited to any person for instituting a suit for possession of a any property, his right to such property shall be extinguished."

9. In *Dindayal v. Rajaram* (1970) 1 SCC 786 : AIR 1970 SC 1019) this Court was considering the arguments of the appellant before it that in view of the principle underlying Section 28 of the Indian Limitation Act, 1908, which principle is not confined to suits and applications for which limitation is prescribed under that Act but is of general application, the plaintiffs' right to the suit properties must be held to have been extinguished. In other words, the contention was that in view of the aforementioned provisions, the plaintiffs had not merely lost their right to sue for possession of the suit properties, their right in the properties itself had been extinguished. This Court held that it is well settled that the principle underlying Section 28 of the Indian Limitation Act, 1908 (same as Section 27 of the Indian Limitation, 1963) is of general application for which a period of limitation is prescribed under the Limitation Act. In the present case, however, we are concerned with the consequences which followed when a suit under Section 209 of the Zamindari Abolition Act is not filed against the person in possession of the land within the period prescribed.

10. From the record before us, it is not clear if the suit filed by Shivrati was merely for partition or it was for partition and possession of his separate share. Since the appellant was claiming exclusive possession of the land, it would appear to us that the suit was for partition and possession. Admittedly no execution was taken out after the final decree was passed on 24-2-1961. Before the time for execution of the decree had elapsed, ownership of the land falling to the share of Shivrati changed hands and he executed two sale deeds in favour of the respondents. Suit under Section 209 of the Zamindari Abolition Act was filed on 19-6-1968. Authorities under the Consolidation Act as well as the High Court proceeded on the footing that suit under Section 209 was maintainable. Since the final decree in the partition suit by Shivrati could not be executed, it is debatable if recourse could be had to Section 209, particularly when the share of Shivrati had not been separated and possession always remained with the appellant. Be that as it may, the authorities under the Consolidation Act reached a concurrent finding that the appellant was in adverse possession of the land and though the respondents claimed their right as owners but since the suit under Section 209 was not filed within the period of limitation prescribed, the appellant became a "Sirdar" thereof. Under Section 209, a suit had to be filed within six years beginning "from 1st of July following the date of occupation" as provided in Entry 30 of Appendix III to the Rules under the Zamindari

Abolition Act. It could not be disputed that the suit in question was filed more than six years from the date as provided in Entry 30 of Appendix III as aforesaid. The record shows that it was always the appellant who was in possession of the land from the date his father Baldev died to the exclusion of any other person.

11. There is another feature of the case which relates to attempts made by the respondents to get possession of the land from the appellant. The first respondent had been a Patwari. The other respondents are his kinsmen. In March 1962, the appellant and nine others were prosecuted for offences under Sections 147, 148, 323, 324, 395 and 397 IPC. This was on a complaint made by the first respondent that when the respondents went to the land for harvesting the crop, they were attacked by the appellant and his party. The Sessions Judge who tried the case found the case to be false and acquitted all the accused holding that the respondents were never in possession of the land and that it was the appellant who had grown his crops there and was ploughing the same. Not satisfied, the first respondent instituted a complaint under Sections 218/109 IPC against the appellant and the Patwari of that village (who was holding the office at that time) stating that the Patwari made wrong entries in the revenue records showing possession of the appellant of the land. This complaint was also dismissed by the Magistrate holding that it was the appellant who was in possession of the land. During the course of evidence in these cases, it came on record from the statement of Shivrati that the land in question valued Rs. 7000 but then he sold the same for Rs. 1200 to the respondents. It is interesting to note that in the suit filed by the respondents for recovery of Rs. 500 claiming the same to be as loss they had stated that they, in fact, suffered a loss amounting to Rs. 800. For a land of the value of Rs. 1200, the respondents claimed to have suffered loss of Rs. 800 only on one crop. All this leads us to conclude that Shivrati was a tool in the hands of the first respondent who was earlier a Patwari and then the first respondent adopted all sorts of foul means to dispossess the appellant.

12. We are of the considered view that in a matter like this, the High Court should not have interfered in the writ jurisdiction to upset the concurrent findings of the authorities under the Consolidation Act holding that it was the appellant who was in possession of the land and the suit under Section 209 of the Zamindari Abolition Act not having been filed within the period of limitation, the appellant had become "Sirdar" thereof in view of Section 210 of that Act. As a matter of fact, no decree had been passed as the suit filed under Section 209 abated. Consequences as given in Section 210 follow when there is failure to file a suit under Section 209 or to execute a decree obtained thereunder. In the present case, the authorities under the Consolidation Act came to the conclusion that the suit under Section 209 was filed beyond the period of limitation and conferred sirdari rights on the appellant. In *Hasan Ali v. State of U.P.* (1992 Supp (2) SCC 70 : AIR 1990 SC 1980) a case also under the Zamindari Abolition Act, in somewhat similar circumstances, this Court said that the High Court should not have exercised jurisdiction under Article 226 of the Constitution. In that case, the High Court had held that the view as to the possession taken by all the three consolidation authorities was manifestly erroneous inasmuch as the possession could have been only permissive and not adverse. This Court said that the High Court while exercising a jurisdiction under Article 226 of the Constitution was not justified in arriving at a contrary conclusion in the face of the clear evidence of possession and entries in the records of right sufficiently discussed by the three consolidation authorities.

13. Accordingly we allow this appeal, set aside the impugned judgment of the High Court and restore that of the consolidation authorities under the U.P. Consolidation of Holdings Act. The appellant will be entitled to costs throughout.