

(1985) 10 AHC CK 0004

In the Allahabad High Court

Case No : Civil Misc. Review Application No. ... of 1985 in Civil Misc. Writ Petition No. 7060 of 1973

Chandrapati and Others

APPELLANT

Vs

Gunnu and Others

RESPONDENT

Date of Decision : 18-10-1985

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 20B, 20B(1)

Citation : (1986) RD 134

Hon'ble Judges : K.P. Singh, J

Bench : Single Bench

Advocate : A.K. Shukla, for the Appellant;

Judgement

K.P. Singh, J.—This is a review application seeking recall of my Order dated 19.03.1979 whereby the Writ Petition has been dismissed.

2. The applicants Petitioners had gone to the Supreme Court against my Order dated 19.03.1979 and their Lordships of the Supreme Court passed the following order :

Allowed to withdraw the petition. It will be open to the Petitioners to move the High Court by way of a review petition if so advised and if law permits.

3. The present review application has been filed with an application for condonation of delay. I have gone through the affidavit filed in support of the application for condonation of delay and I am not satisfied with the explanation for the delay. But, however, the applicants have taken shelter behind the mistake of a counsel of this Court and their counsel has placed reliance upon the ruling of their Lordships of the Supreme Court reported in AIR 1981 Supreme Court 1400 so I do not think it proper to dismiss the review application on the ground of limitation.

4. On merits, the Petitioners-applicants had claimed co-tenancy right in the disputed land and I did not accept their claim as is evident from my Order dated

19.03.1979.

5. Now, the learned Counsel for the applicants has placed reliance upon *Dudhnath Kori v. Smt. Dhamrajia* 1964 AWR 458, *Bhagan Ram v. State of U.P.* 1967 RD 396, *Kalawati Consolidation Officer* 1968 AWR 139, *Mewa Ram v. Shanker* 1970 ALJ 1019 and *Gaya Singh v. Deputy Director of Consolidation* 1976 AwC 633 and he has contended before me that the claim of the Petitioners applicants has been established in the disputed land in view of the dictum of law laid down in the aforesaid rulings, therefore, the impugned judgment dated 19.03.1979 should be recalled.

6. I have gone through the rulings cited by the learned Counsel for the Petitioners-applicants. I have no quibble to the dictum of law laid down in the aforesaid rulings. In the present case the applicants' father Tina was recorded as a co-tenure holder over the disputed land in the year 1349F when he was a care taker of the contesting opposite parties whose father was away from the village and during the minority of the contesting opposite parties, the Petitioners' father got his name recorded over the disputed land. According to the law in the year 1349F it was incumbent upon the Petitioners-applicants' father to have written consent of the landlord with a view to get his right recognized. Since there was no written consent in favor of the father of the present applicants, I did not accept their claim. Moreover, in the present case the -entry in favor of the applicants' father showing him as co-tenure holder is palpably incorrect and fictitious, and therefore, the Petitioners applicants cannot claim any right in the disputed land. In the circumstances of this case the Petitioners have failed to establish the essential ingredients of estoppels and acquiescence. Therefore, they cannot legitimately rely upon the rulings, mentioned above. It is well settled now that a person can acquire co-tenancy right on the principle of estoppels and acquiescence but in the present case when the entry in favor of the applicants' father is unreliable and incorrect, the applicants cannot seek any benefit out of the entries in their favor. In the circumstances of this case I am not prepared to hold that my judgment suffers from any patent error of law and that the applicants are entitled to recall of the Order dated 19.03.1979. On the facts involved in the present case the rulings cited by the learned Counsel for the applicants do not better their claim.

7. Second contention raised on behalf of the applicants before me is that the applicants are entitled to Adhivasi-cum-sir Dari right in the disputed land on the basis of the entry of 1356F and cultivator possession in the year 1359F. In this connection the learned Counsel for the applicants has placed reliance upon *Upper Ganges Sugar Mills Ltd. v. Khalil Ul Rahman* 1961 AWR 78 *Ram Dular Singh v. Babu Sukhu Ram* 1963 AWR 461 and *Chobey Sunder Lai v. Sonu alias Sonpal* 1967 AWR 426. In my opinion, the applicants' father was incorrectly and fictitiously recorded over the disputed land as co-tenure holder in the year 1349F. And the same entry continued thereafter. Therefore, the applicants cannot be permitted to acquire Adhivasi and sir Dari right on the basis of the entries in

favor of their father when the entries had flowed from incorrect and fictitious entry originally. Moreover, the entry in favor of the applicants' father was as a co-tenure holder and no doubt the cases relied upon by the learned Counsel for the applicants support the contention that even a person recorded as a tenant or sub-tenant would be deemed as occupant within the meaning of Section 20B of the UP ZA and LR Act but it is note worthy that in Ram Dular Singh v. Babu Sukhu Ram 1963 AWR 461 a Full Bench of this Court has indicated that the entry in favour of a person as a tenant or subtenant would not confer Adhivasi or Sirdari right. In Basudeo v. Board of Revenue 1974 RD 188 a Full Bench of this Court consisting of five Judges has indicated that a person recorded as a tenant or sub-tenant would not be covered by the provisions of Section 20B(1) of the U.P. Act No. 1 of 1951. However, as I have indicated above, the entry in favour of the applicants' father was an incorrect and fictitious entry, therefore, in view of the ruling reported of the five Judges of this Court, the applicants "are not entitled to the claim of Adhivasi and Sirdari right in the disputed land on the basis of fictitious and non-genuine entry. To my mind, the second contention raised on behalf of the applicants also fails.

8. Third contention raised on behalf of the applicants is that due to their possession over the disputed land as co-tenure holder, their claim should be accepted as co-tenure holder on the basis of adverse possession because co tenancy could be acquired by adverse possession also In my opinion, the applicants' father was a relation of the contesting opposite parties and he was looking after the interest of the contesting opposite parties whose father was away from the village. Therefore, even if the applicants' father continued in possession over the disputed land for more than statutory period, he could not be permitted to acquire any right on the basis of adverse and continuous possession. It will be a sad day when a relation and caretaker would be permitted to acquire right in the property of the persons who were under his care on the basis of adverse possession. In my opinion, all the contentions raised on behalf of the applicants fail and the judgment sought to be reviewed does not suffer from any patent error of law, therefore, the review application deserves dismissal.

9. In the result, the review application fails and is accordingly dismissed.