

SUPREME COURT OF INDIA

Choudhary Udai Singh (Dead) By Lrs.

Vs.

Narayanibai

(S.S. Ahmed and S. R. Babu JJ.)

25.04.2000

ORDER

S. SAGHIR AHMAD, J.

1. The plaintiffs are in appeal before us. They brought a suit for possession in respect of certain parcels of agricultural land and for recovery of mesne profits. Their case is that one Madhorao had effected a mortgage of the suit lands in their favour and he brought a suit for redemption which was decreed and on his filing execution petition the same was resisted by the appellants on the ground that it was barred by limitation. The executing court however overruled the objections raised by the appellants and in execution of the aforesaid decree delivered possession of the suit lands to Madhorao on 15.7.1949. On appeal filed by the appellants the Addl. District Judge, Garoth, reversed that order of the executing court and held that the application for execution was barred by time. When the matter was carried further by Madhorao the order passed by Addl. Distt. Judge was upheld.

2. The appellants filed an application for restitution on 12.5.1953. That application was rejected on an objection being raised by one Kishan Lal stating that he was in possession of the lands in question, who was not a party to earlier proceedings. So the present suit has been filed by the appellants against Kishan Lal for recovery of possession of the suit lands. The stand of Kishan Lal in the suit is that he has been in possession of the suit lands as a tenant of the Zamindar on 2.10.1951 when the M.B. Zamindari Abolition Act (hereinafter referred to as 'the Act') came into force and hence he became a pucca tenant of the State Government under Section 38 of the Act. However the trial court decreed the appellants' suit. On appeal the lower appellate court held that on 2.10.1951 when the propriety rights in the suit lands vested in the State under the Act the appellants had lost all interest in the same and that the said Kishan Lal had become a pucca tenant of the suit lands by virtue of the provisions of Section 38 of the Act and thus the appellant was not entitled to any relief. On this basis the lower appellate court allowed the appeal and dismissed the suit filed by the plaintiffs-appellants. Thereafter, the appellants carried the matter unsuccessfully in second appeal. Hence this appeal by special leave.

3. The suit land was situated in a village which was settled under the Zamindari System in the erstwhile State of Gwalior when Madhorao was Malguzar of the said village and appellants were mortgagees who could be described in the category of Malguzars as defined by Section 2(12) of Qanoon Mal, Gwalior and, therefore, could be treated to be proprietors as de fined by Section 2(a) of the Act.

4. Even after giving such a finding the High Court is of the view, that on the vesting of the land rights of the proprietor in respect of the suit land ceased. It was held after 2.10.1951 the right to possession of suit land from the said Kishan Lal even assuming him to be a trespasser could not be claimed by the appellants as their rights were lost having vested in the State. It is on that basis the High Court took the view the suit was filed having no right to possess the suit lands and therefore, no relief could be granted.

5. Section 41 reads as under :

41. Tenant to be deemed to be a Government's tenant from the date of vesting and Revenue Administration and Ryotwari Act to apply to the vested land. When the propriety rights in any village, Muhal, land, chak or block are vested in the State under Section 3 of this Act, every Sakitulmilkayat, Pacca Maurusi, Mamuli Maurusi, Gair Maurusi tenant of such village muhal, land, chak or block who was in possession of any holding shall from the date of vesting, be deemed to be a tenant of the govt. and the proprietor shall also likewise, in respect of the holding of his Khud-Kasht or Sir, be deemed to be a tenant of the Government from the date of vesting and all provisions of Part II of Madhya Bharat Revenue Administration and Ryotwari land Revenue and Tenancy Act, Samvat 2007, shall, subject to other provisions of this act, apply to such village, Muhal, land, chak or block are similar provisions of Qanoon Mal, Gwalior State, Samvat 1983, and of other laws shall cease to apply:

Provided that all cases pending before any Revenue Court at the time of Commencement of this Act shall be decided according to the provisions of Acts and laws heretofore in force.

6. Under the said provision the proprietor in respect of holding of the KhudKasht is deemed to be tenant from the date of vesting. On the basis of this provision it is clear that the High Court is not justified in taking the view that the appellants had lost all rights in respect of the lands in question. The finding that the land was in possession of the respondents as trespassers could not be disputed at all.

7. In *Harishchandra Behra v. Garbhoo Singh* 1961 J LJ 780 (C.N. 203) the expression 'personal cultivation' is explained as not mere bodily cultivating the land but constructively also and also the right to possess against a trespasser. If a wrong-doer takes possession, steps to exclude him can certainly be taken and cultivation of trespassers in such circumstances cannot clothe him with any right and his cultivation has to be deemed to be on behalf of rightful owner. Thus the appellants are entitled to claim right to possess in respect of the land in question. We are further fortified by the decision in *Himatrao v. Jaikishandas and Ors.* where a distinction has been drawn between a suit brought by a proprietor in his character as proprietor for possession of property and in his individual right to possess in respect of the said property against the trespasser. The High Court lost sight of the provisions of Section 41 of the Act which enables even a proprietor holding land Khud-Kasht or Sir, should be deemed to be tenant from the date of vesting. If the appellants were entitled to be put in possession of the land and the same had been deprived of by a trespasser which possession has to be recognised as that of the person who is entitled lawfully to cultivate the land in question.

8. In result we allow the appeal, set aside the order made by the High Court and of the lower appellate court but restore that of the trial court. However, in the circumstances of the case there shall be no order as to costs.

