

DELHI HIGH COURT

Umrao Singh

Vs.

Man Singh (Delhi)

Regular Second Appeal No. 113 of 1967

(Hadyal Hardy, J.)

11.3.1968

JUDGMENT

Hardy, J.

1. This Second Appeal from the Judgment and decree of the learned Additional Senior Subordinate Judge ii affirming the judgment and decree of the trial Court raises an interesting but difficult question of law. The appellant was defendant in a suit for possession brought against him by the respondents in respect of 17 big has 8 biswas of land situate in village Barwala within the Union Territory of Delhi on the allegations that the respondents had purchased the land on 21st February, 1962 from one Ranjit Singh who in turn had been allotted the same by the Managing Officer appointed under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and that the appellant was in un-authorized occupation of the said land.

2. The suit was resisted by the appellant who pleaded that the Civil courts had no jurisdiction to try such a suit and that he was in lawful possession of the land. The validity of the sale in favor of Ranjit Singh and consequently in favor of the respondents was also challenged on the ground that Ranjit Singh was a "Bhumidhar" and as such the sale contravened the provisions of Section 88 of the Delhi Land Reforms Act, 1954 and the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 The parties went to trial on the following issues: -

- (1) Whether the Civil Court has no jurisdiction to try this suit? Opd
- (2). Whether the plaintiff is (sic are) the owner (sice owners) of the suit land by purchase ? Opp
- (3) Whether the sale effected in favor of the plaintiff is void as alleged in para 2 of preliminary objection of the written statement? Opd (3- A) Whether the

defendant is in lawful possession of the suit land as alleged? If so to what effect?

(4) Relief.

3. The trial court found all the issues in favor of the respondents and against the appellant. It was held that the Civil courts had jurisdiction to entertain the suit. It was also held that the respondents were owners of the suit land, that the sale in their favor was not void and that the appellant had failed to prove that he was in lawful possession of the same. The Appeal court affirmed the decision of the trial court dismissing the Appeal with costs.

4. The focal point of the appellant's attack in this second Appeal is the finding of the courts below that Ranjit Singh was not a 'Bhumidhar' under the Act and therefore the transaction of sale by him in favor of the Respondents was not hit by Sections 33 and 42 of the Act.

5. It is common ground that the land in suit was evacuee property owned by a Muslini migrant to Pakistan of mind which was subsequently acquired by the Central Government under of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and eventually transferred to Ranjit Singh on 25th October, 1957. The factum of transfer of the land in favor of Ranjit Singh and by him to the respondents as per sale deed (Exhibit PI) dated 21st February, 1962 is not disputed by the learned counsel for the appellant.

6. The Displaced Persons (Compensation and Rehabilitation) Act, 1954 came into force on 9th October, 1954 and the Notification under Section 12 of the said Act whereby the property was acquired by the Central Government was issued in April, 1955 while the Delhi Land Reforms Act had come into force on 20th July, 1954. It, therefore, follows that at the commencement of the Delhi Land Reforms Act, the land in suit was still evacuee property as defined in the Administration of Evacuee Property Act xxxi of 1950.

7. Section 192 of the Act saved from its operation all evacuee properties except evacuee land held by tenants under lease or agreement entered into before the 15th day of August, 1947 and evacuee's share in lands of common utility which would vest in the Gaon Sabha. The land in suit was not covered by any such exception and was thus exempt from the operation of the Act.

8. This exemption ceased to have effect as soon as the property lost its character as evacuee property by reason of its acquisition by the Central Government under

Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act 1954. The property, however, still continued to remain outside the purview of the Act by virtue of Section 1

(2)(b) of the Act. The immunity of the land from the provisions of the Act was however short lived as on 25th October, 1957 it was transferred by the Managing Officer to Ranjit Singh and was thenceforth owned by him as its absolute owner.

9. The question for determination, therefore, is whether the rights vested in the new owner of the property were Bhumidhari rights and Ranjit Singh was Bhumidhar within the meaning of that expression, as used in the Act.

10. The appellant contends that the objects of the Act as set out in the preamble are to provide for modification of zamindari system so as to create an uniform body of peasant proprietors without intermediaries, and for the unification of Punjab and Agra systems of tenancy laws in force in the territory of Delhi and to make provisions for other matters connected therewith. It is well known that before the advent of independence the system of land tenures in vogue in this country was riddled with all kinds of complications. Various kinds of tenures, under-tenures and sub-tenures with their peculiar rights and incidents had come into existence which not only hindered production and improvement in agriculture but also exposed the actual tiller of the soil to rapacious exactions by a body of persons who in the garb of intermediaries robbed him of a major portion of the fruits of his toil leaving him in a state of utter penury and destitution. An ambitious programme of agrarian reform was, therefore, undertaken by State Governments in the constituent units of the Union with the object of exterminating those parasitic intermediaries. The Delhi Land Reforms Act of 1954 being a step in that direction provides by Section 4 that there shall be, for the purposes of this Act, only one class of tenure holder, that is to say, 'Bhumidhar' and one class of sub-tenure holder, that is to say, 'Asami'. This Section may, therefore, be rightly characterised as the key-stone of the entire edifice under the Act

11. Section 5 mentions the classes of persons who shall be Bhumidhars. The Section reads:-

"5. Every person belonging to any of the following classes shall be a Bhumidhar and shall have all the rights and be subject to all the liabilities conferred or imposed upon a Bhumidhar by or under this Act, namely : -

(a) a proprietor holding Sir or Khudkasht land a proprietor's grove holder, an

occupancy tenant under Section 5 of the Punjab Tenancy Act, 1887 paying rent at revenue rates or a person holding land under Patta Sawami, or Istamarari with rights of transfer by sale, who are declared Bhumidhars on the commencement of this Act;

(b) Every class of tenants other than those referred to in Clause (a) and sub-tenants who are declared Bhumidhars on the commencement of this Act ; or

(c) every person who, after the commencement of this Act. is admitted to land as bhumidhar or who acquires Bhumidhari rights under any provisions of this Act."

It would appear from the perusal of this Section that under Clauses (a) and (b) a person becomes entitled to be a bhumidhar immediately on the commencement of the Act and may be declared as such under Sections 11 and 13. In other words these two Clauses deal with the case of persons who possessed the necessary qualifications on or before the commencement of the Act and did not apply to those who might acquire such qualifications after the commencement of the Act. Those cases are provided for in Clause (c) which lays down that every person who after the commencement of the Act is either admitted to land as Bhumidhar or acquires Bhumidhari rights under any of the provisions of the Act shall also be a Bhumidhar having all the rights and liabilities of a person bearing that character. In order that such a person may also qualify for holding the character of a Bhumidhar he must either be admitted to that character as such or he should acquire those rights under any provisions of the Act.

12. The declaration under Sections 11 and 18 of the Act as already stated, being in terms restricted to those persons who had earned the necessary qualification before the commencement of the Act one has to look to some other provisions of the Act dealing with the case of such a person. An examination of the provisions of the Act shows that in this case Bhumidhari rights may be acquired by him by means of transfer inter vivos in his favour from an existing Bhumidhar under Section 31 or by bequest from a Bhumidhar under Section 48 or by exchange or partitions between Bhumidhars under Sections 40 and 55. Likewise a person may be admitted to Bhumidhari rights by the Gaon Sabha under Section 73 of the Act or where the land is of the type mentioned in Section 74, an Asami may be admitted to such rights under sub-Section (4) of that Section. Similar rights may also be acquired by an Asami under Section 79 of the Act. Bhumidhari rights will also accrue to a person taking or retaining possession of land against whom no suit is brought by the Gaon Sabha under Section 84 or if a decree obtained in any such suit is not executed within the period of limitation providing for the

filing of the suit or the execution of the decree.

13. It will thus be seen that a person claiming to have acquired Bhumidhan rights by transfer inter vivos under Section 31, has first instance to establish that the transfer made to him is by a Bhumidhar and that it also does not contravene the conditions laid down in Section 33 of the Act otherwise the transfer would be void under Section 42 of the Act.

14. The transfer of the suit land in favour of Ranjit Singh being a transfer inter vivos was admittedly not made by a Bhumidhar, the transfer being the Managing Officer acting on behalf of the Central Government. Ranjit Singh has also not acquired Bhumidhari rights under any other provision of the Act nor has he been admitted to such rights. He could not therefore confer on the respondents any rights that he himself did not possess. A transfer made by him to the respondents was therefore not of Bhumidhari rights to which the provisions of Sections 33 and 42 of the Act were attracted nor could the respondents be treated as Bhumidhars.

15. The arguments of the learned counsel for the appellant however is that according to the provisions of Section 4 of the Act a person in possession of land within the areas to which the Act applies can either be a Bhumidhar or an Asami and therefore by implication all the other rights of ownership in land which do not fall within these two categories should be deemed to have been abolished.

16. In support of his argument, the learned counsel drew my attention to the provisions of Sub-Section (2) of Section 4 which define a tenure holder. A tenure-holder according to that Section means a person who holds land directly under and is liable to pay land revenue for that land to the State. The argument of the learned counsel is that under sub-Section (1) of Section 4 every tenure holder as defined in sub-Section (2) is required to be classified as a Bhumidhar. Ranjit Singh and after him the respondents are admittedly persons holding land directly under the State and they are also liable to pay land revenue to the State. It is therefore not necessary that they should be either expressly admitted to land as Bhumidars or should acquire Bhumidhari rights under any of the provisions of the Act. Their entitlement to such rights arises by virtue of their holding land directly under the State and their liability to pay land revenue to the State for the same. The other provisions of the Act relating to admission of persons to land as Bhumidhars may not be applicable to their case but their right to be classified as such flows from Section 4 itself and since under Clause (e) of Section 5 there can be acquisition of Bhumidhari rights under any of the provisions of the Act, Section

4(2) is one such provision in addition to Section 31,48, 55, 79 and 84 mentioned above. According to the learned counsel the provisions of Section 5 cannot be read so as to control the operation of Section 4.

17. Mr. Dalal, learned counsel for the respondents contends on the other hand that Section 4 merely define(r) the terms "Bhamidhar" and "Asami" which depute a certain status to which certain rights and obligations are attached by the Act. The classes of persons on whom such status is conferred are mentioned in Section 5 and Section 6 of the Act respectively Section 5 is exhaustive of all the categories of persons on whom the status of Bhamidhari is conferred by the Act and the only mode of its conferment after the commencement of the Act is as envisaged in Clause (c) of Section 5. A person may either be admitted to land as Bhumidbar or he may acquire such rights under any of the provisions of the Act. Section 4 being in the nature of a definition Section only; its operation is controlled by Section 5 in so far as it relates to Bhumidhari rights.

18. The contentions urged by the learned counsel on both sides have much to commend themselves in favour of the side represented by them. Section 4 has been enacted with a view to give expression to legislative intent of effectuating the object of the Act in creating a uniform body of peasant proprietors without intermediaries. This intention will obviously be defeated if it is held that while all rights of ownership in land existing before the commencement of the Act in respect of land which was previously exempt from its operation but which subsequently did fall within its purview were left untouched. This goes against the very basic scheme of the Act.

19. The argument for the opposite view is that the legislature having conferred by Section 5 the status of Bhumidars on persons possessing certain qualifications and having also laid down the manner in which such status could be acquired by those persons on and after the commencement of the Act it was not open to anyone to devise any other methods of acquiring that status

20. On a close and careful consideration of the matter I am inclined to agree with Mr. Dalal. It seems to me that this is an instance of cases missus. The function of the court however is to interpret the statute as it finds it. It can neither re-write nor amend the statutory provision with a view to translate the supposedly real intention of the framers of the Act on grounds of inadvertence of the legislature. It is for instance, not permissible to a court to insert by implication any matter thought to have been erroneously left out by legislature as that would not be construing an Act but altering

or amending it.

21. I am therefore in agreement with the Courts below that Ranjit Singh or the respondents who derive their rights through him cannot be held to be Bhumidbars by implication under Section 4 of the Act as the Legislature cannot be held to have left the question of the status of persons acquiring ownership rights in land which was evacuee property at the commencement of the Act but which lost that character later on to be dealt with in a provision at the Act that is no more than a definition Section.

22. In this view of the matter no question arises about the transaction of sale by Ranjit Singh in favor of the respondents being hit by Sections 33 and 42 of the Act. The argument based on these two Sections of the Act is also not open to the learned counsel for the appellant on the ground of its being concluded by a finding of fact against him. The trial court has held that the appellant had failed to prove that Ranjit Singh, even if he were held to be a Bhumidar, was left with less than 8 standard acres after the sale of the land in suit to the respondents or that the respondents had become the owners of 30 standard acres of land after the purchase of the land from Ranjit Singh. This finding of the trial court has not been disturbed by the first appellate court.

23. The courts below have also held that the appellant had not succeeded in proving that he was in lawful possession of the land in suit as a tenant.

24. For the foregoing reasons, I further agree with the courts below that the civil courts had jurisdiction to try the suit. The decree for possession passed against the appellant is therefore upheld and the Appeal is dismissed but in the circumstances, there will be no order as to costs. Considering the importance and difficulty of the question involved in the Appeal I certify that the case is a fit one for Appeal to the Letters Patent bench of this Court.

Appeal dismissed.