

ALLAHABAD HIGH COURT

Parshotam Das

Vs.

Prem Narain

Supreme Court Appeal No. 89 of 1954
(Mootham, C.J. and Agarwala, J.)

13.03.1956

JUDGMENT

Agarwala, J.

1. This is an application by a receiver appointed by this Court during the pendency of the appeal in the Supreme Court. The prayer of the applicant is that the order of the court below be set aside and he be permitted to obtain actual cultivatory possession over the Sir and Khudkasht lands in dispute in the case.

2. The facts of the case, briefly stated, are as follows. The suit out of which the Supreme Court appeal has arisen was filed by one Mahant Uma Shankar against the applicant Mahant Prem Das for possession over the endowed property of which the last Mahant was one Bholu Das. Uma Shankar claimed to be the Chela of Mahant Bholadas and duly elected as the Mahant of the estate after the death of Bholadas. This claim was contested by the applicant Mahant Prem Das who claimed himself to be entitled to succeed as Mahant after the death of Mahant Bholadas.

3. The property in dispute included certain Sir and Khudkasht plots. During the pendency of the suit, the Court below appointed one Chet Ram as receiver of the zamindari property including the Sir and Khudkasht land in dispute by an order dated 6-12-1943. The receiver took charge of the zamindari property and of the Sir and Khudkasht lands from the applicant Mahant Preme Sukh Das.

4. On 11-10-1944, the suit was decreed by the court below, the receiver was discharged and Uma Shankar plaintiff took delivery of possession of the property in dispute including the Sir and Khudkasht lands from the receiver. The applicant Mahant Prem Das filed a first appeal in this Court and applied for the appointment of a receiver. On 13-4-1945, this Court ordered that a receiver be appointed over the property in dispute and directed the court below to name a suitable person as receiver. On 26-4-1954 the court below appointed one Damodar Swarup, who was official receiver, as receiver of the disputed property. The official receiver took actual possession of the Sir and Khudkasht plots.

5. On 21-12-1945 Damodar Swarup receiver asked for direction from the court below as to how lie should manage the Sir and Khudkasht plots which were lying uncultivated. Both parties to the litigation, namely Uma Shankar and the applicant Prem Das, made separate applications to the court below praying that the Sir and Khudkasht land may not be given to an outsider as in that case tenancy rights would be created and the character of Sir and Khudkasht would be lost. Both offered to take the plots under their own cultivation on theka. It was stated in Uma Shankar's application that;

"There are Sir and Khudkasht plots in the estate in dispute. The receiver has not arranged for their cultivation and intends to let them out to strangers on rent or theka. If that is allowed the Sir rights of the plaintiff will be put in jeopardy because he pays more than Rs. 25/- as local rate and as the Sir is of the year 1333-34 Fasli and is not an old Sir as has happened in respect of certain other cases relating to the very same estate and about which litigation is going on.

In these circumstances it is prayed that the whole of the Sir and Khudkasht land be given over to me, the plaintiff himself, on reasonable and legal lease money for cultivation. I, the plaintiff, will pay to the receiver every full-yearly the lease money and will be responsible for the profit and loss of the 'Cultivation."

The court acceded to the prayer of both parties that the plots be not given to a third party. The court's order was as follows :

"The decree-holder applies that he is ready to take the land from the Receiver for cultivation and the other party has also no objection to the Receiver's letting them out to any tenant. The lands are Sir and Khudkasht and the Receiver says that he has not been cultivating them and they are lying uncultivated.

It was the primary duty of the Receiver to cultivate the land but if he cannot do so and by letting them out to other tenants legal complications may arise in the long run, the Receiver may let them to the decree-holder who will pay rent to the Receiver, otherwise the Receiver will expose himself to risk by letting the land uncultivated.

11-1-1946."

6. One thing is clear at least from this order, and it is that the court was anxious to avoid the creation of tenancy rights in the Sir and Khudkasht plots in dispute.

7. The recover fixed Rs. 400/- as the annual rent to be paid by Uma Shankar and he was put in possession of the Sir and Khudkasht lands which he cultivated till his death on 16-4-53. Then the receiver sought the directions of the court below as to whether Parshotam Das, brother of Uma Shankar, who claimed to be the next heir of Uma Shankar, (and who is now the appellant in the Supreme Court appeal) should be allowed to cultivate the Sir Khudkasht lands. On this

application no orders were passed by the court below for a long time.

8. While the said application was pending in the court below, the first appeal was allowed on 2-8-1954, by this Court, the suit was dismissed and the applicant Prem Das was held entitled to recover possession over the property in suit.

9. Parshotam Das filed an application, for leave to appeal to the Supreme Court and also applied for appointment of a Receiver. On 19-8-1954 this court made an ad interim order that the same receiver, namely Damodar Sarup, may continue as receiver till the application was decided. Then a final order was passed by this Court on 21-2-55. This was a consent order and the Court directed that the applicant Prem Das be appointed Receiver on condition that he furnished security to the extent of Rs. 5000/- during the pendency of the appeal in the Supreme Court. The court further directed that the defendant-respondent (i.e. applicant Prem Das) on assuming charge of the property shall furnish six-monthly accounts in the court below, that the plaintiff appellants shall be at liberty to raise objections to the accounts and bring them to the notice of the court below and that the court below will have the power to issue such directions to the new Receiver as it may consider fit and proper.

10. On 4-3-1955 the court directed the applicant Prem Das to take charge of the property which he formally did on 14-3-1955. On 21-3-1955 the applicant Prem Das in his capacity as Receiver applied to the court below to allow him to take actual possession over the Sir and Khudkasht plots with police help as he was being obstructed by certain persons who were illegally in possession of the same.

This prayer was allowed by the court below, and it is alleged by the applicant Prem Das that he took actual possession over the Sir and Khudkasht plots and started cultivation.

11. On 24-3-1955 Parshotam Das applied to the court below that the Receiver be either removed or be restrained from interfering with his possession over the Sir and Khudkasht plots. He alleged that by the order of 1946 Uma Shankar had become a tenant of the plots and he (Parshotam Das) as his legal representative had also become a tenant and in fact had acquired the rights of an Adhivasi under the U.P. Zamindari Abolition and Land Reforms Act. This application was resisted by the applicant Prem Das and the court made an order on the 13-8-1955 that Uma Shankar had become a tenant and that Parshotam Das his heir and legal representative is also a tenant and could not be dispossessed from the Sir and Khudkasht lands, and directed the receiver not to interfere with the possession of Parshotam Das.

12. The present application has been filed by Mahant Prem Das Receiver for setting aside this order and for a direction that he may be allowed to recover actual cultivatory possession over the Sir and Khudkasht plots. This application is opposed by Parshotam Das on the ground that Uma Shankar acquired the rights of a tenant under the order of the lower court and that after the death of Uma Shankar he himself became an Adhivasi and cannot be evicted. He has further contended

that thin Court has no jurisdiction to entertain this application because the applicant should have filed an appeal against the order of the court below and not come up by way of an application.

13. We are of opinion that there is no force in the contentions raised on behalf of Parshotam Das. After the appeal was decided in favor of Prem Das he was by consent of parties appointed receiver of the property in dispute by an order of this Court. The receiver is therefore an officer of this Court to whom directions can be given by this Court. This Court authorized the court below to issue such directions to the receiver as it may consider fit and proper. The court below in giving the directions exercised a delegated power but as the receiver continued to be an officer of this Court and this officer continued to have seisin of the case, it is open to this court to set aside the directions of the court below and to give such directions to the receiver as it considers just in the circumstances of the case. The present application made by the receiver under Order 40, Rule 1(d), Civil Procedure Code, was therefore in order.

14. We are further of opinion that in the circumstances which have been narrated above, Uma Shankar did not acquire tenancy rights when the lands were given to him by the receiver for cultivation on payment of Rs. 400/- per year.

15. It will be seen that the Sir and Khudkasht plots were part of the disputed property in the case. Both parties claim to be Mahants of the property. They were both anxious that tenancy rights might not accrue in the land by its being given on rent to a stranger. In ordering the receiver to let out the land to Uma Shankar who was at that time the decree-holder in the case and entitled as Mahant to manage the property, the Court did not intend that Uma Shankar should acquire the very same rights which all concerned were anxious to avoid, as that would destroy the Sir and Khudkasht rights in the land and thus cause serious loss to the endowment. The Court, therefore, in directing the receiver to let the decree-holder Uma Shankar cultivate the land on payment of rent, intended this to be a temporary arrangement for the duration of the suit or appeal so that there may be no loss to the estate. By the order of the Court, Uma Shankar became a licensee of the plots entitled to cultivate the plots on payment of compensation for use and occupation. The use of the word "rent" by the court below for this compensation did not mean that Uma Shankar became a tenant. During the time Uma Shankar was alive, it does not appear that he ever claimed to be a tenant of the plots. Parshotam Das, the appellant in the Supreme Court appeal, also did not claim those rights before 24-3-1955. Indeed he himself applied to this Court for the appointment of a receiver over the property in dispute, including the Sir and Khudkasht lands, and it was with his consent that Prem Das, who had now become the decree-holder after his appeal had been allowed by this Court, was appointed as receiver of the disputed property. Where a party to a litigation who claims to be the owner or trustee of the property in dispute is allowed to cultivate the disputed property during the pendency of the litigation he cannot claim rights adversely to the person who is ultimately held entitled to the property. Cultivatory possession of such person does not create tenancy rights in his favour. Nor was the position of Uma Shankar altered by anything in the U.P. Zamindari Abolition and Land Reforms Act.

Section 20(b) of the said Act does not apply to a case of this kind. The vesting order under the Zamindari Abolition and Land Reforms Act was made with effect from 1-7-1952 when Uma Shankar was alive and when the appeal was pending in this Court. Section 20(b) of the Act was not intended let apply to a person in the position of Uma Shankar who had been allowed to cultivate the disputed property as a licence, as a temporary measure pending the decision of the litigation.

The entry in the revenue papers in the year 1356 and 1359 Fasil recorded him as being in cultivatory possession "under an arrangement (zer iutejam) with Damodar Sarup receiver". The entry clearly showed that Uma Shankar was cultivating the land on behalf of the receiver as his agent or licensee. Section 20 was not intended to confer Adhivasi rights on a person in the position of Uma Shankar. It has recently been held in - '*Badri Prasad v. Board of Revenue*¹', decided by a Bench of this Court on 5-3-1956, that the section applies to the case of persons who are recorded as occupants in their own right claiming to cultivate land as tenants or as trespassers and has no application to persons recorded as agents or licensees. So far as Parshotam Das is concerned, he was neither recorded as a tenant nor as an occupant and was not in cultivatory possession in the relevant years mentioned in the section. We are of opinion that Parshotam Das has not acquired tenancy or Adhivasi rights in the plots in dispute. The arrangement made by the receiver allowing him to cultivate the plots was only temporary and as soon as with the consent of Parshotam Das himself Prem Das was appointed a receiver of the property and was allowed to take actual possession over the plots in dispute by the court below, Parshotam Das was liable to vacate the same and to hand over possession to Prem Das the receiver.

16. We therefore set aside the order of the court below and direct that court to put the receiver in actual possession of the plots in dispute by evicting Parshotam Das there from.

17. The applicant will have his costs from Mahant Parshotam Das, opposite party.
Application allowed.

¹ Writ Petn. No. 915 of 1955