

DELHI HIGH COURT

Umrao Singh

Vs.

Man Singh

Letters Patent Appeal No.28 of 1968.
(H. R. Khanna, C.J. and P. N. Khanna, J.)

16.4.1971

JUDGEMENT

H. R. Khanna, C.J.

1. This appeal under Clause 10 of the Letters Patent by Umrao Singh defendant-appellant is directed against the judgment of learned Single Judge affirming on appeal the decisions of the Courts below whereby a decree for possession of the land in suit measuring 17 Bighas 9 Biswas, situated in village Barwala within the Union Territory of Delhi, was awarded in favour of Man Singh and three other plaintiff-respondents against the defendant-appellant.

2. The land in suit originally belonged to a Muslim who migrated to Pakistan. The land was consequently declared evacuee property and vested in the Custodian. The rehabilitation department allotted the land on permanent basis to Ranjit Singh as per order dated October 25, 1957. Sanad about the transfer of the right, title and interest acquired by the Central Government in the said land to Ranjit Singh was executed on October 29, 1957. Ranjit Singh sold the land to the plaintiff-respondents as per registered sale deed dated February 21, 1962 for a sum of Rs. 10,000/-. On July 16, 1965 the respondents filed suit for possession of the land in dispute against the appellant on the allegation that the appellant was in unauthorized occupation of the land.

3. The suit was resisted by the appellant who pleaded that the civil Court had no jurisdiction to try the suit. The appellant claimed to be in lawful possession of the land. The validity of the sale by Ranjit Singh in favor of the respondents was challenged on the ground that Ranjit Singh was a Bhumidhar of the land and as such

the sale contravened the provisions of section 33 of the Delhi Land Reforms Act and the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948.

Following issues were framed by the trial Court

- "1. Whether the civil Court has no jurisdiction to try this suit?
2. Whether the Plaintiff is the owner of the suit land by purchase?
3. Whether the sale effected in favor of the plaintiff is void as alleged in Para No.2 of preliminary objection of the written statement?
4. Relief?"

4. All the issues were decided by the trial Court in favour of the respondents. In the result decree for possession of the land in dispute was awarded in favour of the respondents against the appellant. The decision of the trial Court, as stated above, was affirmed on appeal by the first Appellate Court. On second appeal argument was advanced on behalf of the appellant that Ranjit Singh was a Bhumidhar of the land. This contention was repelled by the learned Single Judge. It was accordingly held that the civil Court had jurisdiction to try the suit. The second appeal was consequently dismissed.

5. In the Letters Patent Appeal Mr. Chadha on behalf of the appellant has assailed the finding of the learned Single Judge that Ranjit Singh was not a Bhumidhar of the land in suit. Reference in this connection is made to subsection (1) of section 4 of the Delhi Land Reforms Act, 1954 (Act No.8 of 1954), according to which 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'. It is urged that the civil Court had no jurisdiction to try the suit. Our attention in this context has been invited to section 185 of the Delhi Land Reforms Act according to which except as Provided by or under this Act do court other than a court mentioned in column 7 of Schedule I shall, notwithstanding anything contained in the Civil Procedure Code, 1908, take cognizance of any suit, application, proceedings mentioned in column 3 thereof. Entry 19 of Schedule I deals with suits for ejectment of a person occupying land without title and damages by a Bhumidhar, Asami or Gaon Sabha. According to column 7 of that entry such a suit is triable in the court of Revenue Assistant.

6. The above contention has been controverted by Mr. Dalal on behalf of the respondents. In our opinion, it is not necessary to express an opinion about the merits of the above contention, because we are of the view that the appeal is liable to be dismissed on other grounds to which reference would be made hereafter.

7. Ranjit Singh, after the allotment of the land, instituted a suit for ejectment from the land in suit on July 10, 1961 against the appellant in the Court of Additional Revenue Assistant Delhi. In that suit the appellant filed written statement dated August 22, 1961. Exhibit P.10 is the copy of that written statement. Two preliminary objections were raised by the appellant in the written statement. It was averred that the suit was not maintainable under Section 192 of the Delhi Land Reforms Act as Ranjit Singh had been allotted land by the Ministry of Rehabilitation and was not a Bhumidhar. The Delhi Land Reforms Act was stated to be not applicable to such lands. Section 192, to which reference was made, exempted evacuee property from the operation of the Delhi Land Reforms Act. The next preliminary objection was that as Ranjit Singh was not a Bhumidhar, the Court of Additional Revenue Assistant had no jurisdiction to try the suit. The Additional Revenue Assistant treated issues 1, 3 and 5 reproduced hereinafter as the preliminary issues:

"1. Whether the plaintiff is the Bhumidhar of the land in suit?

2. x x x

3. Whether the present suit is barred under section 192 of the Act.

4. xx xx xx

5. Whether this Court has jurisdiction to try this suit?"

On issue No.1 the finding of the Additional Revenue Assistant was that Ranjit Singh had failed to prove that he was Bhumidhar of the land in suit. On issue No.3 the finding was that section 192 of the Act showed that the Act did not apply to the land in suit. Issue No.3 was accordingly decided in favour of the defendant in that suit. On issue No.5 the Additional Revenue Assistant held that in view of the findings on issues Nos.1 and 3 he had no jurisdiction to try the suit. In the result, Ranjit Singh's suit was dismissed. Exhibit P.11 is the copy of the judgment of the Revenue Assistant dated December 29, 1961.

8. It would appear from the above that when Ranjit Singh, predecessor of the plaintiff-respondents, filed a suit for ejectment against the defendant-appellant in the Court of Additional Revenue Assistant his suit on the objection of the defendant-appellant, was dismissed on the ground that Ranjit Singh was not a Bhumidhar of the land and the revenue Court had no jurisdiction in the matter. The defendant-appellant cannot now after the dismissal of the earlier suit be permitted to contend that Ranjit Singh was a Bhumidhar and it is the revenue and not the civil Court which had jurisdiction to try the suit. To allow the appellant to take up inconsistent position and to blow hot and cold or to play fast and loose according to his convenience in a case like the present

would result in a situation which is not only anomalous but is also manifestly inequitable and unjust. Such a situation cannot be countenanced by the Courts. The matter has been discussed in Bigelow on Estoppels, sixth edition, in the following words:

"If parties in Court were permitted to assume inconsistent positions in the trial of their causes, the usefulness of Courts of justice would in most cases be paralyzed, the coercive process of the law, available only between those who consented to its exercise, could be set at naught by all. But the rights to all men, honest and dishonest, are in the keeping of the Courts, and consistency of proceeding is therefore required of all those who come or are brought before them. It may accordingly be laid down as a broad proposition that one who, without mistake induced by the opposite party, has taken a particular position deliberately in the course of a litigation must act consistently with it one cannot play fast and loose."

It has also been observed there:

"The principle under consideration will apply to another suit than the one in which the action was taken, where the second suit grows out of the judgment of the first. It is laid down that a defendant who obtains judgment upon an allegation that a particular obstacle exists cannot in a subsequent suit based upon such allegation deny its truth." The above observations were relied upon by a Division Bench of Oudh Chief Court in *Mahadeo Singhh v. Pudai Singh*. ¹In that case the civil suit was the result of a Judgment passed by the Board of Revenue which upheld the plea that the revenue Court had no jurisdiction to entertain the suit. In the subsequent civil suit a plea was raised by the defendant that the suit was not cognizable by a civil Court and that the remedy of the plaintiff was to proceed in a revenue Court. The learned Judges in this connection observed:

"The suit out of which this appeal arises has clearly grown out of the judgment passed by the Board of Revenue and the judgment upheld the plea of the defendant that the Court of Revenue had an obstacle in its way of determining the merits of the case for the reason that it had no jurisdiction to entertain the suit. It is too late therefore now for the defendant to deny the truth of his plea raised in the Revenue Court when the plea has compelled the plaintiff of the present suit to put His plaint

before the civil Court for adjudication."

In the case of *Lal Singh v. Sardara*,² to which one of us was a party, it was observed while dealing with a similar situation:

"As a finding has already been given between the parties in respect of the land in dispute by the Revenue Assistant that the present suit is tribal not by a Revenue Court but by a Civil Court the respondents, in my opinion, cannot be non-suited in the present suit on the ground that the suit in fact was triable by a Revenue Court. The above finding was given by the Revenue Assistant after hearing both the parties and whether right or wrong it would be binding upon the parties. It would look anomalous and would indeed be reducing judicial proceedings to a farce if a finding was given by the Revenue Court that the suit was tribal by the Civil Court and subsequently when the matter came before the Civil Court a decision was given that the suit was tribal by the Revenue Court."

It may be stated that the views expressed in the case of *Lal Singh v. Sardara*, in some other aspects of the matter were partly approved and partly disapproved by their Lordships of the Supreme Court in the case of *Hattig v. Sunder Singh*,³ but so far as the above aspect of the matter was concerned their Lordships did not express their disapproval. In the case of *Gajapatirai v. Secretary of State*,⁴ their Lordships of the Judicial Committee observed:

"A litigant who has all along maintained a position in support of one and in this case the more important branch, of his suit cannot be permitted, when he fails upon this branch to withdraw from the position and assert the contrary, more especially when he thereby places his opponent at a great disadvantage. There could be no clearer case for the application of the doctrine of estoppel owing to the conduct of the litigant."

9. The Question of approbation and reprobation has been dealt with on page 171 of Halsbury's Laws of England. Third Edition Volume 15, and it is observed:

"On the principle that a person may not approbate and reprobate, a species of estoppel has arisen which seems to be intermediate between estoppel by record and estoppel in pais. The principle that a person may not approbate and reprobate expresses two propositions, first that the person in question, having a choice between two courses of conduct is to be treated as having made an election from which he cannot resile, and, second, that he will not be regarded, in general at any rate, as having so elected unless he has taken a benefit under or arising out of the course of conduct which he has first pursued and with

which his subsequent conduct is inconsistent."

The above observations were emoted with approval by their Lordships of the Supreme Court in the case of *Nagubai Ammal v. B. Shama Rao*.⁵ and it was held that the operation of the maxim that a person cannot 'approbate and reprobate' should be confined to reliefs claimed in respect of the same transaction and to the persons who are parties thereto. The Court also relied upon the following observations of Scrutton, L.J. in the case of *Verschures Creameries, Limited v. Hull and Netherlands Steamship Company, Limited*: (1921), 2 KB 608:

"A plaintiff is not permitted to 'approbate and reprobate'. The phrase is apparently borrowed from the Scotch law, where it is used to express the principle embodied in our doctrine of election namely, that no party can accept and reject the same instrument: *Ker v. Wauchope*, (1819) 1 Bligh 1 (21) (232) (F). The doctrine of election is not however confined to instruments. A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage. That is to approbate and reprobate the transaction."

The various observations reproduced above, in our opinion, lend support to the conclusion that the appellant having successfully resisted the suit for his ejection from the land in suit on the ground that Ranjit Singh was not a *Bhumidhar* and the suit for ejection was not maintainable in a revenue Court cannot now take up inconsistent stand in subsequent suit relating to the same land brought by the successors-in-interest of Ranjit Singh and contend that Ranjit Singh was a *Bhumidhar* and the suit for ejection should have been filed in a revenue Court. The appellant having already taken advantage of his pleas about the status of Ranjit Singh and the maintainability of a suit in a revenue Court by the dismissal of the earlier suit cannot now turn round and take the stand that Ranjit Singh was a *Bhumidhar* and the suit was tribal in a revenue Court.

10. The observations of their Lordships of the Supreme Court in the case of AIR 1971 NSC 160 show that the question as to whether a person is a *Bhumidhar* of land or not is essentially one for the revenue authority and that a party cannot directly approach a civil Court for the determination of that question. The revenue Court as already stated, held vide judgment dated December 29, 1961 that Ranjit Singh was not proved to be a *Bhumidhar* of the land in dispute. A similar finding was also given by Shri R.K. Baweja, Judicial Secretary, Delhi Administration, as per order dated February 16,

1965. That order was made in an appeal filed by Man Singh and other respondents against Umrao Singh appellant against the order of Additional Collector, Delhi, made in mutation proceedings. Shri Baweja held that Ranjit Singh had not become a Bhumidhar of the land in dispute. As it was primarily for the revenue authorities to determine whether Ranjit Singh was a Bhumidhar or not and as those authorities in mutation proceedings as well as in suit for ejection have held that Ranjit Singh was not a Bhumidhar, the matter, in our opinion, cannot be reopened in the civil Court.

11. Reference on behalf of the appellant has been made to the case of Mathura Prasad Bajoo Jaiswal v. Dossibai N.S Jeejeebhoy, (1970) 2 Ren CR 396. The appellant in that case was a lessee of open land. He constructed a residential building on the land and applied to the Court of Civil Judge for fixation of standard rent. The application was rejected by the Court holding that Rent Control Act, 1947 did not apply to open land let for constructing buildings for residence education, business, trade or storage. The order was affirmed by the Bombay High Court in 1955. Some years later the High Court held in another case that a building lease in respect of an open plot is not excluded from Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 solely because open land was used for residence or educational purposes after building a structure on it. The appellant filed a fresh petition in the court of Small Causes for determination of the standard rent. The trial Judge rejected the application on the ground of *res judicata* and his order was affirmed by the High Court on further appeal to the Supreme Court it was held that the view of the Courts below that the Civil Judge had no jurisdiction was erroneous and that where the law is altered since the earlier decision, the same will not operate as *res judicata* between the parties. The said case, in our opinion, cannot be of much avail to the appellant because there has been no change of law since the earlier decision in the present case. Moreover, in the cited case there arose no question of a party taking a plea inconsistent with the earlier plea after having enjoyed the benefit of the earlier plea.

12. We, therefore, are of the opinion that the appellant cannot now be permitted to contend that Ranjit Singh was a Bhumidhar and the present suit for ejection brought against the appellant could be tried not by a civil Court but by a revenue Court. The appeal consequently fails and is dismissed, but in the circumstances without costs.

Appeal dismissed.

Cases Referred.

1. AIR 1931 Oudh 123.

2. ILR 1964 (2) Punj 428,
3. 1970 (2) SCC 841
4. AIR 1926 PC 18
5. AIR 1956 Supreme Court 593,