

Chheda Singh

Vs

Town Area Committee, Akbarpur and Another

Civil Appeal No. 1235 of 1984

(CJI M. M. Punchhi, G. B. Pattanaik, A. P. Mishra JJ)

23.09.1998

ORDER

1. The defendant-appellant has challenged the concurrent finding recorded by all the courts below. The trial court decreed the suit of the respondents for recovery of possession which was confirmed by the first appellate court and also by the High Court in the second appeal. The only point raised by the learned counsel for the appellant is that once question of the validity of bhumidhari sanad being raised by the respondent in an earlier proceeding and that having become final, the question raised now that the appellant is not the Bhumidhar of the disputed land cannot be raised and for this the civil court would have no jurisdiction.

2. Having heard learned counsel for the parties and after giving our consideration, we do not find any merit in the submission. The jurisdiction of the civil court is only ousted by virtue of Section 331 of the U.P. Zamindari Abolition and Land Reforms Act, 1950. Under it, the jurisdiction of the civil court is only excluded in case it falls under Column 4 or under Column 3 of Schedule II. So far as proceeding for cancellation of the bhumidhari is concerned, it is a matter covered under Section 137-A of the said Act, which is not referred in Column 3 of the said Schedule. This apart, ouster of civil court jurisdiction under the said Act would only arise if the defendant could be a tenant under the said Act or in other words, there existed such basic fact, before the coming in force of the said Act, to qualify him to be such. We find that the finding recorded is that the appellant was not even in cultivatory possession over the land in dispute prior to the coming of the said Act. The bhumidhari sanad was granted in view of his being wrongly recorded as Sirdar. Once the basic fact is recorded by the courts below that he was not in cultivator possession prior to the Act, the question of any entry as Sirdar cannot stand and for adjudicating this, the civil court jurisdiction is not ousted.

3. The appeal has no merit and is dismissed.