
(1978) 10 AHC CK 0022

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 465 of 1977

Chhattar Singh and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 19-10-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2)

Citation : (1978) 10 AHC CK 0022

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

Final Decision : Allowed

Judgement

K. P. Singh, J.

This writ petition is directed against the judgment of the Civil Judge, Orai, dated 31st January, 1977 whereby Ceiling Appeal No. 147 of 1976 Chhattar Singh v. State of U. P. was decided.

Notice under section 10, subclause (2) of U. P. Imposition of Ceiling on Land Holdings Act (hereinafter referred to as "the Act") was served upon petitioner no. 1 to show cause as to why 14"92 acres land may not be declared as surplus area. Petitioner no. 1 had raised one of the plots that his son Pratap Singh had share in the ancestral property in the hands of petitioner no. 1 and his share was not separated and was wrongly shown as the land belonging to petitioner no. 1, hence the notice was incorrect and the surplus area of petitioner no. 1 indicated therein was liable to be reduced.

The Prescribed Authority through its judgment dated 11.6.1976 did not accept the plea raised on behalf of petitioner no. 1 and had confirmed the notice and had declared 14.92 acres as surplus area of petitioner no. 1. Aggrieved by the decision of the Prescribed Authority petitioner no. 1 had preferred an appeal and the appeal has also been dismissed through the impugned judgment dated 31.1.1977. Thereafter the petitioners have come to this Court under Article 226 of the Constitution. Learned counsel for the petitioners has Contended before me

that the appellate authority has patently erred in not separating the share of the son, Pratap Singh, from the land held by petitioner no. 1, hence the determination of surplus area stands vitiated in law.

Learned counsel for the State has tried to refute the contentions raised on behalf of the petitioners and has rightly justified the finding recorded by appellate authority. According to him the appellate authority has also held that petitioner no. 1 had perfected right in the area by ouster of his son, hence the ceiling authorities were fully justified in holding the whole area shown in the name of Pratap Singh as the land of petitioner no. 1.

I have examined the respective contentions. The appellate authority has dealt with the controversy raised on behalf of petitioner no. 2 in paragraph 4 of the judgment which is as below:

"I have heard the learned counsel of the appellant and the learned D. G. C. (Civil) Sri H. J. Srivastava for the State and have carefully perused the evidence on record. The first contention raised on behalf of the appellant is that his son, Kunwar Pratap was born before the abolition of the Zamindari and the land comprised in the notice served upon him being his Sir and Khudkasht land, his son, Kunwar Pratap was a coparcener in it. It is urged that the land given to Kunwar Pratap and Virendra Kumar have been wrongly included in the ceiling area applicable to him. A number of documents have been filed in support of these contentions. The extract of kutumb registers shows that Kunwar Pratap was born before the abolition of Zamindari but his share is not shown in that extract of khatauni. It is also significant to note that a suit was filed for partition by Chatur Singh, a brother of Chhattar Singh, in which Pratap Singh was impleaded as a party. But in the Kurra which was made on compromise no share was given to Pratap Singh. We then find that Chhattar Singh has executed giftdeeds in favour of Pratap Singh and Virendra Kumar alleging that he was the exclusive owner of the property in question. It would then appear that the claim of Pratap Singh, a coparcener was definitely negated by Chhattar Singh himself to which transaction Pratap Singh and Virendra Kumar himself were a party. It would further appear that the above circumstances show that the ouster of Pratap Singh by necessary implication was complete. In 1973 R. D. page 183 Kailash Rai's case it has been emphasised that if ouster is established the rights of a coparcener in the joint family property cannot be given effect to because in that event the principle of possession of one cosharer in the property and on behalf of other cosharers will not cause into the operation. It is, therefore, clear that Pratap Singh was clearly ousted by necessary implication by the act and conduct of Chhattar Singh himself. If Pratap Singh allowed Chhattar Singh to act an exclusive owner of the land in dispute on which representation the learned Prescribed Authority has acted, he cannot be allowed to turn round and say that it was his coparcenary property and therefore, Chhattar Singh alone was not entitled to it. Thus the lights of Pratap Singh come to an end due to ouster.""

It appears that the appellate authority has relied upon the giftdeeds executed

by the present petitioner no. 1 in favour of his sons and it thinks that due to the averment in the giftdeeds the petitioner no. 1 would be exclusive owner of the land gifted to his sons and it has also arrived at the conclusion that because of the giftdeeds and the conduct of Pratap Singh, the ouster of Pratap Singh would be complete, and the land would be treated as the land of Chhattar Singh.

It is noteworthy that the appellate authority has accepted that Pratap Singh was born before the date of vesting, i. e. 1st July, 1952 and that the property in the hands of the present petitioner Chhattar Singh was coming down from the time of Nathuram. In such circumstances, it is evident that Pratap Singh being grandson of Nathuram, father of the present petitioner no. 1 would get right in the property by birth. Whether the property would be exclusive property of Chhattar Singh or not it would be a pure question of law in the circumstances of the present case. Even if the Present petitioner no. 1 makes contrary admission in the alleged gift deeds that the property exclusively belongs to him, but in law if it could not belong to him, as such the petitioner could be held as an exclusive owner, I think that the appellate authority has misappreciated the circumstances in the present case. Secondly even if the possession of the present petitioner Chhattar Singh is treated to be exclusive possession on his own behalf excluding Pratap Singh, his son, the present petitioner no. 1 would not mature right to the land on the relevant date because for perfecting title by adverse possession ousting the other cosharer he would need 12 years possession. In the present case the giftdeed is of the year 1967 and the relevant date for the purpose of determining the ceiling area of the petitioners would be 8th June, 1973 according to the provisions of the aforesaid Ceiling Act. In this view of the matter the right of the son of the petitioner no. 1, namely, Pratap Singh had not extinguished in the area which is under the provisions of law. It appears that the appellate authority has misdirected itself in holding that the right of Pratap Singh had come to an end in the area which he could otherwise hold being a cosharer in family of Nathu Ram, father of present petitioner no 1.

Since the finding recorded by the appellate authority on both the questions namely that the area which could be legally held by the petitioner no. 1 would be treated as the property of the present petitioners on the basis of the admission made by him in the gift deed that the property was his exclusive property as well as the finding of the appellate authority that the right of Pratap Singh had come to an end due to ouster appears to be patently erroneous.

For the reasons given above, the writ petition succeeds and it is accordingly allowed, and the impugned judgment of the appellate authority is hereby quashed and the appellate authority is directed to separate the area belonging to petitioner no. 1's son Pratap Singh and thereafter it should declare the surplus area of the petitioners. No order as to costs.