Mishri Lal (dead) by Lrs.

Vs

Dhirendra Nath (dead) by Lrs.

Civil Appeal No. 190 of 1991

(M. Jagannadha Rao, Umesh C. Banerjee JJ)

06.04.1999

JUDGMENT

Umesh C. Banerjee, J.

1. This appeal is directed against the order of the Madhya Pradesh High Court confirming the preliminary decree passed by the trial court and allowing the plaintiffs' claim for redemption in respect of mortgaged houses and khudkasht land.

2. The contextual facts record that the defendant-mortgagee has challenged the right of the plaintiff-mortgagor to redeem assorted items of property which were mortgaged prior to the enactment of the Madhya Bharat Zamindari Abolition Act, 1951 (Samvat 2008). The learned trial judge decreed the suit and the appeal therefrom however before the learned single judge resulted in an order of reference before a Division Bench by reason of expression of a view contra, by another Single Judge of Indore Bench in *second appeal No.498 of 1965, (Yakub son of Kasamji v. Yakub son of Fakir Mohammad and others).*

3. On however a detail analysis of facts it appears that the plaintiff-respondent being the Zamindar of village Kamalpur, during the subsistence of the Zamindari, executed two mortgage-deeds dated 4.8.1947 and 5.1.1948 in favour of the defendant-appellant for securing thereunder a loan against movable property and houses, Zamindari and Khudkasht lands. The possession of the mortgaged property as the record shows was delivered to the mortgagee-defendant and in a suit filed for redemption of the mortgage, the trial court as noted above decreed the suit with an express finding that the plaintiff was entitled to redeem the mortgage.

4. Be it noted here that the Madhya Bharat Zamindari Abolition Act has been engrafted into the statute book for acquisition of rights of proprietors in villages, Muhals, Chaks or blocks settled on Zamindari system so as to subserve the public purposes of the improvement of agriculture and financial condition of agriculturists and came into force on 25th June, 1951.

5. Section 2(C), defined "Khudkasht land" meaning thereby land cultivated by Zamindar himself or through employees or hired labourers and includes `sir' land. Section 3 of the Act provides for vesting of the proprietary rights in the State and Section 4 records the consequence of vesting of an estate in the State. Section 4(27) provides that notwithstanding anything contained in sub-section (1) the proprietor shall continue to remain in possession of his Khudkasht land so recorded in the annual village papers before the date of vesting.

6. It, therefore, appears that there is a categorical expression or statutory intent that the land which

has not been recorded as Khudkasht land is liable to vest in the State. Conversly thus, the intent of the legislature is loud enough to indicate that while Zamindari or intermediary interest was being abolished, due care has been taken to protect the Khudkasht land and allowed the subsisting interest of the Zamindar to continue so as to enable the Zamindar either to cultivate himself or through employees or hired labourers and in that event the same would be out of contemplation of the statute. The statute has put an embargo even on the mortgagee of Khudkasht land. As a matter of fact the Act read as a whole suggests that the mortgagee would not be able to upgrade his entitlement or status and the possession of Khudkasht land stands transferred from him to the Zamindar by operation of law. Section 4 and various sub-sections thereunder read with Section 5 and 6 categorically depict the same and it is on this aspect of the matter we lend our concurrence to the observation of the High Court to the following effect :-

> "A mortgagee's interest in the mortgaged Khudkasht land is not allowed to blossom into larger interest of ownership or of indefeasible right to possess the land in virtue of the advent of the new land tenure system."

7. The definition section as noticed above and in particular the definition of the word "Proprietor" means a person as respects a village, muhal or land settled on Zamindari system owning whether in trust or for his own benefit, such village, muhal or land. The definition of "Khudkasht" under Section 2(C) referring therein land cultivated by the Zamindar himself or through employees or hired labourers, read with section 4(2), makes it abundantly clear that Section 2(a) cannot but mean that it is the Zamindar or Proprietor only who has been allowed to claim a better title by reason of the provisions as noted above than he has prior to the enactment of the statute.

8. As regards the Yakub's case the High Court in paragraph 13 of the Judgment observed :-

> "True, for the view taken in Yakub's case (supra) reliance is placed mainly by the learned single judge, on a decision rendered by another learned single judge of this court in Bhagwant v. Ramchandra, 1961 JLJ 286. In that decision also, a simplistic view of the definition was taken and relying on Section 2(a)(a) read with sub-clause (2) of section 2 of Qanoon Mal, Gwalior State, the rights of Zamindar/proprietor were subrogated to that of his mortgagee and the latter was even held entitled under Section 38 to claim to be a "*Pakka tenant"* and thereby to keep alive his interest in the mortgaged "Khudkasht" land in direct opposition to the object and purpose of Section 4(1)(f). Reference was also made in Yakub's case (supra) to a Bench decision of this Court in Khumansingh v. Dhansingh, 1971 RN 351, but, in our opinion, reliance thereon was misconceived. In that case, it was held that in "Z.A. Act" emphasis was on actual cultivation of the "Khudkasht" lands and not on entry ("so recorded") in the revenue record, while constructing Sections 2(c) and 4(2) of the said Act. The scope and object of Section 4(1)(f) did not come up for consideration of their Lordships in that case. Although reference was also made in Yakub's case to another Bench decision of this Court, Chaturbhuj v. Mohanlal, 1961 RN 182, that was also not a case of a mortgagee versus Zamindar and in that case, construction of the provisions merely of Section 4(2) and 2(c) has to be read."

9. This aspect of the matter, however, has been dealt with by this Court in the case of *Meharban Singh v. Naresh Singh, AIR 1971 SC 77* wherein this Court in paragraph 8 observed :-

> "8. A plain reading of these sections would show that all rights, title and interest of

> the proprietors in the area notified were to cease and were instead to vest in the State free from all encumbrances with effect from all encumbrances with effect from the date of notification and after such vesting in the State every mortgage with possession existing on the property so vested or part thereof on the date immediately preceding the date of vesting, to the extent of the amount secured on such property or part, thereof, is to be deemed, without prejudice to the right of the State under Section 3 to have been substituted by a simple mortgage. The proprietor, however, notwithstanding other consequences of the vesting in a State, is entitled to continue to remain in possession of his khudkasht land which is so recorded in the annual village papers before the date of vesting. Now it was clearly open to the plaintiffs to show that the land in question was khudkasht and, therefore, in accordance with Section 4, they were entitled to remain in possession thereof."

10. Mr. S.K. Jain, appearing in support of the appeal however contended that subsequent to the decision in Meharban Singh's case this Court in the case of *Budha v. Amilal, 1990(4) JT, 804* expressed a different view and by reason of divergence of views this matter ought to be referred to a larger Bench for resolution and communication of the law on the subject. For convenience sake the observation of this Court in Budha's case (supra) is set out herein below :-

> "14. Even if it is assumed that the lands in dispute have to be treated as Khudkasht lands of the appellant by virtue of clause (i) of the inclusive part of the definition of `Khudkasht' contained in Section 5(23) of the Rajasthan Tenancy Act, the appellant cannot succeed in his claim that he has acquired Khatedari rights in respect of those lands on the basis of the provisions contained in sub-section (4) of Section 5 and sub-section (1) of section 29 of the Act. Sub-section (4) of Section 5 provides that notwithstanding anything contained in sub-section (2) of Section 5 the Zamindar or Biswedar shall subject to the provisions of Section 29, continue to retain the possession of his Khudkasht, recorded as such in the annual registers before the date of vesting. The words "continue to retain the possession", imply that lands which are recorded as Khudkasht in the annual register before the date of vesting. The words "continue to retain the possession", imply that lands which are recorded as Khudkasht in the annual register before the date of vesting should also be in possession of the Zamindar or Biswedar on the date of vesting and if he is in possession of such lands he can continue to retain the possession of the same subject to the provisions of Section 29. Sub-section (1) of Section 29 prescribes that as from the date of vesting of an estate, the Zamindar or Biswedar thereof shall be a malik of any Khudkasht land in his occupation on such date and shall, as such malik be entitled to all the rights conferred and subject to all the liabilities imposed on a Khatedar tenant by or under the Rajasthan Tenancy Act. Under this provision Khatedri rights have been conferred on a Zamindar or Biswedar as from the date of the vesting of the estate in respect of Khudkasht lands in the occupation of such Zamindar or Biswedar on such date. The words "in his occupation on such date" postulates that the lands, though Khudkasht, should be in the occupation of the Zamindar or Biswedar on the date of vesting of the estate. It would thus appear that in view of sub-section (4) of Section 5 and sub-section (1) of Section 29 of the Act the mere fact of recording of the land as Khudkasht in the settlement records on the date of vesting would not be enough for a Zamindar or Biswedar to acquire Khatedari rights over the said lands and it is further required that the Zamindar or Biswedar should be in possession/occupation of the saidlands on the date of vesting of the estate under the Act. The

> possession/occupation envisaged by sub-section (4) of Section 5 and sub-section (1) of Section 29 of the Act is actual possession/occupation and the possession of a mortgagor through the mortgagee cannot be held to be possession or occupation as postulated in sub-section (4) of Section 5 and sub-section (1) of Section 29 of the Act.
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> 15. In the present case the appellant has come forward with a specific case in the plaint that the defendant is in possession of the lands in dispute as a mortgagee from the date of the two mortgagees. In other words the appellant was not in possession/occupation of the said lands on the date of vesting of the estate of the appellant under the Act. The appellant cannot, therefore, claim Khatedari rights in respect of the lands in dispute".

11. Incidentally, be it noted that the decision in Budha's case 9supra) was in interpretation of Rajasthan Zamindari and Biswedari Abolition Act, 1959 whereas Madhya Bharat Zamindari Abolition Act, 1951 came up for consideration in Meharbansingh's case. The later decision of this Court in Budha's case (supra) however has not noticed the judgment of this Court in Meharban Singh's case (supra) and by reason of the observation of this Court in paragraph 15 of the judgment in Budha's case, it cannot but be said that the decision in the later judgment was on the peculiar facts of the case. It is further to be noted that Meharban Singh's case came to be decided as early as 1970 and has been followed for last three decades in the State of Madhya Pradesh and innumerable number of matters have been dealt with on the basis thereof and in the event, a different view is expressed today, so far as this specific legislation is concerned, it would unsettle the situation in the State of Madhya Pradesh and it is on this score also that reliance on the doctrine of `Star decisions' may be apposite. While it is true that the doctrine has no statutory sanction and the same is based on a Rule of convenience and expediency and as also on `Public Policy' but in our view, the doctrine should and ought always to be strictly adhered to by the courts of law to sub-serve the ends of justice.

12. This Court in *Muktul v. Mst. Manbhari and others, 1959 SCR 1099,* explained the scope of the doctrine of stare decisions with reference to Halsbury's Laws of England and Corpus Juris Secundum in the manner following :-

"The principles of `Stare Decisions' is thus stated in Halsbury's Laws of England :

> "Apart from any question as to the Courts being of co-ordinate jurisdiction, a decision which has been followed for a long period of time, and has been acted upon by persons in the formation of contracts or in the disposition of their property, or in the general conduct of affairs, or in legal procedure or in other ways, will generally be followed by courts of higher authority than the court establishing the rule, even though the court before whom the matter arises afterwards might not have given the same decision had the question come before it originally. But the supreme appellate Court will not shrink from overruling a decision, or series of decisions, which establish a doctrine plainly outside the statute and outside the common law, when no title and no contract will be shaken, no persons can complain, and no general course of dealing be altered by the remedy of a mistake."

The same doctrine is thus explained in Corpus Juris Secundum :-

> "Under the stare decisions rule, a principle of law which has become settled by a series of decisions generally is binding on the courts and should be followed in similar cases. This rule is based on expediency and public policy, and, although generally it should be strictly adhered to by the courts, it is not universally applicable."

13. Be it noted however that Corpus Juris Secundum, adds a rider that "previous decisions should not be followed to the extent that grievous wrong may result; and, accordingly, the courts ordinarily will not adhere to a rule or principle established by previous decisions which they are convinced is erroneous. The rule of stare decisions is not so imperative or inflexible as to preclude a departure therefrom in any case, but its application must be determined in each case by the discretion of the court, and previous decisions should not be followed to the extent that error may be perpetuated and grievous wrong may result."

14. The statement though deserves serious consideration in the event of a definite finding as to the perpetration of a grave wrong but that by itself does not denude the time tested doctrine of Stare Decisions its efficacy. Taking recourse to the doctrine would be an imperative necessity to avoid uncertainty and confusion. The basis feature of law is its certainty and in the event of there being uncertainty as regards the state of law - the society would be in utter confusion resultant effect of which bring about a situation of chaos - a situation which ought always to be avoided.

15. In *Raj Narain Pandey and others v. Sant Prasad Tewari and others, 1973(2) SCR 835,* H.R. Khanna, J. (as he then was) observed at page 840 of the Report as follows :-

> "In the matter of the interpretation of a local statute, the view taken by the High Court over a number of years should normally be adhered to and not disturbed. A different view would not only introduce and element of uncertainty and confusion, it would also have the effect of unsettling transactions which might have been entered into on the faith of those decisions. The doctrine of stare decisions can be aptly invoked in such a situation. As observed by Lord Evershed M.R. in the case of Brownsea Haven Properties v. Poole Corpn., there is well established authority for the view that a decision of long standing on the basis of which many persons will in the course of time have arranged their affairs should not lightly be disturbed by a superior court not strictly bound itself by the decision."

16. Recently in *Bishamber Dass Kohli v. Satva Bhalla, 1993(1) SCC 566* J.S. Verma, J. (as he then was) observed in respect of a provision of the East Punjab Urban Rent Restriction Act, 1949 as follows :-

> "This is how this provision appears to have been understood at least ever since then and the people in the State have arranged their affairs on that basis. Apart from the fact that this view commends to us as the correct view, the desirability of continuing the settled view is also a reason in its favour."

17. More recently in *Gangeshwar Limited v. State of U.P. and others, 1995(6) SCC 84* this Court observed :-

> "We would have appreciated this attractive argument had there not been two decisions of the Allahabad High Court in the way, which are to the contrary. These

are - State of U.P. v. Har Bilas Goel and Jai Ram Singh v. State of U.P. The understanding of section 6 of the Ceiling Act by the High Court reflected in these two decisions, when none has been placed before us to the contrary, would require upholding on the principle of stare decisions, for if we go to reinterpret the provision contrarily, it would upset the settled position in the State insofar as this area of law is concerned."

18. Paripoornan, J. in a similar vein in *Kattite Valappil Pathumma and others v. Taluk land Board and others, 1997(4) SCC 114* observed :-

"We are further of the view, that even if another view is possible, we are not inclined to take a different view at this distance of time. Interpretation of the law is not a mere mental exercise. Things which have been adjudged long ago should be allowed to rest in peace. A decision rendered long ago can be overruled only if this Court comes to the conclusion that it is manifestly wrong or unfair and not merely on the ground that another interpretation is possible and the court may arrive at a different conclusion. We should remember that the law laid down by the High Court in the above decision has not been doubted so far. The Act in question is a State enactment. These are weighty considerations to hold that even if a different view is possible, if it will have the effect of upsetting or reopening past and closed transactions or unsettling titles all over the State, this Court should be loathe to take a different view. On this ground as well, we are not inclined to interfere with the judgment under appeal."

19. In this context reference may also be made to two English decisions :

(a) In Admiralty *Comrs v. Valverda (Owners), 1938 Appeal Cases 173 at 194* wherein the House of Lords observed that even long-established conveyancing practice, although not as authoritative as a judicial decision, will cause the House of Lords to hesitate before declaring it wrong and

(b) In *Button v. Director of Public Prosecution, Swain v. Director of Public Prosecutions, 1966 AC 591* House of Lords observed :-

"In Corpus Juris Secundum, a contemporary statement of American Law the stare decisions rule has been stated to be a principle of law which has become settled by a series of decisions generally is binding on the courts and should be followed in similar cases. It has been stated that this rule is based on expediency and public policy and should be strictly adhered to by the courts. Under this rule courts are bound to follow the common law as it has been judicially declared in previously adjudicated cases and rules of substantive law should be reasonable interpreted and administered. This rule has to preserve the harmony and stability of the law and to make as steadfast as possible judicially declared principles affecting the rights of property, it being indispensable to the due administration of justice, especially by a court of last resort, that a question once deliberately examined and decided should be considered as settled and closed to further argument. It is a salutary rule, entitled to great weight and ordinarily should be strictly adhered to by the courts. The courts are slow to interfere with the principle announced by the decision, and it may be upheld even though they would decide otherwise were the question a new one, or equitable

> considerations might suggest a different result and although it has been erroneously applied in a particular case. The rule represents an element of continuity in law and is rooted in the psychological need to satisfy reasonable expectations, but it is a principle of policy and not a mechanical formula of adherence to the latest decision however recent and questionable when such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder and verified by experience.

20. The law as settled by this court in Meharbansingh's case (supra) has stood the test of time and if at this juncture a contra opinion is expressed, it will open up a series of conflicts and consequent litigation and thereby disturbing settled position of law in the State of Madhya Pradesh. This Court's decision on the Rajasthan legislation has been decided in the peculiar facts of the matter in issue therein. There is (sic) any (SIC) nor any identity of subject, between the two enactments and as a matter of fact the legislation speak differently. As such, we are not able to record our concurrence with the submission of Mr. Jain that the law needs to be enunciated more fully by reason of a different view as expressed by this Court in Budha's case. Budha's case (supra) as noticed above, has been decided on its own merits and has no applicability in the contextual facts. The doctrine of stare decisions therefore, prompt us to reject the contention of Shri Jain. In that view of the matter and since the High Court has proceeded on the basis of Meharbansingh's case, we do feel it convenient to record that the High Court has decided the issue in its proper perspective and we see no reason to express any different view at this point of time.

21. The appeal, therefore, fails and is dismissed with no order as to costs.