SUPREME COURT OF INDIA

Ram Gopal

Vs.

Dy. Director of Consolidation

C.A.No.10283 of 1995

(S. Rajendra Babu and Doraiswamy Raju, JJ.)

03.05.2000

JUDGEMENT

RAJENDRA BABU, J.:-

1. In respect of disputed lands Maniraji was recorded as Bhumidar bearing Khata No. 34 and Smt. Bhagirathi was recorded as Mukarrardar on a rent of Rs. 9/-. Heirs of Smt. Bhagirathi claimed right in respect of the disputed land while Smt. Subhraji claimed on the basis of a sale deed executed by Smt. Manraji in her favour. The Consolidation Officer by an order made on 25-10-1971 held that Smt. Subhraji is a Bhumidar of the disputed land and that the contesting claimants, descendants of Bhagirathi are entitled to Asami right in the disputed land. Both the parties preferred appeals and the appellate authority by an Order made on 21-2-1972 allowed the appeals filed by descendants of Bhagirathi and dismissed the appeal filed by Smt. Subhraji. Against this Order, a Revision Petition was preferred which was dismissed by an Order made on 5-9-1973. Aggrieved by this Order,a Writ Petition was filed by Smt. Shubraji. The High Court after considering the rival contentions took view that the entry relied upon by descendents of Bhagirathi is the entry in Khatauni wherein the predecessor-in-interest of the appellant was recorded as Mafidar and the predecessor-in-interest of the contesting opposite parties were recorded as Mukarrardar. Therefore, the Court felt it was necessary to examine whether the entry of Mukarrardar in favour of the contesting opposite parties

denotes their status as sub-proprietors. The Consolidation Officer had recognised the claim of Shubhraji being transferee of Smt. Manraji who was Mafidar of the disputed plots and had become Bhumidar thereof after the enforcement of U. P. Act 1 of 1951. While the appellate and the revisional Court recognised the claim of the contesting opposite parties on the basis that they were sub-tenants of the disputed land and acquired Sirdari right therein and the sale deed in favour of the petitioner executed by Smt. Manraji did not confer valid title in her favour and such right, if any, had become extinguished before the execution of the sale deed in her favour. Thus, the revisional Court has accepted the claim of the contesting opposite parties on the ground of sub-letting by Mafidars.

2. A Mafidar (Rent free grantee) is not a tenant as is evident from the provision of Section 4 (5) of the North-Western Province Tenancy Act, 1901. A sub-tenant is described as one who holds land from a person possessing therein only the interest of a tenant other than a permanent tenure-holder of a Thekedar.

Identical definitions have been given in Section 3(6) and (7) of the Agra Tenancy Act, 1926 and the provisions of Section 3 (22) and (23) of the U. P. Tenancy Act, 1939. All these enactments indicate that a rent free grantee is not included within the term tenant and a person holding land from a rent free grantee is also not a sub-tenant. Hence, the High Court felt that the appellate authority and the revisional Court had failed to examine the law in this light and remitted the matter for fresh consideration in accordance with the law after setting aside order of revisional authority. That order of remand made by the High Court became final.

3. On remand, the Deputy Director of Consolidation examined the matter and gave a finding that the land had been recorded in the name of Adyadev as Mafidar and Jai Narain as Mukarrardar in the entry in Khatauni relating to 1305 Fasli; that in the Khatauni 1343 Fasli Saraswati Pd. has been recorded as Mafidar and Bhagirathi had been recorded as Mukarrardar which entry continued up to 1356 Fasli; that after the abolition of Zamindari, this land continued to be recorded in the name of Manraji who had already been stated to have executed a sale deed in favour of Shubhraji; that the revisional Court followed the direction of the High Court that Mafidar could not have been treated to fall in the category of a tenant and, therefore, if any person cultivates the Mafi land after taking it from Mafidar, he cannot become a sub-tenant. Proceeding on this basis, the revisional Court stated that Mukarrardar in the present case cannot be treated as a tenant. Explaining the meaning of Mukarrardar, on an analysis of the entries, the revisional Court held that the only meaning that flows is that Bhagirathi cultivated land for and on behalf of Manraji, the Mafidar; and she was a Mukarrardar in the capacity of a care taker. On these findings the revisional Court held that Bhagirathi never remained in possession over the disputed land independently and her possession whatever it may be, was for and on behalf of the recorded tenure-holders, Manraji, Saraswati, etc. Inasmuch as the land in dispute was a rent free grant no person could acquire any right over it on any other basis. The argument that the appellants' holding had matured to tenancy rights in the land in dispute was rejected. Then the finding recorded by the revisional Court is that the said Bhagirathi and her heirs never remained in independent possession over the land in dispute; their rights did not mature to any tenancy right on the basis of their possession; Smt. Manraji did have the right to

execute the sale deed and Smt. Shubhraji is entitled to get her name recorded on the basis of the sale deed. This order was challenged before the High Court in the Writ Petition. The High Court agreeing with the view expressed by the revisional Court dismissed the same. Hence this appeal.

4. The learned Counsel for the appellant urged that the term 'Mukarrardar' gives the status of a lease-holder as has been held by this Court in Munni Lal v. Bishwanath Prasad, (1968) 1 SCR 554 : (AIR 1968 SC 450). The claim is that Smt. Bhagirathi's rights were intermediary in nature being Mafidars and their right in the property in dispute came to an end with abolition of the Zamindari in Uttar Pradesh and thus Smt. Bhagirathi who on the date of the enforcement of the Zamindari Abolition Act was a tenant having permanent leasehold right in the land in dispute. The learned Counsel strongly relied on the circumstance of payment of a rental of Rs. 9/- per annum. It is clear from the findings recorded by the revisional Court as per law declared by the High Court in the order of remand that Bhagirathi was only a Mafidar holding the land on rent free basis and, therefore, giving any right of lease in favour of the appellant or predecessors-in-title does not arise at all and, therefore, the view taken by the High Court appears to us to be correct and does not call for interference.

5. The decision in Munni Lal v. Bishwanath Prasad, (1968) 1 SCR 554 : (AIR 1968 SC 450) was in the context of explaining that the term 'Mukarrardar' made in certain circumstances would amount to leasehold rights. However, if examined in the context of the enactments enforced in U. P. at the relevant time and the right held by Smt. Manraji and her predecessors-in-title it is clear that it is on a rent free basis, therefore, their holding of the same as tenants would not arise nor is there any material to show that the appellants were paying rent to the said Bhagirathi or her predecessors. Therefore, their becoming Sirdars also would not arise. In the circumstances, we find no force in the arguments advanced on behalf of the appellants. The appeal, therefore, stands dismissed. In the circumstances of the case, there shall be no order as to costs.

Appeal dismissed.