

(1971) 03 AHC CK 0039
In the Allahabad High Court
Case No : Second Appeal No. 158 of 1970

Mohd. Yasin and Others	Vs	APPELLANT
Abdul Wadood and Others		RESPONDENT

Date of Decision : 19-03-1971

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 4C, 5
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 1

Citation : AIR 1971 All 571

Hon'ble Judges : C.S.P. Singh, J

Bench : Single Bench

Advocate : R.S. Mehrotra, S.N. Kacker and Sridhar, for the Appellant; G.P. Mathur and Ambika Prasad, for the Respondent

Final Decision : Dismissed

Judgement

C.S.P. Singh, J.—Yasin and his three brothers had been allotted a Chak in village Bangawan and another Chak in village Chaura. The plots comprised in the Chak of both the villages consisted of Bhumidhari and Sirdari holdings. Yasin wanted to transfer some plots comprised in his Chaks to his nephews and he moved an application for the grant of permission u/s 5 (c) (ii) of the Consolidation of Holdings Act (hereinafter referred to as the Act). The permission was accorded. Subsequently, however, he executed four sale deeds, viz. (Exts. 13 and 4) in respect of plots situate in village Bangawan and (Ex. 2) in respect of plots situate in village Chaura in favour of persons other than in whose favour sanction had been accorded. It appears that, thereafter, he changed his mind and filed the present suit for cancellation of the sale-deeds executed in favour of vendees-defendants. He was joined in this suit by his other co-sharers. The main contention on behalf of the plaintiff was that the transfer was hit by Section 5 (c) (ii) of the Act inasmuch as the sale had been effected in favour of persons in whose favour permission had not been accorded by the Settlement Officer, Consolidation. This was sought to be met by the defendants on the ground that inasmuch as the entire share of Yasin had been transferred no permission was

necessary u/s 5 (c) (ii) of the Act.

2. The lower appellate Court has ultimately upheld the sale deed except in respect of the plot No. 100. The plaintiffs as such have filed the appeal against that decision and the defendants a cross-objection in respect of plot No. 100.

3. It has been contended on behalf of the appellants that inasmuch as a portion of plot No. 100 had not been sold all the sale-deeds were void as the entire holdings of Yasin have to be considered as one. As has been seen the holdings of Yasin fell in two villages, i.e., Bangawan and Chaura which were for the purposes of revenue acts distinct from each other. It is difficult to see how holdings belonging to an individual in two different villages can constitute a single holding. Holding has been defined u/s 3 (4-C) of the Act as under:

"(4-C)-- "Holding" means a parcel or parcels of land held under one tenure by a tenure-holder singly or jointly with other tenure-holders."

Before parcel or parcels of land can be held to be comprised in one holding it has to be seen as to whether they are holdings under one tenure. The word "tenure" has not been defined in the Act and as such the common meaning of the word "tenure" has to be imported. In Webster's dictionary the following meaning to word "tenure" is given :

"The act or right of holding property".

It would thus appear that the word "tenure" means right under which a particular property or estate is held. This would indicate that the word "tenure" signifies the particular rights, that is, Bhumidhari, Sirdari or Asami rights under which the holding is held. Thus, if a parcel or parcels of land are held as a Sirdari while the others are held as Bhumidhari or Asami rights they would constitute separate tenure.

4. In the present case, the holdings of Yasin would as such be divided into Bhumidhari and Sirdari tenure. But, that would not mean that the Bhumidhari, Sirdari or Asami rights in different villages would all fall within a single tenure inasmuch as it appears that the scheme of the Consolidation of Holdings Act is to treat each village or part thereof, which is notified u/s 4 of the Act as a separate unit for the purposes of the scheme of consolidation. This is clear from the provisions of Sections 5, 7, 8, 9 of the Act. The consolidation scheme is drawn up village-wise, that is, unitwise as defined u/s 3 (2-A), of the Act and the records and objections and proposals for the allotment of Chaks, confirmation of Chaks and preparation of the final revenue records are made up village wise. This would go to indicate that the word holdings has to be read with reference to each village and the holdings of a tenure-holder in two separate villages cannot be treated to be single holding. Thus, even if a part of the holding of village Bangawan had not been sold, it would not affect the sale in respect of village Chaura.

5. In village Chaura the entire share of Yasin had been sold and as such no

permission was necessary in view of the decision of this Court in *Ram Bebari Shukla v. Munna Lal Shukla* 1968 All LJ 223. Coming now to the holdings situate in village Bangawan, the contention is that, firstly, that the sale has been effected in favour of the person not specified by the Settlement Officer, Consolidation in his order u/s 5 (c) (ii) of the Act and, secondly, that inasmuch as a portion of plot No. 100 has been left out of the sale-deeds was hit by Section 45A of the Act and was void. The sales in question would not come within the mischief of Section 54A in case the sales are not in respect of the entire holding of Yasin. From the sale-deeds (Exts. 1, 3 and 4), it appears that Yasin had sold his entire share in the plots which are in the sale deeds. In the sale-deed pertaining to plot No. 100 there is a recital that the entire share in that plot is being sold, while setting out the area of plot No. 100 a smaller area than what is recorded in the revenue papers, has been given and this has led to the present argument.

This contention does not appear to be sound, as on a true interpretation of the sale deed it is clear that Yasin wanted to sell his entire share in plot No. 100. The mere fact that the area of that plot was not correctly set out cannot lead to the inference that his entire share in that plot has not been sold. Thus, the sale deeds in respect of village Bangawan including the one relating to plot No. 100 were valid and the lower appellate Court committed an error in setting aside the sale deed in respect of plot No. 100.

6. After I had heard the arguments in the case and the case was marked for judgment, counsel for the appellant drew my attention to a decision of Hon'ble Satish Chandra, J. in Writ Petn. No. 2126 of 1968 decided on 13-8-1969 (All.) wherein the Division Bench decision in 1968 All LJ 223 has been distinguished in its application to the case of co-sharers and the view taken that even in case a co-sharer transfers his entire share in his holding even then permission would be necessary u/s 5 (c) (ii) of the Act, I am unable to see the distinction that has been drawn by Hon'ble Satish Chandra, J. The provision u/s 5 (c) (ii) of the Act is against the transfer of any part of a holding.. The words used in this section are: "transfer by way of sale, gift or exchange any part of his holding in the consolidation area. The word "holding" as has been seen is defined in Section 4-C as parcel or parcels of land held under one tenure by a tenure-holder singly or jointly with other tenure-holders.

In order to appreciate the position of *cosirdar* and *co-bhumidbar* in respect of their holdings it is necessary to look into the provisions of the U. P. Zamindari Abolition and Land Reforms Act too. From the scheme of the Zamindari Abolition and Land Reforms Act it is clear that on the enforcement of the Act all tenancies, whether they were being held singly or jointly, came to an end and fresh tenancies were granted under the Zamindari Abolition Act. The tenancies so granted made erstwhile holders tenants in common, i.e., each co-sharer got a distinct title to his share in the holding and became a *co-sirdar* and *co-bhumidhar* of his share.

Reference in this connection may be made to the Full Bench case, in Ram Awalamb and Others Vs. Jata Shankar and Others, . Although it deals with the case of members of a Joint Hindu Family and holds that each member became a tenant in common of the holding yet the principles laid down therein are applicable to all co-sirdars and co-bhumidhars. This position is further clear from the fact that a Sirdar can become a Bhumi-dhar of his share in the holding u/s 137 of the U. P. Zamindari Abolition and Land Reforms Act and pay reduced revenue for his share. The holding of the tenure-holder in case of joint tenancy would be his share and he would be Sirdar or Bhumidhar of his share and not that of the share of other co-share-holders. In case the entire holding, that is, his share as also the share of others was treated to be that of all the co-sharers it would not have been possible for one co-sharer to acquire separate rights. The Division Bench case has not made any distinction between cases of holding held singly and those held jointly and I am bound by that decision.

7. The appeal fails and is dismissed. The cross-objection is allowed. Parties shall bear their own costs. Stay order is vacated.