
(1978) 11 AHC CK 0054

In the Allahabad High Court

Case No : Sp. A. No. 1026 of 1970 in CMW No. 4671 of 1968

Moin Uddin

APPELLANT

Vs

Dy. Director of Consolidation

RESPONDENT

Date of Decision : 24-11-1978

Acts Referred:

Uttar Pradesh Tenancy Act, 1939 — Section 180, 181, 295A, 39, 39(2)

Citation : (1979) AWC 94

Hon'ble Judges : Satish Chandra, C.J.;Yashoda Nandan, J

Bench : Division Bench

Advocate : Sankatha Rai, for the Appellant; G.C. Dwivedi, for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, C.J.—This special appeal is directed against the judgment of a learned single Judge dismissing a writ petition.

2. The writ petition was directed against the judgment of the Deputy Director of Consolidation upholding the right of the Respondents to be the sirdars of the plots in dispute. The plots in dispute were at one time the sir and Khudkasht of Kulsum Bibi, a widow. In 1930 she executed a waqf. alalaulad and thereafter she became an exproprietary tenant of the plots in dispute. In 1940 she executed a Theka in favour of Abdul Hasan for five years. This was renewed for another five years in 1945. Abdul Hasan was authorised to cultivate the plots OF to sublet them. In his turn Abdul Hasan engrafted the predecessor-in-interest of the contesting Respondents on the plots. At first they cultivated the plots on Batai but in 1949 they executed Qabuliats in favour of Abdul Hasan agreeing to pay cash rent. This transaction was in law a lease by a sub-tenant, which was prohibited by Section 39 of the U.P. Tenancy Act.

3. In due course consolidation proceedings commenced. In the basic year the contesting Respondents, namely, the sub-tenants of Abdul Hasan, were recorded as sirdars of the plots in dispute. The Appellants, who were the grandsons of

Kulsum Bibi, filed objections, claiming to be Sirdars. Their case was that Smt. Kulsum Bibi had become an exproprietary tenant. On abolition of Zamindari she became a sirdar. The status of the Respondents was merely that of asamis, because they were lessees of a disabled person. The findings ate that the plots in dispute were sir and Khudkasht of Kulsum Bibi. Even after the waqf deed the plots continued to be recorded as such. The Thekedar sublet the plots to the Respondents, and since 1949 he was not in possession, and he did not claim or assert any right over the plots. The contesting Respondents remained in cultivatory possession throughout. Kulsum Bibi died in 1958. She did not challenge the title of the contesting Respondents in her lifetime. The objectors did not also file any suit for the ejectment of the Respondents. Section 39 of the U.P. Tenancy Act barred sub-letting by a subtenant. The possession of the Respondents was hence adverse even against Smt. Kulsum Bibi. The contesting Respondents were in cultivatory possession in 1356 Fasli as well as in 1359 Fasli. They became Adhivasis and then sirdars. In any event, they being trespassers in possession, they matured title as sirdars.

4. Kulsum Bibi became an exproprietary tenant after the execution of the waqf deed. An exproprietary tenant can sub-let u/s 40 of the U.P. Tenancy Act, but only for a term not exceeding five years, or within three years on the previous sub-letting. But Section 41 relaxes a female exproprietary tenant from this restriction on the ground that she is a disabled person. Section 39(2), however, provides that no subtenant shall sublet the whole or any part of his holding. Abdul Hasan became a sub-tenant of Kulsum Bibi. He could not, in view of Section 39(2), again sublet. Section 44 of the U.P. Tenancy Act makes a sub-lease by a sub-tenant in contravention of Section 39(2) void. Section 44, Sub-section (2) makes a sublease by a tenant in contravention of the Act voidable at the option of the landholder. This provision, therefore, clearly makes a distinction between void or voidable transfers. Transfer by Abdul Hasan in favour of the contesting Respondents was u/s 44(1) void, and not merely voidable at the option of the land-holder. Possession of a person under a void transaction is per se adverse. It is not permissive-See *State of West Bengal Vs. The Dalhousie Institute Society*, . Possession under a void lease was held adverse in *Chanasambanda Pandora Sannadhi v. Velu Pandaram* 27 Indian Appeals 69 P.C. In *Abdul Ghafoor and Another Vs. Lala Kunj Behari Lal and Another*, it was held that possession taken under an unregistered permanent lease was adverse.

5. By being continuously in possession for more than six years, the Respondents acquired sirdari rights. Since their possession was adverse, it was open to Smt. Kulsum Bibi to file a suit for their ejectment u/s 180 of the U.P. Tenancy Act on the expiry of two years. Even from 1949 the Respondents became hereditary tenants u/s 181 of the U.P. Tenancy Act, and thereafter sirdars under the Zamindari Abolition Act.

6. Section 295-A, U.P. Tenancy Act protected possession of a sub-tenant. It did not apply to a sub-tenant of a subtenant. It had no effect on the contesting

Respondents.

7. The disability of Kulsum Bibi is of no help against the contesting Respondents. Because of her disability she could lawfully let out the land to Abdul Hasan. But that is (?) all. Abdul Hasan, in his turn, could not execute a void sublease in favour of the contesting Respondents. Abdul Hasan was not a disabled person. The submission of the learned Counsel for the Appellants is hence based on misconceived premises, and cannot be accepted.

8. There is no substance in this special appeal and it is accordingly dismissed with costs.