
(1972) 10 AHC CK 0021
In the Allahabad High Court
Case No : Special Appeal No. 745 of 1967

Nanhun

APPELLANT

Vs

Deputy Director of Consolidation

RESPONDENT

Date of Decision : 24-10-1972

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 20

Citation : AIR 1973 All 360 : (1973) 43 AWR 1 : (1973) RD 146

Hon'ble Judges : Satish Chandra, J;N.D. Ojha, J

Bench : Division Bench

Advocate : Radhey Shyam, for the Appellant; S.N. Sahai and Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Ojha, J.—The appellant, Nanhun was a sub-tenant of two plots 27 and 201. A suit for his ejectment was filed by Pargan Singh, deceased husband of respondent No. 4 u/s 175 of the U. P. Tenancy Act and a decree was passed for his ejectment on November 5, 1943. The decree was executed and possession was delivered to Pargan Singh on May 25, 1944. Notwithstanding the decree and Dakhaldihani in the suit aforesaid the name of the appellant continued to be recorded as a sub-tenant, which on an application being made by Pargan Singh was subsequently expunged in 1363 F and thereafter the name of Pargan Singh continued to be recorded in village papers. Subsequently, the village in which the aforesaid two plots are situate was brought under consolidation operations and in the basic year Khatauni the name of Pargan Singh stood recorded. An objection was filed by the appellant u/s 12 of the U. P. Consolidation of Holdings Act claiming Adhivasi and thereafter sirdari rights on the ground that he was recorded as an occupant in 1356 F. The claim of the appellant was repelled by the consolidation Officer and his order was upheld in appeal and revision by the Settlement Officer (Consolidation) and the Deputy Director of Consolidation respectively. These various orders passed by the consolidation authorities were challenged by the

appellant in a writ petition which was dismissed by a learned Single Judge. Hence this special appeal.

2. Learned counsel for the appellant has urged that it was only the entry in 1356 F which was to be looked into and the learned Single Judge was not right in observing that since the appellant had failed to prove his possession on 30th June, 1948 he could not be given the benefit of the entry in 1356 F. In support of his contention that neither the question of possession in 1356 F nor the correctness of the entry of 1356 F wherein the name of the appellant was actually recorded as a sub-tenant could be gone into subsequent to the date of vesting, he relied upon *Mosim Ali and Others Vs. Ganga Prasad and Others*, and *Nath Singh and Others Vs. The Board of Revenue and Others*, . In our opinion none of these two cases is applicable to the facts of the present case. As has been found by the consolidation authorities the appellant was actually ejected and possession was delivered to Pargan Singh on May 25, 1944. It is not the appellant's case that he trespassed over the land or that the land was again let out to him after the said date. His specific case on the other hand is that notwithstanding the decree and delivery of possession in the suit u/s 175 he continued to be in possession. This case has not been accepted by the consolidation authorities. Once possession was delivered to Pargan Singh on May 25, 1944 there would be a presumption of continuity of possession in his favour. See *Nathoo Lal Vs. Durga Prasad*, .

3. Rule 39 of the Revenue Court Manual lays down that in any case in which the effect of the order or decree passed by a court involves a change in the Patwari's records other than a change in the Khewat the court shall draw up a separate order in the prescribed form giving full details of the entries to be made and the entries to be expunged and direct the Tehsildar to have the new entries recorded in the Patwari's papers. The decree u/s 175 was for the ejectment of the appellant. The appellant was actually ejected and on his ejectment it was incumbent upon the authorities to have got the necessary corrections made in the village papers. The Dakhaldihani which was carried out in pursuance of the decree for ejectment involved a change in the Patwari's record as contemplated by Rule 39 of the Revenue Court Manual. It is true that the entries were not actually corrected and consequently Explanation II to Section 20 (h) (i) of the U. P. Zamindari Abolition and Land Reforms Act may not apply. But, in our opinion, the provisions of Explanation III to Section 20 (b) (i) are clearly attracted. Explanation III lays down that for the purposes of Explanation II an entry shall be deemed to have been corrected before the date of vesting if an order requiring any correction in records had been made before the said date and it became final even if the correction may not have been incorporated in the records. In the instant case it has not been stated in the Writ Petition that no order as required by Rule 39 aforesaid was issued. The provisions of the said rule are mandatory and in view of illustration (e) to Section 114 of the Evidence Act it can safely be presumed that such an order was issued. The decree and the order issuing parwana for delivery of possession read with the mandatory requirements

of Rule 39 aforesaid had the effect of requiring necessary correction being made in the records as contemplated by Explanation III aforesaid. Consequently even if the correction may not have been incorporated in the records it would be immaterial and the entry of 1356 F would be deemed to have been corrected before the date of vesting. Such an entry on the face of it could not confer any Adhivasi rights on the appellant.

4. In this view of the matter we find no error of law apparent on the face of the record in the orders of the consolidation authorities and the special appeal is, accordingly, dismissed with costs.