
(1975) 12 AHC CK 0034

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 151 of 1971

Kumar

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 18-12-1975

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 157, 160, 200, 202, 204

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 157, 160, 200, 202, 204

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 157, 160, 200, 202, 204

Citation : (1976) AWC 134

Hon'ble Judges : K.B. Asthana, C.J; Satish Chandra, J

Bench : Division Bench

Advocate : Sankatha Rai, for the Appellant; S.K. Subedar and S.C., for the Respondent

Final Decision : Allowed

Judgement

K.B. Asthana, C.J. and Satish Chandra, J.—Finding that he was unable to agree with the decision of a learned single Judge of this Court in Kamta Prasad v. Board of Revenue 1962 AWR 829 another learned single Judge has referred this writ petition to a Division Bench.

2. One Balroop was the sir-holder of the land in dispute. On his death it devolved on his widow, Smt. Anari. On 5th July, 1954, Smt. Anari executed a registered lease in favour of the Petitioner, Kumar, for a fixed term of eleven years. The lessee could not obtain possession because the land had been trespassed upon by some persons. Smt. Anari as well as the Petitioner jointly filed a suit No. 920 of 1954, in the Civil Court for injunction and/or possession against those trespassers. The suit was decreed on 9th August, 1960, and actual possession was taken by the Plaintiffs on 16th December, 1960, and 18th June, 1961. During the pendency of the suit Sm. Anari had died on 19th May, 1956 and her

personal heirs, namely, Raj Narain and Sm. Kishore, Respondents 4 and 5, were substituted.

3. On 30th June, 1964, Sm. Kishore filed a suit for declaration and/or possession u/s 229-B/209 of the Zamindari Abolition Act against the Petitioner Kumar. The suit was decreed by the trial Court on 11th April, 1966. The Defendant went up in appeal. During its pendency the village where the land in dispute was situated came under consolidation operations, with the result that on 4th November, 1967, the suit was declared to have abated under the provisions of the U.P. Consolidation of Holdings Act.

4. The dispute was thereafter taken before the consolidation authorities. The Petitioner Kumar claimed that he was a sirdar. The Deputy Director of Consolidation held that the lease in favour of the Petitioner remained ineffective because the Petitioner did not get possession over the land during the life-time of the executor of the lease, namely, Sm. Anari. His possession as a result of the decree against the trespassers was with the consent of Sm. Kishore, who was the bhumidhar of the land, and so no sirdari rights accrued in his favour. Aggrieved, Kumar has come to this Court.

5. The principal contention raised on behalf of the Petitioner is that Sm. Anari was a disabled person. In view of the lease executed by her the Petitioner became an asami. On her death the disability determined. Her heirs could bring a suit for the Petitioner's ejectment under clause (f)(i) of Section 202 within three years of the determination of the disability, from 19th May, 1956. No such suit having been filed, the Petitioner became a sirdar u/s 204 of the Act.

6. In support reliance was placed upon Kamta Prasad v. Board of Revenue 1962 AWR 829, in which it was held that the successor of a disabled bhumidhar must file a suit within three years of the death of the disabled bhumidhar because by the death the disability of the disabled bhumidhar ceased. It was also held that Section 160 of the U.P. Zamindari Abolition Act could not override the express provisions of clause (f)(ii) of Section 202.

7. Learned Counsel for the Petitioner also invited our attention to Parmeshwar Singh v. The Deputy Director of Consolidation 1969 AWR 347 and Salik Ram v. Ram Lakhan 1972 AWR 883.

8. Under the rules the prescribed period of limitation for a suit for ejectment of an asami under clause (f)(ii), namely, where the disability has determined, is three years, and the period commences to run from the date the disability has determined. Section 202 provides for a suit for the ejectment of an asami. It will apply to such cases only where the asami is in factual possession. If, for any reason, the asami is not in possession of the land, no suit for his ejectment will obviously lie. In the present case, the Petitioner, who became an asami by virtue of the lease executed by Sm. Anari, was not able to obtain possession till the year 1960. Consequently the heirs of Sm. Anari could not sue for the ejectment of the Petitioner from the land in dispute till 1960. The commencement of the

period of limitation for a suit under clause (f)(ii) of Section 202 is from the date when the disability determines. This event happened on 19th May, 1956. Since on that day, or on, any day during the three years thereafter, the asami was not in actual possession, a suit for his ejectment did not lie at all. The necessary consequence of this position is that Section 204 of the U.P. Zamindari Abolition Act did not come into effect. Section 204 applies if a suit for ejectment of an asami is not instituted within the period of limitation prescribed therefor. The asami shall, on the expiry of the period, become a sirdar. This provision necessarily implies that a suit u/s 202 will be maintainable. If a suit is not maintainable, the consequence of failure to institute such a suit cannot ensue. In the present case the Petitioner did not become a sirdar u/s 204 for failure of the heirs of Sm. Anari to bring a suit for his ejectment under clause (f)(ii) of Section 202.

9. Section 157 of the Zamindari Abolition Act entitles a disabled landholder to let out the holding. The lease granted by Sm. Anari was valid and in consequence the Petitioner became an asami. Section 200 of the Act provides that no sirdar or asami shall be ejected from his holding except as provided in this Act, This implies that a person who has become an asami under the Act shall continue to hold that status until he is ejected in accordance with the provisions of the Act. He, not having been ejected as yet, continued to retain his status as an asami. The submission raised on behalf of the Respondents that since the term of eleven years, for which he was granted lease, has expired, he became a trespasser cannot be sustained.

10. Clause (f)(i) of Section 202 entitles a land-holder to sue for the ejectment of an asami in cases where the lease is for a fixed term and such term has expired. So, until this event happens the person will not lose his status of an asami.

11. The position is that the Petitioner continued to be an asami. His claim that he had become a sirdar was not justified. At the same time, the view of the Deputy Director that the Petitioner had no rights or status is also untenable.

12. In this view of the case it is unnecessary to go into the controversy whether Sub-clauses (i) and (ii) of clause (f) of Section 202 are mutually exclusive or overlapping, and whether the view taken in *Kamta Prasad v. Board of Revenue* that Section 160 does not override the provisions of Section 202(f)(ii) is correct.

13. In the result the petition succeeds and is allowed in part. The orders of the consolidation authorities are modified to this extent that the Petitioner will be recorded as the asami of the land in dispute.

14. In view of the divided success the parties will bear their own costs.