
(1969) 10 AHC CK 0029
In the Allahabad High Court
Case No : Second Appeal No. 2774 of 1963

Lal Singh and Other

APPELLANT

Vs

Kaur Singh and Other

RESPONDENT

Date of Decision : 14-10-1969

Acts Referred:

Registration Act, 1908 — Section 17(1)(b), 17(2)(vi), 39

Citation : (1970) 40 AWR 309

Hon'ble Judges : D.D. Seth, J

Bench : Single Bench

Advocate : S.K. Dhavans, for the Appellant; S.S. Bhatnagar for Respondents, for the Respondent

Final Decision : Allowed

Judgement

D.D. Seth, J.—This is a Defendants' appeal arising out of a suit for possession over five plots detailed in the plaint.

2. The Plaintiffs' case was that they were the Maurusidar of the plots in dispute and that Nain Singh Defendant No. 12 was the Khaikar of the plots. Nain Singh, according to the Plaintiff, was recorded as Khaikar in the revision settlement and after the revision settlement the Plaintiffs alleged that Nain Singh Defendant No. 12 surrendered the plots in favour of the Maurusidars by a compromise. According to the Plaintiffs the compromise between the parties was arrived at on 25-12-1958 and the Plaintiffs since then have remained in possession of the plots as Maurusidars. The Plaintiffs also alleged that sometime in Sambat 2016 Defendants Nos. 1 to 7 wrongfully took possession of the plots in dispute and took away the standing crops thereon belonging to the Plaintiffs about which a criminal case was filed against those Defendants and in which the accused were sentenced to fine. On these allegations the Plaintiffs filed the present suit for possession over five plots and impleaded Defendant No. 12 as the recorded Khaikar. Defendants Nos. 1 to 7 were impleaded because they had taken illegal possession of the plots in dispute and Defendants Nos. 8 to 11 as co-Maurusidars.

3. The suit was contested mainly by Nain Singh Defendant No. 12. He pleaded that he was the Khaikar of the plots in dispute and that the Plaintiff Kaur Singh was all along trying to dispossess him about which a criminal case was instituted by Nain Singh but in the criminal case a compromise was arrived at to the effect that Kaur Singh will not interfere with the land and on that understanding Nain Singh withdraw the criminal case. Defendant No. 12 pleaded that by playing fraud and by putting the contesting Defendant under the influence of liquor the Plaintiff Kaur Singh got his thumb impressions on a compromise and was giving out that the compromise was a surrender deed. The contesting Defendant also pleaded that the Plaintiffs filed a tanaza before the Assistant Records Officer and in that Tanaza Nain Singh Defendant No. 12 had filed a reply as a result of which the Plaintiffs tanaza was dismissed. According to Nain Singh he was ill in Sambat 2016 and therefore, he got the plots in dispute cultivated through the remaining Defendants who are his relations.

4. The trial court framed the following three issues:

1. Whether Nain Singh abandoned the plots in suit or does he still continue to be Khaikar?
2. Whether Defendant dispossessed the Plaintiff in Asauj Sambat 2016?
3. To what relief if any the Plaintiffs are entitled?

5 The trial court held that Nain Singh Defendant No. 12 did not surrender his Kaikar rights in favour of the Plaintiffs and that the alleged surrender deed surrendering Khaikar rights by Nain Singh in favour of the Plaintiffs is a document which was not stamped and bears a court fee stamp of Re. 1/- and it is an unregistered document. According to the trial court the surrender deed could not be read into evidence in view of Section 39 of the Indian Registration Act as it was not registered. According to the learned Munsif, Tehri Garhwal, the surrender deed was required to be compulsorily registered u/s 17 of the Indian Registration Act. The trial court also held that the Plaintiffs were not dispossessed in Asauj Sambat 2016 as alleged by them. On these findings the learned Munsif dismissed the Plaintiffs' suit on 11-8-1962.

6. Kaur Singh and other Plaintiffs preferred an appeal against the judgment and decree of the learned Munsif and in appeal the learned Civil and Sessions Judge, Tehri Garhwal held that the proceedings before the Assistant Records Officer, before whom the surrender deed was filed, were of judicial nature and in the surrender deed the plots in dispute were the subject matter of controversy and in the opinion of the lower appellate court, in view of Section 17(2)(vi) of the Indian Registration Act, the provisions of Section 17 regarding the compulsory registration do not apply to proper judicial proceedings and as such the surrender deed was exempt from registration even though the property involved was more than Rs. 100/-. The lower appellate court held that Plaintiffs were entitled to possession over three plots, namely, plots Nos. 1113, 1114 and 1124. On these findings the lower appellate court partly allowed the Plaintiff's appeal

and modified the decree of the trial court and decreed the Plaintiffs' suit for possession over three plots, namely, plots Nos. 1113, 1114 and 1124 and dismissed the Plaintiffs' claim for possession over the other two plots.

7. Against the decree of the lower appellate court the Defendants have come up in second appeal.

8. I have heard Sri S.K. Dhavan, learned Counsel appearing for the Appellants and Sri S.S. Bhatnagar, learned Counsel appearing for the Plaintiffs Respondents.

9. Sri S.K. Dhavari contended that the surrender deed (Ex. Ka 1) was compulsorily registerable under the Indian Registration Act as the provisions of Section 17(2)(vi) were not attracted. Sri S.K. Dhavan also contended that the Assistant Records Officer was not a court within the meaning of Section 17(2)(vi) of the Indian Registration Act and the mutation proceedings before him were not judicial proceedings as no decree could be passed in mutation proceedings and hence Section 17(2)(vi) was inapplicable to those proceedings.

10. The main point in the appeal is whether Section 17(2)(vi) of the Registration Act, hereinafter called the Act is applicable to the surrender deed (Ex. Ka-1). Sri S.S. Bhatnagar relied upon the Tehri Garhwal Tenancy Act (Tehri Garhwal Rajya Ke Bhumi Sambandhi Adhikar Niyam) and according to Sri S.S. Bhatnagar the provisions of the Tehri Garhwal Tenancy Act applied and Under Sub-section (6) of Section 10 of the Tehri Garhwal Tenancy Act a Khaikar could even orally or in other way surrender his tenancy to the Maurusidar. Sri S.S. Bhatnagar placed great reliance on Section 26 of the Tehri Garhwal Rajya ke Bhumi Sambandhi Adhikar Niyam.

Sub-section (ka) of Section 26 reads as follows:

Naat hone per arthat jab Khaikar mar jawe aur uska koi waris dhara 6 ke anusar na ho ya jab Khaikar niyam 10(6) ke anusar Maurusidar ke jamin chor de ya de de.

11. The main point for consideration in the appeal is whether the surrender deed (Ex. Ka 1) was compulsorily registerable or not and whether it was admissible in evidence or not. As already observed above the alleged surrender deed is an unregistered document. I have given careful thought to the "submissions made by the learned Counsel and I do not agree with the submissions made by the learned Counsel for the Respondents that the Niyam will be applicable to the facts of the instant case. Even if the Niyam is applicable the Niyam only provided that the Khaikar could surrender his tenancy to his Maurusidar. It did not lay down whether the surrender deed was or was not registerable and hence we have to take resort to Indian Registration Act. Section 17 of the Registration Act deals with documents of which registration is compulsory. Clause (b) of Sub-section (1) of Section 17 of the Registration Act reads as follows:

Other non-testamentary instruments which purport or operate to create, declare, assign, limit, or extinguish, whether in present or in future any right, title or

interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property;

12. Under Clause (b) of Sub-section (1) of Section 17 of the Act the documents mentioned in that clause are compulsorily register-able. The exception is provided by Sub-section (2) of Section 17 of the Act which reads as follows:

Nothing in Clauses (b) and (c) of Sub-section (1) applies to-

(i)...(ii)...(iii)...(iv)...(v).....

(vi) any decree or order of a court except a decree or order expressed to be made on a compromise and compromising immoveable property other than that which is the subject matter of the suit or proceedings or

(vii).....

13. The surrender deed in dispute in this appeal is neither a decree nor an order of a court as contemplated by Clause (vi) of Sub-section (2) of Section 17 of the Act and as such Clause (b) of Sub-section (1) of Section 17 of the Act is applicable to the deed in question. The surrender deed was filed in suit No. 42 but the proceedings before the Assistant Records Officer were No. 1/6 of 1958. No decree was passed in favour of the plaintiff in case No. 1/6 of 1958.

14. As already observed above the Niyam only permitted that Act of transfer, i.e. of surrender by a Khaikar of his Khaikar rights to his Maurusidar. It did not exempt a document of surrender from being registered. Arguments were advanced before me by the learned Counsel for the Respondents that the Indian Registration Act was not applicable to the erstwhile Tehri Garhwal State but I am afraid I do not agree with the submission made by the learned Counsel for the Respondent. List III contained in Schedule VII of the Constitution deals with concurrent list and is relevant in this connection. Item 6 of List III deals with transfer of property other than agricultural land, registration of deeds and documents. Since the question of registration of surrender deed was involved the concurrent list III of Schedule VII would be material in this case. The Registration Act being a Central Act would be applicable even to Tehri Garhwal State even after its merger in the Indian Union in preference to the Niyam which could prevail over the Central Act only Under Article 254 of the Constitution, but as provided by Clause (2) of Article 254 of the Constitution since the Niyam made by the Tehri Garhwal State was not reserved for the consideration of the President and had not received his assent could not prevail against the Registration Act.

15. For the reasons mentioned above I agree with the learned Counsel for the Appellant that Section 17(2)(vi) of the Act was not attracted to the facts of the instant case and the view taken by the lower appellate court is, therefore, wrong.

16. The result, therefore, is that the appeal is allowed and the judgment and decree of the lower appellate court are set aside and that of the trial court

restored. The Plaintiffs' suit is dismissed. Since the appeal is being allowed on a pure question of law I direct the parties to bear their own costs of the appeal.