

SUPREME COURT OF INDIA

Dharam Singh

Vs.

Prem Singh

C.A.No.516 of 2009

(Ashok Bhushan and K.M.Joseph,JJ.,)

05.02.2019

JUDGMENT**Ashok Bhushan,J.,**

This appeal has been filed challenging the judgment dated 28.07.2006 of High Court of Uttarakhand by the appellants, who were the plaintiffs in suit No. 9 of 1992. The High Court by its judgment has allowed the first appeal filed by the defendants-respondents setting aside the judgment and decree dated 13.08.1996 of the District Judge in Suit No. 9 of 1992.

2. The brief facts of the case necessary to be cited for deciding this appeal are:

2.1 One Badri Aswal was the owner of agricultural land in Khata/Khatauni No. 46 of Village Gyansu, District Uttar Kashi (earlier part of Tehri Garhwal) measuring a total of 62 Nali and 1 muthi. The said Badri had no issue. He married one Tulsa Devi. It is claimed that Tulsa Devi adopted one Bhopalu as her son after death of her husband but Bhopalu's name could never be mutated in the Revenue records. Tulsa Devi died much before independence. One Amar Singh, predecessor-in-interest of appellants claimed to be looking after the affairs of Bhopalu and paying land revenue on his behalf. Bhopalu also died before independence and after death of Bhopalu, Amar Singh continued to be in possession of land belonging to Tulsa Devi. Tulsa Devi's name continued in revenue records. Amar Singh claimed to be in possession of the land. According to law as was in force in Tehri Garhwal at that time that when a tenant/owner dies without an heir, the land is escheated to State. For the reason, Tulsa Devi died without an heir, the entire land was treated to be State property.

2.2 The Collector, Tehri Garhwal passed an order on 17.04.1956 and ordered that property of Tulsa Devi be got released from the possession of Amar Singh. However, Amar Singh was allowed to remain in possession of the land where his house, Gaushala and Sagwara was situated with the condition that total areas shall not exceed 4 Nali. A document was written on 14.05.1956 (paper No.23Gha/2)

which recorded that Amar Singh has handed over possession of the entire land of Tulsa Devi except 4 Nali 1 muthi. The plots covering that area of 4 Nali and 1 muthi was also mentioned in the said document. The Government required land for construction of buildings for District Uttar Kashi, with regard to which land in Village Gyansu was acquired. Instead of paying compensation to tenure holders whose land was acquired, the Government ordered to give land in exchange of the land, which earlier was recorded in the name of Tulsa Devi, which stood escheated to the State. An exchange document was recorded in this context where various plots were given in exchange to different tenant holders whose land was acquired. The record operations in the village in question continued from 1952 to 1963 (as has been noted by the High Court).

2.3 The name of Amar Singh was shown in possession with regard to few plots, which were the plots recorded in the name of Tulsa Devi. The A.R.O. passed an order dated 06.05.1961 directing that name of Amar Singh, who was recorded in possession be deleted. The said order was based on a report that name of Amar Singh has been recorded surreptitiously by the record officials.

2.4 In area where the land in question was situated, the Kumaon and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 (hereinafter referred to as "1960 Act") was enforced. In accordance with the provisions of the 1960 Act, Section 10 provides that every person who on the date immediately preceding the appointed date was recorded as occupants of land held by a hissedar or a khaikar was held to be asamis. The Patwari of the village referring to a Government order dated 19.12.1973 made an entry in Khata/Khatauni firstly in the Fasli year 1979-1985 making entries as per the above Government order. The status of asamis w.e.f. 01.01.1974 and right of sirdar of Khasra No. 641, 719 and 697 was entered against the name of Amar Singh by the Patwari. Amar Singh died in or about the Year 1985. The appellants, who are sons of Lt. Amar Singh filed Civil Suit No. 9 of 1992 against the defendants-respondents praying for permanent injunction. Following reliefs were claimed in para No. 11 of the plaint:-

a) to pass a permanent injunction restraining the defendant his family members, agents and labourers from forceful, fraudulent interference in the land in Khata Khatoni No.195/35-K field No.719 admeasuring 2 Nali, 11 Muthi land of village Gyansu, Patti Barahat, Uttarkashi;

b) the cost of the case be awarded in favour of the plaintiffs and against the defendant, as this Hon'ble Court deems fit and proper in the facts and circumstances of the case.

2.5 The case of the plaintiff was that father of plaintiff got sirdari rights w.e.f. 01.01.1974. Father of the plaintiffs remained in possession till his death and thereafter the appellants are in possession of plot No. 719 area - 2 Nali and 1 muthi on which they have shown mustard crops. It was pleaded that on 27.11.1991, the defendants damaged the mustard crops. Consequently, the suit was filed.

2.6 The defendants in their written statements denied the plaintiff allegations. Defendants' case was that plot No. 719 and other plots were recorded in the name of Tulsa Devi, who died before the present settlement leaving no heir, therefore, the properties of Tulsa Devi escheated to State and vested in the State of Uttar Pradesh. In the year 1956-57, State needed the properties in Mauza Barahat for construction of PWD houses, the Government acquired property but instead of paying compensation, the owners were given plots of Tulsa Devi in exchange. The grandfather of defendant Mor Singh was Maurusidar, who was owner of plot No. 611 area of 3 Nali 2 muthi, which was acquired by the State and in exchange of said plots Mor Singh was given plot Nos. 366,335, 336 and 364 corresponding to new Plot Nos. 641, 719 and 657. After the death of Mor Singh, partition took place and the plots came in the kura of Narain Singh, father of the defendants.

2.7 Narain Singh partitioned the property and since 24.03.1969, it is the defendants, who are the owners of the plot. Narain Singh died in 1974. It was pleaded that District Magistrate, Tehri Garhwal ordered that the property of Tulsa Devi be got released from the possession of Amar Singh and allowed him to own only 4 Nali 1 muthi land. The land, which was left with Amar Singh did not include Plot No. 719 and with connivance of revenue officials, he got forged entries made with regard to Plot No. 719 and 641. It was alleged that at the present settlement, the Assistant Record officer ordered for striking off the name of Amar Singh by order dated 06.05.1961 but even after directing for deletion of his name from Plot No. 641, 749, it continued in the Revenue records on the basis of which Amar Singh claimed that he has become sirdar.

2.8 It was alleged that plaintiffs are not in possession of the plot Nos. 641 and 719 and it is the defendants, who are in possession and the suit is liable to be dismissed.

2.9 Trial court framed several issues and by order dated 13.08.1996 decreed the suit for injunction of the plaintiffs. Trial court further noticed that an order was passed by the Assistant Record Officer and in the order, he directed for deletion of the name of Amar Singh, the order was only in papers and there is no proof, which has been filed on the record to prove that actual possession of the plot was taken from Amar Singh. Consequently, the entries of possession continued in favour of Amar Singh.

2.10 With regard to the case of the defendants that possession was taken from Amar Singh of the plot belonging to Tulsa Devi and in exchange the plot No. 719 was given to the predecessors-in-interest of the plaintiffs, the trial court held that even though document 23C indicate that plots were taken from Amar Singh and given in supurdagi of Malguzar but there is no proof that actual possession was taken from Amar Singh. The entries in the name of Amar Singh cannot be held to be forged (farzi).

2.11 The defendants aggrieved by the judgment of trial court dated 13.08.1996 filed an appeal in the High Court. The High Court vide its judgment dated 28.07.2006 has allowed the first appeal and set aside the judgment of the trial court dated

13.08.1996. High Court held that in the record operation, there being order passed by Assistant Record Officer in the year 1961 directing the deletion of entry in the name of Amar Singh, no right can be claimed by Amar Singh on the basis of such possession entry. High Court further held that the entry made by the Patwari(Lekhpal) in 1379-1385 Fasli, that Amar Singh has become asamis and sirdar was without authority. Patwari(Lekhpal) was not competent to declare asami/sirdari rights and it was only Assistant Collector, who could have passed any such order. No order having been passed by the competent authority giving asamis/sirdari rights to Amar Singh, on the strength of unauthorised entry made by Patwari, Amar Singh cannot claim any right.

2.12 High Court further noticed that Amar Singh himself in his statement, as has been extracted, in the document dated 14.05.1956, admitted to release the land of Tulsa Devi from his possession except area of 4 Nali, which was given to him under the order of Collector, Tehri Garhwal, where his house, Gaushala and Sagwara were situated. Amar Singh thereafter cannot claim possession or right with regard to any land except those 4 Nalis land, which was given to him in the year 1956.

2.13 High Court held that although correctness of entries in the revenue records cannot be challenged but entries are open to attack on the ground that it was made fraudulently or surreptitiously. High Court held that defendants' case is fortified by the document 21-Ga, which indicate that the land in question had been given in exchange to the predecessor of defendants. On the aforesaid findings, the appeal was allowed setting aside the judgment of the trial court. The appellants aggrieved by the judgment of the High Court has come up in this appeal.

3. Shri A.S. Rawat, learned senior counsel appearing for the appellants contends that High Court erred in setting aside the decree of trial court. He submits that Amar Singh's name being recorded in the revenue records as in possession of plot in question, he become asamis by virtue of provisions of 1960 Act and the entry made by Patwari in Khasra "1979-1385" was on the strength of statutory provision and Government order issued therein. He submits that Amar Singh was never dispossessed from plot in question. He submits that the plot No. 719 being a very small piece of land measuring 2 Nali 1 muthi land, which was in possession of Amar Singh, the trial court has correctly decreed the suit holding the Amar Singh to have become asamis/sirdars and bhumidars. He submits that entry made in favour of Amar Singh as asamis cannot be held to be forged.

4. Learned counsel for the respondents refuting the submissions of the learned counsel for the appellants contends that the plot in question was given in exchange to the predecessor-in-interest of the respondents in lieu of acquisition of land of predecessor-in-interest. It is submitted that in the exchange, plot No.719 - 2 Nali 1 muthi was given to the defendants, which is reflected in records, Amar Singh had no right to claim the land, which was recorded in the name of Tulsa Devi. Tulsa Devi having died issueless, the entire land was escheated to State. He submits that entry of possession in the name of Amar Singh was directed to be deleted by competent officer in the record operation. On the mere fact that name continued on record no rights can be claimed by Amar Singh thereafter. There are

material on record where Amar Singh himself admitted that he has handed over the possession of all plots including 719 except 4 Nali 1 muthi land, which was permitted to be retained by him. The appellants name not being recorded as occupants, he cannot claim any rights under Section 10 of the 1960 Act. Learned counsel for the respondent submits that High Court has rightly allowed the appeal.

5. We have considered the submissions made by the learned counsel for the parties and perused the records.

6. Amar Singh, the father of the appellant, claimed Asami/Sirdari right on Plot No.719 in the suit on the ground that he was recorded in possession. We have already noticed above that Plot No.719 along with other plots was recorded in the name of Smt. Tulsa Devi, last tenure holder. Smt. Tulsa Devi having died without leaving any legal heirs her land escheated to State. The Collector has also passed an order for taking possession of land of Smt. Tulsa Devi from the possession of Amar Singh except leaving 4 Nali one Muthi land in the possession of Amar Singh. A document dated 14.05.1956 was recorded in this respect which was signed by Amar Singh. Plot No.719 was not included in 4 Nali which was left with Amar Singh.

7. The right of Amar Singh was sought to be claimed in accordance with Section 10 sub-clause (e) of the Act, 1960. Section 10 of the Act is as follows:

"Section 10. Sirtans to be Asamis.-Every person who, on the date immediately preceding the appointed date, was-

(a) a sirtan holding from aissedar; or

(b) a sirtan holding from a khaikar; or

(c) a mortgagee in actual possession of land mentioned in Section 8; or

(d) a lessee of the rights of a hissedar in non-khaikari land and a lessee or sub-lessee mentioned in Section 34 of the Tehri-Garhwal Bhumi-Sambandhi Adhikar Niyams, 1941 of the rights of a khaikar or those of a maurusidar in non-khaikari land having any land in his personal cultivation as such; or

(e) recorded as occupant of land held by a hissedar or a khaikar as such in the last revision of records made under Chapter IV of the U.P. Land Revenue Act, 1901; shall be called asami of the land and shall, subject to the provisions of this Act, be entitled to take or retain possession thereof."

8. Every person, who on the date immediately preceding the appointed date, was recorded as occupant of the land held by a hissedar or a khaikar as such in the last revision of records made under Chapter IV of the U.P. Land Revenue Act, 1901 shall be called Asami of land and entitled to take or retain possession thereof. For acquiring right under Section 10 sub-clause (e) it has to be established that person claiming Asami right was recorded as occupant of land. The High Court in its judgment noticed that the record operation in

village in question was undertaken between the period from 1952 to 1963. In the record operation it was noticed that the name of Amar Singh was recorded in possession on some plots including Plot No.719. A report was submitted that the name of Amar Singh had been recorded surreptitiously by the Record Operation Officials. The report further mentioned that possession of land has already been taken over and handed over to the Malguzar. The Assistant Record Officer passed an order dated 01.05.1963 English translation of which order has been extracted by the High Court which is to the following effect:

"The new No.719 showing Amar Singh. The Amin has shown forged entries as is evident from the report of S.N.T. dated 06.05.1961. For the time being delete the possession from these numbers and enter into the Maurusi record of the deceased." It was further directed that the revenue record may be corrected accordingly. In pursuance of the said order the settlement record was corrected and that document is paper No.23 Ga/2 on record."

9. When during record operation competent authority has passed an order for deleting the name of Amar Singh from possession whether Amar Singh can be still treated as recorded occupant in the record so as to acquire benefit of Asami is the question to be answered.

10. The trial court in its order decreeing the suit has noticed the order of A.R.O. directing for deletion the name of Amar Singh from record. The trial court, however, has observed that the order passed by the A.R.O. having not given effect in the record and name of Amar Singh having continued in the record he is entitled to be treated as Sirdar. The trial court in the above context has made following observation in its judgment:

"Ex.1 is the copy of order of A.R.O. in present settlement by which he had passed order for striking the name of Amar Singh from some of the plots but again there is nothing on record to show that this order was complied with. The learned counsel for the defendant contended that paper No.18-C is another copy of paper No.12-Ka(Ex.1) which shows that Amar Singh was present at the time of order. However, the presence of Amar Singh and his signature on the said order does not prove that Amar Singh delivered possessions of the said plots and further as earlier stated that Smt. Tulasa was not alive and possession could not be delivered to her, therefore, even if the entries were held forged in 1961 and in spite of the order the entries were not corrected by the revenue authorities, this could not be held as forgery and fraud on the part of plaintiff or his father and further even there was no evidence that in compliance of the order Amar Singh was ever dispossessed and in spite of the said orders, Amar Singh was in actual possession and, therefore, he was recorded as Sirdar on the basis of actual possession."

11. The statute confers Asami right to a person recorded as occupant in the last revision of records which were undertaken between 1952 to 1962. In the said revision order was passed deleting the name of Amar Singh from the record which is a fact not disputed by any of the parties. The trial court decreed the suit observing that even if the order was passed there was nothing on record to show that said order of A.R.O. was complied. The trial court further held that it is not proved that Amar Singh was even dispossessed in spite of the order passed by the A.R.O. The statute conferred the benefit on a person recorded as

occupant. When in a record operation order is passed for deleting the name of Amar Singh from possession over the land in question, Amar Singh cannot be held to be recorded occupant within the meaning of Section 10(e).

12. The High Court has dealt with the above aspect of the matter and has held that continuous of entry after the order of deletion of the name of Amar Singh cannot confer any right. The judgment of this Court in *Vishwa Vijay Bharati vs. Fakhrul Hassan and others*¹, has rightly been referred to and relied by the High court. This Court in paragraph 14 of the judgment was laid down following:

"14. It is true that the entries in the revenue record ought, generally, to be accepted at their face value and courts should not embark upon an appellate inquiry into their correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent, entries. The distinction may be fine but it is real. The distinction is that one cannot challenge the correctness of what the entry in the revenue record states but the entry is open to the attack that it was made fraudulently or surreptitiously. Fraud and forgery rob a document of all its legal effect and cannot found a claim to possessory title."

13. The order of A.R.O. directing the deletion of the name of Amar Singh was passed on the report of Record Operation Officials in which report it was mentioned that the name of Amar Singh has been surreptitiously recorded. The report was accepted and the direction was issued to delete the name. We, thus, are of the clear opinion that Asami right could not have been obtained by Amar Singh.

14. Learned counsel for the appellant has placed much emphasis on the entry made by Patwari in 1379-1385, Annexure-P/8. The entry made by Patwari with respect to Amar Singh is as follows:

"The Government order No.291/1-4(3)/73 Revenue dated 19.12.73 a status Asami w.e.f. 1 January, 1974 and right of Sirdar of Khasara No.641, 719, 720 total 6 Nali 10 Muthi at the rate of Rs.3.15 per annum.
Sd/- Illegible Patwari."

15. As per the provisions of the Act, 1960 those persons who had acquired Asami right under the Act were treated to be Sirdar w.e.f. 1st January, 1974. The entry made by Patwari as noted above is to the above effect. Amar Singh being not recorded occupant, when could not acquire Asami right no question arises of he getting Sirdari right. More so entry made by Patwari as clear from the entry itself, as noted above, was not consequent to any order passed by any competent officer. Patwari (Lekhpal) was not authorised to enter the name of any person or confer any right. The High Court has held that Lekhpal (Patwari) was not entitled to make entry in Khata Khatauni of 1379-1385. We fully endorse the aforesaid view of the High court; no right was acquired on the strength of the aforesaid entry.

16. One more aspect of the matter further needs to be noted. As noted above, land of various persons was acquired for construction of Government buildings in which one of

the persons whose land was acquired was Mor Singh, the predecessor-in-interest of respondent. The Government utilised the land of Tulsa Devi which was escheated to State by giving the said land in exchange to those persons whose land was acquired. The order pertaining to exchange is dated 05.09.1960 which was brought on the record as Annexure-P4. In the said order it was noticed that Amar Singh was in possession of Plot No.719. Plot No.719 was given in exchange to person whose land was acquired by the State.

17. The High Court has also relied on the document paper No.23 Ga/2 which was written on 14.05.1956 in which it is indicated that Amar Singh has handed over the possession of the entire land of Smt. Tulsa Devi except 4 Nali. In paragraph 17 of the judgment of the High Court the statement of Amar Singh has been noted to the following effect:

"17. "I Amar Singh, adopted son of Bhopalu, Village Gyansu, Patti Brahat, state that the escheat land of Maurasi Tulsa, which is in my possession, will be released from my possession and I will not interfere in that land from today onwards and I will be in possession of the land which is ordered to be given to me for the purpose of Goshala, Courtyard, Sagwara and for Water Ponds. The number of those Plots are Plot No.339 Sagwara, 240 Goishala, 244 House, 245, 246 Sagwara, 247, 248, 249 Sagwara and 619 Ka which is 1 Nali 15 Muthi and total area of 4 Nali which has been given to me."

18. Amar Singh himself clearly stated that the land of Tulsa Devi which is escheated to the State will be released from his possession and he shall not interfere and he shall be in possession of only 4 Nali which has been given to him. Plot No.719 was not given to him and was not included in the said 4 Nali land which was left with him. This makes it clear that he could not claim any right on Plot No.719 belonging to Tulsa Devi which was escheated to the State and was given in exchange to predecessor-in-interest of the defendant on 05.09.1960. The claim of the plaintiff that by virtue of entry made by Patwari as noted above, he became Sirdar cannot be accepted. The High Court after considering entire evidence on record has rightly set aside the order passed by the Trial Court.

19. We do not find any error in the judgment of the High Court. There being no merit in the appeal, the appeal is dismissed.

Judgment Referred.

¹(1976) 3 SCC 0642