

(1940) 12 AHC CK 0008
In the Allahabad High Court

Punjab Sugar Mills Co. Ltd.	Vs	APPELLANT
Pt. Lachman Prasad Tewari and Others		RESPONDENT

Date of Decision : 10-12-1940

Acts Referred:

Citation : AIR 1941 All 73 : (1941) 11 AWR 8 : (1941) 11 AWR 32

Hon'ble Judges : Collister, J;Bajpai, J;Allsop, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Collister, J.—The following questions have been referred to this Full Bench:

(1) Whether a dispute between two cosharers as to whether a sir belongs exclusively to one or jointly to both raises a question of proprietary title and (2) which is the proper Court to decide such a dispute?

2. For a proper decision of these questions it is necessary to consider the facts which have given rise to them. In village Poharia in the district of Gorakhpur the respondents, who are Tiwaris, acquired a 2 annas share. In 1913 and 1914 they obtained from the original proprietors of the village, Basdeo Singh and others, possessory mortgages over the remaining 14 annas; and thus they came to possess the whole village. Under authority granted to them by the terms of their mortgage bonds, they ejected tenants from various holdings, the total area of which was 80 acres, and they took this land under their own cultivation. Some of these plots were thereafter recorded in the village registers as their sir, presumably by virtue of Section 4(d), Agra Tenancy Act (3 of 1926), and others as their khudkasht. On 14th June 1932 the Thakurs, that is to say the original proprietors, executed a second possessory mortgage in favour of the appellants the Punjab Sugar Mills Co., Ltd. Money was left with the mortgagees for liquidation of the mortgages which had been executed in favour of the respondents and those mortgages were duly redeemed. Thereafter, the appellants claimed the right to 7/8th of the land which was recorded as the sir

and khudkasht of the respondents; that is to say they claimed 70 out of 80 acres. This claim was repudiated by the respondents and accordingly the appellants instituted a suit against them for declaration and joint possession as well as for another relief with which we are not concerned. The trial Court dismissed the suit; but in appeal the suit was decreed by this Court on 14th December 1936 for joint possession. It was held that whatever rights, the Tiwaris had in the plots in question were obtained by them in their capacity as mortgagees of 14 annas and as owners of two annas and that those rights were for the benefit of all the cosharers in the village and that the appellants were entitled to a decree for joint possession. That decree was capable of execution only under Order 21, Rule 35(2), Civil P.C. The judgment of this Court is reported in Punjab Sugar Mills Co. Ltd. Vs. Lakshman Prasad and Others .

3. Thereafter the appellants and the mortgagors instituted partition proceedings in the revenue Court. On the date fixed for hearing objections u/s 111, Land Revenue Act (3 of 1901), the respondents preferred an objection dated 24th November 1937, and in Para. 5 of that objection they said, " many severalty plots and plots of land exclusively owned by these objectors adjoin the mill." And further on in the same paragraph they prayed that the objectors' plots of sir and khudkasht land towards the north of the mill should "mostly" be given to them. Admittedly the plots in suit are to the north of the mill and are the plots with which we are concerned. On 16th December 1937 Basdeo Singh and others presented a rejoinder to that objection in which they, claimed that by virtue of this Court's decree dated 14th December 1936 the respondents were owners in possession of only a 2 annas share in these plots and that the civil Court had put the Punjab Sugar Mills Co., Ltd., into possession of the remaining 14 annas share; and therefore the respondents, that is to say the Tiwaris, were only entitled to a one-eighth share in the plots in suit. The order which the Assistant Collector passed was in the following terms:

Objector Lachman Prasad's contention could not be and is not according to my reading that he is the sole proprietor of sir plots. His contention is that he has exclusive possession of certain sir plots. This question can be taken up after the submission of the severalty lists. In my opinion no proprietary title is involved.

4. The Punjab Sugar Mills Co., Ltd., appealed against this order, but their appeal was dismissed by the District Judge, who agreed that the objections raised no question of proprietary title within the meaning of Section in, Land Revenue Act. His view was that the objections were concerned only with the details of the method of partition. From that judgment this second appeal has been preferred to the High Court. As I have already shown, in the objection of 24th November 1937 the respondents claimed a right to the major portion of the 80 acres of sir and khudkasht plots and in the rejoinder it was claimed that the Tiwaris were "owners in possession" of a one-eighth share only in the said plots and that that was all that they were entitled to possess. During the pendency of the appeal in the District Judge's Court counsel for the respondent Tiwaris made a statement

which is embodied in a rubkar dated 5th May 1938. That statement reads as follows:

So far as the question of right of ownership in the plots of sir land in dispute is concerned, I admit that the appellant too is the zamindar thereof to the extent of 14 annas as a mortgagee. My objection is that so far as the sir rights are concerned they are exclusively mine, i.e. I have a right to remain in actual possession of these plots exclusively.

5. This rubkar shows that the respondents were claiming exclusive rights in the sir plots, and the objection of 24th November 1937 shows that they were claiming exclusive rights in most of the khudkasht plots also. It is possible that, when counsel for the respondents referred to sir land in the rubkar, he meant to include khudkasht also, but it cannot be said with certainty whether this was his intention or not. Anyway, the nature of the dispute is clear enough; the respondents were claiming an exclusive right of possession in respect to either the whole or the major portion of these 80 acres and this claim was repudiated except in respect to a one-eighth share thereof. What we have to determine is whether so far as the sir land is concerned, a question of proprietary title was involved in this controversy.

6. Learned Counsel for the respondents contends that the question of proprietary title has already been decided by a competent Court, that is to say by the judgment of the High Court to which I have already referred; and he pleads that this being so, the dispute was only as regards a right to actual possession and the decision of such dispute is within the jurisdiction of the revenue Court. In (Diwan) Balwant Singh and Others Vs. Kunwar Partap Singh one of the cosharers claimed in the course of a partition proceeding that he had a title to hold a certain khata in severalty. His claim was admitted by the applicant for partition and so this Court held that no question of proprietary title arose. The learned Judges however went on to say:

It has however been argued that even if the objection has been disputed by anyone, it would still not involve a question of proprietary title. With this contention we do not concur. The expression "proprietary title", in our opinion, will include not only the title to be proprietor or co-sharer but also any rights appurtenant to such a title. Primarily all the cosharers in a mahal, i.e. a unit under a separate engagement for the payment of land revenue, have a title to own and possess the mahal jointly. This title may give way to a title to hold in severalty different areas, i.e. khatas or pattis in the mahal. This is effected by what is called a private partition. The title arising under a private partition is nonetheless a proprietary title because it is acquired without Government intervention and is subject to the general liability of all cosharers for the whole revenue of the mahal.

7. Finally they say:

The right of a cosharer to hold in severalty does, therefore if disputed, in our

opinion, involve a question of proprietary title.

8. In *Abu Jafar Vs. Syed Mohammad Kazim*, it was held that, when a question arises between two cosharers as to how much is the sir of one of the cosharers, the question is one of title and not of tenancy. In that case there were three co-owners of a khewat consisting of 14 bighas of which 12 bighas odd were sir land. One of these cosharers was a man named Abu Jafar, whose share was 2/16ths. His co-owners sold their shares and gave up their exproprietary rights. Abu Jafar applied to the revenue Court for an imperfect partition, his object being that he might be recorded as sir-holder of 2/16ths of the area of the khewat and as exproprietary tenant of the remaining portion of 12 bighas 1 biswa. The purchaser from the other cosharers was a man named Mohammad Kazim. He objected to the application, and the question for decision was whether Abu Jafar was the sirholder of the 12 bighas 1 biswa so that the provisions of Section 126, Land Revenue Act, might be attracted in his favour. The revenue Court decided that it was a matter involving no proprietary title and could be decided later on. Mohammad Kazim appealed to the District Judge, who held that a question of proprietary title was involved. At p. 1415 the learned Judges of this Court say:

There can be no doubt that when a question arises between two cosharers as to how much is one cosharer's sir, the question is one of title and not of any tenancy. Question of title can be litigated finally in the civil Court and civil Court alone.

9. Sir right is defined in the last paragraph of Section 4, Agra Tenancy Act, as follows:

"Sir right" means the sum of all the special rights conferred on sir-holders by this Act and by the United Provinces Land Revenue Act of 1901, and includes the right to exclusive possession of the sir against cosharers of the sir-holder in the proprietary right, subject to a liability to account for profits.

10. In my opinion, where there is a dispute as to the right to possess a particular plot or plots as sir-holders to the exclusion of the other cosharers, a question of proprietary title is involved. All cosharers in a mahal or patti in which there are sir plots" have admittedly a proprietary right in such plots; but the sir-holder has in addition certain higher rights which his cosharers do not enjoy. He has the right to exclusive possession; he is not fettered by the acquisition of statutory rights on the part of a tenant to whom he may let the plot; and he acquires exproprietary rights in the event of transfer of the plot. His proprietary rights in the plot are thus exempt from the limitations to which his cosharers are subject. These special and superior rights are in the nature of a proprietary interest which he holds over and above the proprietary interest which he has in common with his cosharers. In the case with which we are now dealing the respondents claimed to have an exclusive title to the sir rights in the land and an exclusive right to possession thereof and the appellants and the Thakurs denied that right except in respect to a 1/8th share of the area so held by the respondents and

they claimed a right in themselves to the remaining 7/8th share. We are not concerned with the merits of these respective claims; but having held that the rights which a sir-holder has, as such, are in the nature of a proprietary interest, it logically follows from the view which I have taken that the dispute between the rival parties involved a question of proprietary title.

11. I now come to the second question. Section 111(1), Land Revenue Act, reads as follows:

If, on or before the day so fixed, any objection is made by a recorded cosharer, involving a question of proprietary title which has not been already determined by a Court of competent jurisdiction, the Collector may either : (a) decline to grant the application until the question in dispute has been determined by a competent Court, or (b) require any party to the case to institute within three months a suit in the civil Court for the determination of such question, or (c) proceed to inquire into the merits of the objection.

12. The first thing which it was incumbent on the Assistant Collector to do was to decide whether the question of proprietary title claimed and denied by the respective parties, namely the respondents' right to exclusive possession to land recorded as their sir and khudkasht and held by them as such, had already been decided by a competent Court; and, for this purpose, it was necessary to consider the judgment of this Court already referred to. If the Assistant Collector held that such question had been decided by that judgment, he would have to give effect to it. If he held the contrary, then he had three courses open to him. He could either under Clause (a) decline to grant the application for partition until the question in dispute had been determined by a competent Court, or under Clause (b) require any of the parties to institute a suit in the civil Court within three months, or under Clause (c) proceed to inquire into the merits of the objection. Sub-section (3) of Section 111 provides that if the revenue Court decides to inquire into the merits of the objection (under Clause (c) of Sub-section (1)), it shall follow the procedure laid down in the CPC for the trial of original suits; and Section 112 enacts that an appeal from such decree shall lie to the civil Court. Presumably, the Assistant Collector heard the parties or their counsel and considered the objection and the rejoinder and he came to the conclusion-a wrong conclusion, as I think-that no question of proprietary title was involved at all. In my opinion this must be deemed to have been a decision of the dispute on the merits under Clause (c) and therefore the appeal lay to the District Judge. In *Guthal Chaudhari v. Jogi Chaudhri* ('06) 3 A.L.J. 617 a cosharer instituted proceedings in the revenue Court for the partition of his 5 anna 4 pies share. Another cosharer objected, laying claim to an 8 pie share out of the 5 anna 4 pies share which the applicant for partition was seeking to have converted into a. separate mahal. The Assistant Collector formed the opinion that no question of proprietary title arose and it was held by a Bench of this Court that an appeal lay from that order to the District Judge.

13. In my opinion the appeal from the Assistant Collector's decision in the case

which is before us lay to the District Judge. For the reasons given in this judgment I would, upon the facts, answer the first question in the affirmative; and as regards the second question, I would reply that, the parties being at issue upon a question of proprietary title, the revenue Court had jurisdiction to adopt any of the methods prescribed in Section 111, Land Revenue Act, and that, the Court having proceeded under Clause (c) of Sub-section (1), the appeal lay to the District Judge.

Allsop, J.

14. I agree.

Bajpai J.

15. I agree.