

ALLAHABAD HIGH COURT

Rama Kant Singh

Vs.

Deputy Director of Consolidation

Special Appeal No. 956 of 1964, from judgment of Mathur, J. in Civil Misc. Writ No.
2305 of 1964

(M.C. Desai, C.J. and S.C. Manchanda, J.)

17.09.1964. 04.01.1965

JUDGMENT

S.C. Manchanda, J.

1. It has been found as a matter of fact by the Settlement Officer and also by the Deputy Director that the contesting respondents alone were actually in possession as khudkasht-holders and that the appellants were not. Only the respondents were recorded as khudkasht-holders, and the Settlement Officer found as a matter of fact that the entry was correct; this means that he did not find the appellants to be in actual or cultivatory possession of the land in dispute. He, however, treated them as khudkasht-holders, and subsequently as bhumidhars, merely because he thought that cultivatory possession of a co-proprietor was cultivatory possession of all co-proprietors. There never was any such law. Khudkasht rights were derived from cultivatory possession and not from possession over proprietary rights. It was legally and factually possible for one out of several co-proprietors to be in cultivatory possession of joint land and only that co-proprietor who was in cultivatory possession became khudkasht-holder. Possession over proprietary rights did not by itself confer khudkasht-holder's rights. Constructive or presumptive possession is over proprietary rights only. Cultivatory possession is quite different and means actual or physical possession. Bhumidhari rights are now derived from khudkasht rights; only that co-proprietor, who was in cultivatory possession, can claim bhumidhari rights now. It was never the law that every co-proprietor was deemed to be khudkasht-holder just because one of them himself cultivated the land and it is not the law that every co-proprietor became bhumidhari of the land which did not vest in the Gram Samaj and had not been let to tenants. The Settlement Officer, therefore, went manifestly wrong

in holding the appellants to be khudkasht-holders, and subsequently as bhumidhars, merely because they were co-proprietors with the respondents; he could not find them to be khudkasht-holders and bhumidhars unless he found them to be in cultivatory possession. As he did not find them to be in cultivatory possession his decision was wrong. The Deputy Director set him right and it cannot be said that he committed any manifest error in doing so. There might have been some evidence to show that the appellants were in possession, but the finding of the Settlement Officer which has been concurred in by the Deputy Director is that the respondents alone were in possession. If the Deputy Director made a mistake in saying that there was no evidence, it does not entitle the appellants to certiorari when the evidence was not believed by the Settlement Officer and the Deputy Director. It may be that the Deputy Director said that there was no evidence because the Settlement Officer himself did not pass the order in the appellants' favor on the basis of any evidence about their being in possession. As we said, he passed the order only on the basis of a certain decision of this Court to the effect that cultivatory possession of one co-proprietor is deemed to be cultivatory possession of others. There is no force in this special appeal and it is dismissed summarily.

Appeal dismissed.