(1976) 10 SC CK 0016

In the Supreme Court Of India

Case No : Civil Appeal No''s. 486 and 719 of 1973 with Civil Miscellaneous Petition No. 7220 of 1976

Mirdad and Others — APPELLANT

Vs

Board of Revenue and Others — RESPONDENT

Date of Decision : 19-10-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 136
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 240H

Citation : AIR 1977 SC 94 : (1977) RD 260 : (1977) 3 SCC 341 : (1976) 8 UJ 888

Hon'ble Judges : A. N. Ray, C.J;P. N. Shingal, J;M. Hameedullah Beg, J

Bench : Full Bench

Advocate : R.K. Garg, S.C. Agrawal, V.J. Francis and R.K. Jain, for the Appellant; N.S. Singhal and M.S. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

M.H. Beg, J.—The appellants before us by certificate of fitness of the case for appeal to this Court from the judgment of a Division Bench of the Allahabad High Court are the purchasers of the interest in some land of Smt. Bhagwani who died during the course of the long litigation before several authorities. Her adopted son Kesho Ram and then the appellants before us, as transferees of rights and interests of Kesho Ram, came into the picture after her death.

2. Smt. Bhagwani had let out, on 14th February 1944, for five years, the land in dispute on a annual rent of Rs. 264/-. After the expiry of the period of the lease she instituted a suit ejectment of respondents under Sections 175/179 of the U.P. Tenancy Act, 1939. The respondents had alleged that the transaction was, in substance, a mortgage. They claimed to be entitled to remain in possession until the loan of Rs. 2000, with interest, had been paid off. They also claimed rights of hereditary tenancy on the ground that Smt. Bhagwani paid more than Rs. 25/- as "abwab" of land in dispute which was claimed by her to be her zamindari "Sir"

land. The suit for the ejectment of defendants was decree on 8th March, 1949.

3. The defendants (respondents before us) appealed. During the pendency of this appeal, the U.P. Zamindari abolition and Land Reforms Act (hereinafter referred to as 'the Act') came into force on 1st July, 1952. The defendants, therefore, took up the plea that they have become Adhivasis u/s 20(a)(1) of the Act. The Additional Commissioner, who heard the appeal, upheld this plea, allowed the appeal, and dismissed the suit for ejectment on 6th August, 1953. Therefore, thereafter, Smt. Bhagwani filed a second appeal in the Board of Revenue, on the ground that, she being a woman, was entitled to the benefit of the provisions of Section 21(1)(b) read with Section 10(2)(i) of the Act so that the respondents before us could only have the rights of "Asamis". The Board of Revenue remanded the case to the Additional Commissioner on 17th August, 1954, for hearing on merit after holding that Smt. Bhagwani was entitled to the Benefit of an exemption due to her disability as a woman.

4. The law was, however, amended, with retrospective effect, on 10th October, 1954, so that Smt. Bhagwani could be entitled to the benefit of the exception only if her husband was disabled from cultivating. The additional Commissioner, therefore, remanded the whole case to the Trial Court on 22nd March, 1955, to take evidence on the question whether the husband of Smt. Bhagwani was disabled. No one questioned the legality or propriety of this order of remand as the Law had been retrospectively amended. The Trial Court, after taking evidence, decreed the suit of Smt. Bhagwani. But, the additional Commissioner allowed an appeal against it and dismissed Smt. Bhagwani's suit on 11th July, 1956, after holding that her husband was not disabled. The rights of the defendants as adhivasis were thus upheld. The suit had been dismissed on a pure finding of fact and this decision remained unchallenged for a period long beyond the time required to give respondents additional rights by virtue of their undisturbed possession.

5. Ten years later, Smt. Bhagwani applied to the Additional Commissioner for setting aside the dismissal of her suit on 11th July, 1956, by an application which was dismissed on 21st November, 1966. She again applied on 30th March, 1967, u/s 151 Civil Procedure Code, not appealed at all. The ground for this application was that a notification u/s 4 of the U.P. Consolidation of Holding Act of 1954, had been issued on 26th June, 1954. On 10th August, 1967, the Additional Commissioner recalled the order of 11th July, 1956, dismissing the plaintiff's suit, eleven years earlier, and, substituted for it an order holding that the rights of parties must be decided in accordance with the results in consolidation proceedings which were in progress so that the proceedings in the appeal before the Additional Commissioner had to be stayed. Against this interim order Smt. Bhagwani had again appealed to the Board of Revenue. That appeal was still pending when the jurisdiction of the High Court under Article 226 was invoked by Smt. Bhagwani by means of a writ petition.

6. In the meantime, proceedings under the U.P. Consolidation of Holdings Act

had been going on. There, the Consolidation Officer had held that the defendants were Asamis. In appeal, the Settlement Officer set aside this finding and held the defendants to be Adhiwasis. On a Revision Application, the Assistant Director of Consolidation took the view that the Consolidation authorities could not go behind what was to be decided in the appeal pending before the Board of Revenue in which the correctness of the Additional Commissioner's view, that the ordinary revenue Courts had to stay their hands pending a decision by the Consolidation authorities had been questioned Smt. Bhagwani was it appears, directed to apply to the Settlement Officer after obtaining a decision of the Board of Revenue on the rights of the parties. In the records, the defendants respondents were shown as "adhivasis" and they have continued to be so recorded.

7. In 1958, Smt. Bhagwani applied to the Sub-Divisional Officer for correction of consolidation records, but. this application was dismissed on 12th August, 1959, on the ground that the village had been de-notified on 1st November, 1958, u/s 52 of the U.P. Consolidation of Holding Act, so that no jurisdiction was left for correction in the course of consolidation proceedings. He took the view that the remedy, if any, of the aggrieved parties, lay only through a declaration of right by a competent Court. In other words, what was entered in revenue records in the course of consolidation proceedings could only be corrected, if at all, on the results of a regular trial and decision by an appropriate authorty.

8. The arena of the contest between the two sides was then shifted to compensation proceedings under chapter IX-A of the Act where Smt. Bhagwani had objected that the respondents should have been entered only as "Asamis" and not as "adhivasis". These objections were rejected by the Sub-Divisional Officer on 11th Jully, 1960. An appeal against that, and then a second appeal filed by Smt. Bhagwani against the appellant Court's order were dismissed on merits. After that, Smt. Bhagwani had filed a Writ Petition in the Allahabad High Court. Shri Kesho Ram and then his transferees had continued this litigation on behalf of Smt. Bhagwani who died on 27th November, 1962. The Writ Petition of Smt. Bhagwani was dismissed on 19th September, 1965. That dismissal by a learned Single Judge was the subject matter of what is known as a "Special Appeal" in the Allahabad High Court which was heard and dismissed by a Division Bench on 18th January, 1972. The judgment of that bench is under appeal before us.

9. It appears that Smt. Bhagwani and her adopted son Kcsho Ram had filed another suit also for the ejectment of the defendants u/s 202/209 of the Act. This was decreed by the Trial Court and this decree was affirmed by the Additional Commissioner on appeal on 11th September, 1967, against which the defendants had gone up to the Board of Revenue in second appeal. That second appeal was placed before the Board of Revenue together with an earlier appeal. The Board of Revenue held, by its order dated 30th July, 1970, that findings in proceedings under Chapter IX-A were material and admissible for purposes of

deciding questions of right in regular suits. It, however, stayed the hearing of this appeal as well as another appeal pending before it in connected proceedings the nature of which is not quite clear to us as the record is not before us. It is, however, clear that the stay order of the Board of Revenue was intended to operate only during the pendency of the two special appeals which were heard together by the High Court and disposed off by the judgment under appeal now before us. It is a ho clear from the judgment under appeal that the learned Counsel for the appellants before us had challenged the findings recorded in Chapter IX-A by the Board of Revenue whereas the learned Counsel for the respondents had submitted that the Revenue Court had no jurisdiction at all to decide, in compensation proceedings under Chapter IX-A of the Act, whether a person is an Adhivasi or Asami and hence, Smt. Bhagwani's objection in those proceedings, raising a question of right of title, was not maintainable at all.

10. In Sukhram Singh and Another Vs. Harbheji, this Court held that compensation proceedings, u/s 240H contained in Chapter IC-A of the Act, could in accordance with the procedure for reference on a question of title, cover also decisions on questions of right.

11. On the special facts and circumstances of this case, the High Court for all the records, in various proceedings, from the Board of Revenue and took upon itself to dispose them of title after deciding the crucial and decisive question on which the parties were at issue according to amended provisions of Section 21(1)(h) of the Act. The decision of the High Court was in line with the view of this Court in Sukhram Singh's case (supra) As the decision of the High Court was correct on merits on the decisive question, the contention advanced on behalf of the appellants that only the Board itself could set aside its own remand order and that the amended law could not be taken into account by authorities subordinate to it does not seem to us to be substantial enough to deserve consideration as a ground of interference under the exceptional powers of this Court under Article 136. Even if any objections could be taken to the propriety of the procedure adopted by the High Court in sending for all the records of connected matters also pending before the Board of Revenue, by consent of both sides, and deciding them with others before it in order to put an end to an unnecessarily long and tortuous litigation, we cannot be induced to interfere. Apart from the fact that applications for writs of certiorari can sometimes be made to remove proceedings from one Court to another, the unusual procedure adopted does not affect the merits of the case on what is really decivisve. We think that the High Court had rightly applied the amended law to patent facts of the case on the finding that Smt. Bhagvani's husband was not disabled so that she had lost the right to regain possession. The defendants respondents had also been in possession long enough to acquire immunity from eviction at the instance of Smt. Bhagwani or her representatives in interest who had slept over their rights too long to be permitted to reagitate the question again after ten years from 11th July, 1956. Consequently, we dismiss these appeals and Civil Miscellaneous Petition No. 7220 of 1976, but, in the circumstances of the case, we make no

order as to costs. The amount deposited by the respondents under Orders of this Court will be returned to them.

