

## MADHYA PRADESH HIGH COURT

Maniram Maksudan

Vs.

Ramdayal Maksudan

Second Appeal No. 323 of 1956, Decided on 11.2.1959, from the decree of the 2nd  
Addl. Dist. J., Bilaspur  
(G.P. Bhutt, C.J. and T.C. Shrivastava, J.)

14.10.1955. 11.2.1959

### JUDGMENT

#### **T.C. Shrivastava, J.**

1. This second appeal has been filed by the plaintiff against the judgment dated 14-10-1955 in Civil Appeal No. 54-A of 1954, delivered by the 2nd Additional District Judge, Bilaspur, reversing the judgment of the Civil Judge (Class II), Janjgir, dated 15-4-1953.

2. The facts of the case are mostly undisputed. The appellant-plaintiff Maniram and the respondents-defendants Ramdayal and Hariram are the sons of one Maksudan. The village Bade Sipat, Tahsil Janjgir, District Bilaspur, was held in protected thekedari rights by the family. The theka was recorded in the name of the plaintiff Maniram. In 1935 there was a partition in the family in which the sir and the Khudkasht lands attached to the theka and other properties belonging to the family were divided between the three brothers.

3. The suit lands totalling to an area of 11.18 acres in that village had been given to one Budga, who was working as a washerman for the family, on the condition that the lands would be retained by him so long as he rendered service. In the year 1948, he ceased to render service and gave back the lands on 25-3-1948. According to the plaintiff he is exclusively entitled to these lands; but according to the defendants, all the three brothers are jointly entitled to continue in their possession. Admittedly, after the lands were given up by Budga, they have been in possession of the three brothers

jointly. The plaintiff, however, brought the suit claiming exclusive possession. The suit was dismissed by the trial Court. The lower appellate Court has upheld the findings of the trial Court, but the plaintiff has been granted a decree for joint possession.

4. The findings of the trial Court are based on the evidence of Maniram (P. W. 1) himself, who has admitted that the theka was granted originally to the ancestors of the parties. Although it was recorded in the name of the plaintiff alone according to the provisions of the Land Revenue Act, the family treated the property as joint and the lands attached to it were divided in 1935. The plaintiff Maniram has also admitted that when Budga was given the lands in suit, he was working for the joint family as a washerman and continued to do so. It appears that nothing was mentioned about these lands at the time of partition.

5. The question now is whether on the surrender of the lands by Budga they passed only to the plaintiff, as he was the protected thekedar, or they passed to the three brothers jointly. On this point, Shri Y. P. Verma for the appellant contends that the property in the theka being inalienable and impartible under section 109 of the C. P. Land Revenue Act, 1917, the other co-sharers have no interest and cannot claim to retain possession either jointly or exclusively of any lands with the protected thekedar.

6. The position of a protected thekedar has been examined in several cases I would refer only to *Chandanlal v. Pushkar Raj*,<sup>1</sup> where it has been stated:

"It has always been the accepted view that the grant of protected status to a thekedar did not make the theka the exclusive property of the person on whom the protected status is conferred....

The nature and incidence of protected thekedari tenure came up for consideration by their Lordships of the Privy Council in *Thakur Bhagwan Singh v. Darbar Singh*,<sup>2</sup> Their Lordships observed that the Land Revenue Act, 1917, recognises that the leasehold interest, though impartible, may nevertheless be the joint property of the thekedar and his family." In Letters Patent Appeal No. 19 of *Sao v. Mst. Sukhambai*,<sup>3</sup> the implications of Section 109(1.XA) of the C. P. Land Revenue Act, 1917 were examined and it was observed :

"The conferral of protected status does not disturb the rights of the members inter se though they may not be recognized by the State. As between members the rights of any particular member under the arrangement must continue."

Regarding the validity of arrangements made by the co-sharers in a theka dividing the property between themselves for beneficial enjoyment it was observed:

"From the year 1881 when all existing arrangements were to continue, down to this day when private partitions and family arrangements have been recognized as binding on the family, there is an underlying current of recognition of joint family status. Most of these villages, when they were acquired, belonged to a joint family and the intention in conferring protection was not to disturb arrangements but to recognize one member as a Thekedar and to restrain transfers and impose impartibility and primogeniture. Even though the Act of 1917 enacted about private partitions and arrangements, the law was merely declaratory of family custom as is apparent from a perusal of the various Settlement Reports."

7. It will thus be seen that although section 109 of the C. P. Land Revenue Act states that the theka shall descend by primogeniture, the rights of the other members of the Hindu family in the theka continue, though they cannot obtain a partition of the lands in the theka or claim to be in possession of any lauds pertaining to the theka in the absence of any arrangement between them. It is open to the protected thekedar to come to an agreement with his co-sharers to divide the lands attached to the theka and such a family arrangement would be binding on the co-sharers. The partition effected between the parties in 1935 thus had the character of a family arrangement and even though a theka is importable under law, the arrangement was binding on the parties.

8. On behalf of the appellant, Shri Verma has : relied upon the decision in First Appeal No. 174 of 1954 (*Hiralal v. Chandel*), <sup>4</sup> In that case, the plaintiff Hiralal had sued for his share of the profits in the theka as a member of the joint Hindu family. It was held that such a suit was not tenable. It was also observed that there could be no right by birth in the thekedari rights, which were impartible and inalienable and were governed by the rule of primogeniture. However, it was accepted in that case that a family arrangement could be made between the co-sharers for enjoyment of the theka lands. It was held that a suit for a share of the profits of the thekedari property was not tenable. The view regarding the joint family character of the theka lands taken in ILR 1952 Nag 318 : AIR 1952 Nagpur 271 (supra), which is based on the decision of their

Lordships of the Privy Council in 24 Nag LR 179, was not adverted to in that judgment. The observations in the case relied upon by Sri Verma do not go counter to those decisions. The position remains that the theka lands continue to "be joint family property, even though a suit by a co-sharer for profits of any year cannot be maintained.

9. Sri A. P. Sen for the respondents contends that after the abolition of the proprietary rights in 1950 the rights of protected thekedars have completely disappeared. According to him, the statutory bar of impartibility and inalienability which was imposed on a theka by a special statute has been removed in 1950, and, therefore, the lands which were joint family lands, subject to the statutory restrictions, have now assumed the character of normal joint Hindu family lands free from those statutory restrictions. I agree that this would be the position after the abolition of the rights of a protected thekedar. The lands in a theka are held by the joint family of the protected thekedar according to the accepted view, though it was subject to the express limitation imposed by section 109 of the Land Revenue Act. After the abolition of the protected rights, these restrictions disappeared and the normal character of the lands as joint Hindu family lands was restored. They, therefore, became partible between the co-sharers after 1950.

10. Admittedly, the lands held by Budga were given to him for services to be rendered to the joint family of the parties. In 1948, Budga surrendered the lands, according to the findings of the Courts below, in favour of all the three brothers. They have been in joint possession thereafter. The plaintiff may have claimed exclusive possession of the lands in 1948 while he was the recorded protected thekedar, and it may then have been impossible for the respondents to claim joint possession with him, except on the basis of a family arrangement. I need not go into the question whether such a family arrangement can be inferred from the conduct of the parties in 1948 by taking the lands in their joint possession, as this has not been directly pleaded by the respondents. However, after the abolition of the proprietary rights in 1950, the plaintiff cannot claim exclusive possession of the lands. It is true that the present suit was filed before the abolition of the proprietary rights; but it is incumbent on the Court to take notice of the subsequent law to see whether the plaintiff was entitled to exclusive possession on the date of the decision of the suit. As I have said, the plaintiff was not so entitled and his claim for exclusive possession has, therefore, rightly been disallowed.

11. The appeal fails and is dismissed with costs.

Appeal dismissed.

Cases Referred.

1. ILR 1952 Nag 318: AIR 1952 Nag 271
2. 24 Nag LR 179: (AIR 1928) PC 96
3. decided on 30-11-54(Nag)
4. decided on 30-9-1958 (MP)