
(1972) 11 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : Civil second Appeal No. 24 of 1972

Lal Chand

APPELLANT

Vs

Karim and ors

RESPONDENT

Date of Decision : 22-11-1972

Acts Referred:

Jammu and Kashmir Big Landed Estates Abolition Act, 2007 — Section 20B

Citation : (1973) JKLR 351 : (1974) KashLJ 225

Hon'ble Judges : Jaswant Singh, J

Bench : Single Bench

Advocate : V.S.Sudhan, S.A.Salaria, Advocates appearing for the Parties

Judgement

(1) This civil second appeal is directed against the judgment and decree dated June 17, 1972, of the learned District Judge, Poonch, reversing the

judgment and decree dated March 31, 1967, of the Sub Judge, Rajouri, dismissing Karim, Alaf Din and Mahboob plaintiffsrespondents' suit No.

65 of 1954 for declaration to the effect that they were the owners of the land measuring ten Kanals and one Maria comprised in Khasra No, 63

situate in village Doongi Prahmanai Tehsil Rajouri, and injunction restraining the appellant and his father Sunder from interfering with their

possession, The plaintiffs alternatively prated that in case the court came to the conclusion that they were out of possession a decree for possession

be passed in their favour.

(2) The suit was resisted by the appellant and his father Sunder, averring interalia that they had been in possession of the suit land since 2007, and

that any sale thereof effected by Amar Nath in favour of the plaintiffs was void as Amar Nath was not its lawful owner,

(3) On the pleadings of the parties, the following issues were framed in the case :

(1) Whether plaintiff No. 3 was in possession of the land in dispute ?

O. P. on plaintiffs

(2) In case Issue No. 1 is proved, whether the defendants were interfering in the possession of the plaintiff No, 3 Q.P. on plaintiffs

(3) Relief.

(4) On an assessment of the material on the record the trial court found that the statement of Chuni Lal Patwari, who was examined as a court

witness established that the appellant and his father, Sunder, were in possession of the suit land on .the date of the institution of the suit i. e. on July

10, 1964 The trial court further came to the conclusion that the alternative prayer made by the plaintiffs for possession of the land was not tenable

in view of Section 20 B of the Big Landed Estates Abolition Act; under which the transfer of Kap land was prohibited. With these findings, the trial

court dismissed the plaintiffs' suit. Aggrieved by this decision the plaintiffs went up in appeal to the learned District Judge, Poonch, who get aside

the judgment and decree of the Sub Judge, Rajouri and passed a decree declaring the plaintiffs to be in possession of the suit land on the date of

the institution of the suit as also for injunction restraining the appellant and his father from interfering with the possession of the plaintiffs. It is against

this judgment and decree that the present appeal is directed.

(5) Appearing in support of the appeal Mr. Sudhan has vehemently urged that the evidence adduced in the case has not been properly appreciated

by the lower appellate court, that the conclusions arrived at by it are wholly unjustified and that from the plaintiffs own evidence it is amply proved

that they were out of possession of the suit land on the date of the institution of the suit.

(6) Mr. Salaria appearing on behalf of the respondent has strenuously urged :

(1) that the provisions of Section 20B of the Big Landed Estates Abolition Act' added by Act No. XXXI of 1956 are void being repugnant to the

provisions of the Part III of the Constitution of India as applied to the State.

(2) that it was not open to the President of India to take away the fundamental rights initially conferred by him on the citizens of the State.

(3) that Section 20B of the Big Landed Estates

Abolition Act is meant to apply only to the proprietors of big estates i. e. to those landlords who own more than 182 Kanals of land and has no

applicability to the present case where the vendor of the plaintiffs owned less than 182 Kanals.

(4) that the assessment of the evidence as made by the learned District Judge is correct and does not warrant any interference, and

(5) that in any case the plaintiffs are entitled to a decree for possession on the basis of their possessory title.

(7) So far as the first contention of Mr. Salaria is concerned, I regret, I cannot accede to it. A reference to Para 2 sub para 24 of the Constitution

(Application to Jammu & Kashmir) Order, 1954, as substituted by the Constitution (Application to Jammu & Kashmir) Second Amendment

Order, 1965, (C. O. 74) would show that the Ninth Schedule to the Constitution of India was modified so far as the Status of Jammu and Kashmir

is concerned and after entry 64 seven more entries were added. Among these entries is entry 70 which relates to the Jammu and Kashmir Big

Landed Estates Abolition Act no XVIII of 2007. The effect of this substitution of the Ninth Schedule in place of the one existing before was that

the amendments in the Act upto the issue of the Constitution (Application to Jammu and Kashmir) Second Amendment Order 1965, which was

issued on November 24, 1965, were specifically saved and were protected from challenge on the ground of their inconsistency with or repugnancy

to any of the provisions of part III of the Constitution of India. The first contention raised by Mr. Salaria being, therefore, totally misconceived is

repelled.

(8) The second contention raised by Mr. Salaria is also in my opinion, without any substance. In Sampat Prakesh V. State of Jammu and Kashmir,

A.I R. 1970 S.C 1118: 1971 J&K Law Reporter, 83, their Lordships of the Supreme Court, observed that the proviso added to Article 368 in its

application to the State of Jammu and Kashmir clearly requires that powers of the President under Article 370 must be exercised from time to time

in order to bring into effect in Jammu and Kashmir the amendments made by the Parliament in the Constitution in accordance with Article 368.

Their Lordships further observed that Article 370 (1) (d) in terms provides for the application of the provisions of the Constitution other than

Articles 1 and 370 in relation to Jammu and Kashmir with such exceptions and modifications as the President may by an order specify. The power

to modify in clause (d) also includes the power to subsequently vary, alter, add to or rescind such an order by reason of the applicability of the rule

of interpretation laid down in Section 21 of the General Clauses Act. It was envisaged that the President would have to take into account the

situation existing in the State of Jammu and Kashmir when applying a provision of the Constitution and such situations could arise from time to time.

There was clearly the possibility that, when applying a particular provision, the situation might demand an exception or modification of the provision

applied ; but subsequent changes in the situation might justify the rescinding of those modifications or exceptions. This could only be brought about

by conferring on the President the power of making orders from time to time under Art. 370 and this power must, therefore, be held to have been

conferred on him by applying the provisions of S. 21 of the General Clauses Act for the interpretation of the Constitution. The second contention

of the learned counsel, also therefore, fails.

(9) Elaborating his third contention Mr. Salaria has stressed that taking into consideration the scheme of the Act, it must be held that Section 20B

of the Big Landed Estates Abolition Act was meant to apply to big landlords i.e. landlords whose land exceeded the unit of 182 Kanals and the

restriction contained therein did not affect those landlords the size of whose holdings fell below 182 Kanals.

(10) Section 20B runs thus :

Transfer of Kah Krisham land, Araks, Kaps and such lands including those used for raising fuel or fodder as are unculturable or any interest

therein shall be prohibited and no documents relating to the transfer of such land shall be admitted to registration.

(11) A plain reading of the Section would show that it makes no distinction between big and small landlords. The restriction contained therein is

absolute and applies equally to all landlords irrespective of the unit of land held by them, To hold that Section 20B applies only to big landlords

would be tantamount to reading something in the provision which is not there. The language of the Section being clear, I am bound to give effect to

it. Consequently, I have no hesitation in holding that the sale purporting to be

made by Amar Nath in favour of Mahboob and Karitn plaintiffs was clearly hit by Section 20B of the Act and did not confer any lawful title on them, I cannot understand how the SubRegistrar, Rajouri, admitted the sale deed to registration despite a clear prohibition to that effect contained in the aforesaid Section. It may also be stated that neither the sale deed by Mst Bimla Devi in favour of Amar Nath nor the sale deed by Amar Nath in favour of the plaintiffs has been duly proved and brought on the record.

(12) The fourth contention of Mr. Salaria is equally devoid of force.¹ I have gone through the entire evidence produced in the case and I am inclined to agree with the contention of the learned counsel for the appellant that the learned

District Judge did not bestow his careful attention on the material on the record and has arrived at wholly unwarranted conclusions.

(13) Amar Nath p.w. whose statement was recorded by the trial court on December 18, 1954, has deposed that he sold the suit Kap which was

purchased by him from Mst. Bimla Devi to Mahboob and Karim plaintiffs and handed over possession thereof to them, that before this sale he

sold the produce of two harvests of the Kap, (wa fasal kap) to Lal Chand defendant and that in 1963 the grass growing thereon was cut by the

plaintiffs. In cross-examination he has admitted that before the purchase of the Kap by him the general public was in possession thereof, that

defendants, and other people's cattle used to graze therein and during the period of three years that the Kap remained in his possession it was Lal

Chand who was cutting the grass therefrom. Though he has admitted that the Naib Tehsildar had visited the spot, he has parried the question put to

him by the learned counsel for the defendants as to whether the mutation of the Kap attested in his favour was cancelled or not. He has also not

produced any documentary evidence regarding the alleged sale by him of the produce of the Kao to Lal Chand defendant.

(14) Beli Ram another p.w. admitted that he has been seeing Lal Chand cutting and taking away the grass from the suit Kap since the year 2009

(Samvat), that the plaintiffs cut the grass from the Kap only in one Fasal and that even in September 1964, Lal Chand defendant cut the grass

therefrom.

(15) Nasra p.w.'s statement that Amar Nath p.w. used to enclose the suit land by means of thorny hedges for three years and to give the grass

growing thereon to defendants is based on hearsay and no value can, therefore be attached to it.

(16) Appearing as his own witness Karim plaintiff has stated that Mst Bimla Devi predecessor in interest of Amar Nath was a big landlord.

(17) Vasudev and Ram Ditta D.w.s have stated that the land has been in continuous possession of Lal Chand for the last 10/12 years and they have never seen Alaf Din plaintiff in possession thereof.

(18) Appearing as his own witness Lal Chand, defendant, has deposed that he has been in possession of the land since 2007 Sawvat.

(19) Chuni Lal Patwari who was examined by the trial court has stated that the appellant has been in continuous possession of the Kap since

August 6, 1963. He has, however, added that Mst. Bimla Devi was not the owner of more than 182 Kanals of land.

(20) The evidence adduced in the case shows that the defendants have been in possession of the suit kap since 2009 and have been cutting and

removing the grass therefrom. The only fact that is sought to be relied upon by the plaintiffs to prove their possession of the kap is the removal of

the grass by them and their predecessor. Amar Nath has however, admitted that during the period he remained in possession it was Lal Chand

defendant who was cutting and taking away the grass from the kap. His story that he had sold the produce of the Kap to Lal Chand has not been

corroborated by any documentary evidence, It is not believable that in one Fasal after April 4, 1963, when the alleged sale of the Kap in their

favour took place, the plaintiffs were placed in possession thereof by the defendants. Even the learned District Judge has in the course of his

judgment confessed that if the statements of the witnesses were taken at their face value, the appreciation of the evidence made by the trial Judge,

would appear to be correct. I am also unable to understand how the learned Judge repeatedly observed in the course of his judgment that if it were

a fact that Lal Chand respondent was in possession of the land even in 2007, he would have not got ownership thereof under the Big Landed

Estates Abolition Act particularly when the land was excluded by Mst Bimla Devi from her claim. It seems that he has overlooked the statement of

the Patwari to the effect that Mst. Bimla Devi was not a big landlord as envisaged by the Act.

(21) The last submission made by Mr. Salaria that the plaintiffs are in any event entitled to the grant of a decree for possessory of the suit land on

the basis of their possession title does not merit any serious consideration. The rulings cited by him in support of his submission are clearly

distinguishable. In *Som Nath Berman v. Dr. S.P. Raju and another*, A.I. R. 1970 S.C. 846, the claim for possession was decreed taking in view

that the plaintiffs had been in possession of the suit property from 1930 to 1945. In *Nair Service Society Ltd V. K. C Alexander and others*,

A.I.R. 1961 S C. 1165. the plaintiff was found to have been in peaceable possession for over 70 years. In the present case, it has not been

established by the plaintiffs that they have been in peaceable possession of the land for any length of time. Even according to Beli Ram who was

examined by the plaintiffs themselves, Lal Chand appellant had been cutting the grass from the land in question since the year 2009 (Samvat) which

means even anterior to April 4, 1963, corresponding to Chet 24. 2019 when the alleged Sale in favour of Amar Nath, the so called the

predecessor interest, of the respondents took place. Appearing as his own witness Lal Chand defendant has also stated that he has been in

possession of the land in question since 2007 Samvat. This statement of Lal Chand also received support from the statements of Vasudev and

Ram Ditta D ws. I am therefore, unable to decree the suit of the plaintiffs on the basis of their doubtful possession,

(22) For the foregoing reasons, I allow this appeal, set aside the judgment and decree passed by the lower appellate court and restore that of the

trial court.

(23) At this stage Mr. Salaria has prayed that the case may be certified to be a fit one for Letters Patent Appeal. Taking into consideration the

question relating to the applicability of Section 20 B to small landlords in respect of which I have not been able to lay my hands on any decision of

this court, I declare the case to be a fit one for appeal under clause 12 of the Letters Patent.