

Kali Prasad and others

Vs

Deputy Director of Consolidation & others

Civil Appeal No. 2780 of 1984

(Mr. S.S. Mohammed Quadri and Mr. Y.K. Sabharwal, JJ.)

26.07.2000

JUDGMENT

This Appeal, by special leave, is directed against the order of the High Court of Judicature at Allahabad in Civil Miscellaneous (Writ) No. 382220 of 1969 on December 223, 1981.

The controversy in this appeal relates to the nature of right which Kali Prasad and others (the appellants) are holding the plots in question under the U.P. Zamindari. Abolition & Land Reforms Act, 1950 (for short 'the U.P. Zamindari Act').

The appeal relates to one of the two sets of plots in village Pakar, Tappa Pachauri, Pargana Hasanpur Maghar, Tehsil Sadar, P.O. Madanpur, District Gorakhpur - one set consisted of 12 plots and the other consisted of 13 plots. In both these sets of plots, the appellants were recorded as occupants along with some other persons in different combinations.

Here, we are concerned with the set of 13 plots, namely, plot Nos. 131, 132, 388, 465, 471, 758, 760, 855, 893, 894, 895, 896 and 897. Both those sets of plots were combined and joint entries were made in revenue records. Appeals were filed before the Settlement Officer (Consolidation) for correction of the entries. Appeal Nos. 784 and 785 relate so correction of entries in the said plots. Smt. Partapi was Khatedar and respondents 3 and 4 were asamis of these plots.

After the death of Smt. Partapi on October 31, 1952, Ram Dulare (father of respondents 3 and 4) filed two civil units in the court of District Munsiff claiming declaration of bhumidari rights and ejection of the appellants and others. Though, the learned Munsiff decreed the suit in respect of 13 plots in question also yet on appeal by the appellants, the learned District Judge set aside the judgment and decree of the Trial Court on the ground that the civil court had no jurisdiction and ordered that the plain be returned.

Now reverting to the appeals before the Settlement Officer (Consolidation), he found, inter alia, that Smt. Partapi was the last Khatedar and the appellants were in adverse possession of the said plots. Despite institution of civil suits in 1954 by Ram Dulare, they could not be ejected from the plots and, therefore, they were entitled to Sirdari rights. Accordingly, he apportioned the plots, allotting shares to each one of them by his order dated August 22, 1968.

That order gave rise to filing of five revision petitions, by respondents 3 and 4 herein, before the Deputy Director (Consolidation), Gorakhpur. The Deputy Director (Consolidation) having considered the judgment of the District Judge noted that the claim of respondents 3 and 4 on the ground of being sister's sons of the last male tenure holder (Bal Karan) of the disputed land in respect of

which Smt. Partapi was recorded as Khatedar, was not denied. What was argued before him was that respondents 3 and 4 being sister's sons of Bal Karan were not entitled to the land after the death of Smt. Partapi. It was, however, admitted that the appellants herein were in possession of the land 1359 F but it was argued that they were simply asamis and they had not acquired any Sirdari rights. The contention of the appellants herein before the Deputy Director (Consolidation) was that even if they were held to be asamis, as they were not ejected within the period of limitation by filing a suit under Section 209 of the U.P. Zamindari Act, they acquired Sirdari rights. The alternative submission was that they had perfected their right by adverse possession. The Deputy Director (Consolidation) took the view that Sections 16, 19 and 209 of the U.P. Zamindari Act do not apply to the case and that the appellants continued to be asamis under Section 3 of the U.P. Land Reforms (Supplementary) Act XXXI of 1952, as such they cannot claim to be Sirdaris on the ground that the said respondents did not file any suit for their ejection. In this opinion, as no period of limitation is prescribed for such cases, a suit can still be filed for their ejection. The Deputy Director (Consolidation) thus allowed the appeals of the said respondents on September 3, 1969. Assailing that order, the appellants filed writ petition before the High Court of Allahabad which was dismissed on December 23, 1981. It is the validity of that order of the High Court that is subject-matter of this civil appeal.

Mr. Pramod Swarup, learned counsel appearing for the appellants, invited our attention to Section 191 of the U.P. Zamindari Act and contended that the rights of the appellants as asamis came to an end on the death of Smt. Partapi on October 31, 1952 and thereafter they were holding the plots adverse to the interest of respondents 3 and 4 and as no suit for ejection was filed against them under Section 209 of the said Act, they perfected their rights by adverse possession. We are afraid, we cannot give effect to the submission of the learned counsel for reasons more than one. First, such was not the plea before the consolidation authorities and the High Court. Secondly, Section 209 contemplates filing of a suit for ejection of a person occupying land without title. In the civil litigation which started after the death of Smt. Partapi, the plaint was directed to be returned by the learned District Judge, in the appeals filed by the appellants herein, on the ground that the appellants were asamis and their ejection could not be sought in a civil court. Evidently Section 209 does not postulate eviction of asamis. Now, they cannot be permitted to approbate and reprobate by claiming that they are not asamis either under Section 3 of the U.P. Land Reforms (Supplementary) Act, 1952 or by virtue of the entries made in the records and even so they ceased to be asamis on the death of Smt. Partapi under Section 191 of the U.P. Zamindari Act. If Section 2209 is not applicable, as held by us the consequential provisions contained in Section 210 will not be attracted.

Another contention of Mr. Swarup is that sister's sons of Bal Karan became heirs only on the passing of the U.P. Zamindari Abolition & Land Reforms (Amendment) Act, 1958 and it cannot be given retrospective effect.

The Amendment Act was passed in 1958. The question whether that Act was retrospective in nature, was considered by a Division Bench of Allahabad High Court in Second Appeal No.2940 of 1964 and by its judgment dated April 18 1973 it was rightly held that having regard to the provisions of Section 1(2) of the Amendment Act that Act was retrospective. The said provisions reads as under:

"(1) This Act may be called the Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Act, 1958.

(2) It shall be deemed to have come into force from the first day of July 1952, except Sections 37,

38 and 60 which shall come into force at once".

A perusal of sub-section (2) of Section 1 makes it abundantly clear that all the provisions of the Amendment Act were brought into force from July 1, 1952; only Sections 37, 38 and 60 were brought into force at once (in 1958). It is nobody's case that any of those sections are attracted here. The effect of Section 1(2) is that the provisions would become part of 1952 Act from its inception. It follows that respondents 3 and 4 acquired to succession of Bali Karan.

It is next contended that inasmuch as the civil suit was barred in view of the provisions of Section 331, read with Schedule II of the U.P. Zamindari Act, any finding recorded by the civil court could not be taken note of in the proceedings under the Consolidation Act. In our view, this submission is mis-conceived. Section 331 read with Schedule II bars jurisdiction of the civil court only in respect of such reliefs which are mentioned in Schedule II and for their adjudication another authority has been prescribed thereunder. The suits were filed by Ram Dulare (father of respondents 3 and 4) for the reliefs of declaration of bhumidari rights and for ejection of the persons in possession including the appellants. The relief of ejection of asamis which bars the jurisdiction of the civil court, is mentioned at S. Nos. 19, 20 and 21 of Schedule II. Further, it is not every suit of declaration that is barred under Section 331; the categories of declaration which cannot be granted by a civil court are those mentioned against S.No. 34 and they are of the types specified in Sections 229 229-B and 229-C. We have perused those provisions. The suit filed by Bali Karan does not fall under any of the aforementioned sections. The only ground on which the suit was held to be barred was that the appellants were asamis and their ejection could not be granted by the civil court. A finding recorded by the civil court on the question of jurisdiction fact is binding on the parties to the suit.

In view of the above discussion, we do not find any illegality in the judgment of the High Court confirming the judgment of the Deputy Director (Consolidation). The appeal fails and it is accordingly dismissed. In the circumstances of the case, we make no order as to costs.