

(2008) 07 SC CK 0125
In the Supreme Court Of India
Case No : Civil Appeal No. 5269 of 2003

Rajinder Singh	Vs	APPELLANT
State of Jammu and Kashmir and Others		RESPONDENT

Date of Decision : 11-07-2008

Acts Referred:

Constitution of India, 1950 — Article 136
Jammu and Kashmir Agrarian Reforms Act, 1976 — Section 3A
Jammu and Kashmir Tenancy Act, 1980 — Section 67

Citation : (2009) 3 ALT 27 : (2008) 3 JKJ 1(1) : (2008) 8 JT 159 : (2008) 10 SCALE 60 : (2008) 9 SCC 368

Hon'ble Judges : Lokeshwar Singh Pant, J; C. K. Thakker, J

Bench : Division Bench

Advocate : Ashok Mathur, for the Appellant; S. Mehdi Imam, Anis Suhrawardy, Dinesh Kumar Garg and R.C. Kaushik, for the Respondent

Final Decision : Allowed

Judgement

C.K. Thakker, J.—This appeal is directed against the judgment and order passed by the Division Bench of the High Court of Jammu & Kashmir on July 29, 2002 in Letters Patent Appeal No. 621 of 1999. By the said order, the Division Bench of the High Court allowed the appeal filed by respondent No. 2 herein and set aside the order passed by the single Judge dated November 12, 1998 in Writ Petition No. 457 of 1993.

2. Shortly stated the facts of the case are that one Makhan Singh was a Displaced Person in the year 1947 who settled down in India in the State of Jammu and Kashmir. The Government of Jammu and Kashmir had taken a policy decision in the year 1954 to allot agricultural land with a view to rehabilitate displaced families who were forced to leave the other side of the border (now Pakistan) in 1947 in the wake of partition and who were holding land in that area.

3. The Government, in pursuance of the said policy, passed an order being Government Order No. 254 of 1965 conferring ownership right upon Makhan

Singh. The said order reads thus:

The Government hereby grant proprietary rights on the State lands in favour of the displaced persons from non-liberated areas of the State who in pursuance of Cabinet order No. 578-C of 1954 or any other order issued prior to the CO No. 578-C of 1954 about allotments in favour of such displaced persons, have been settled on such lands and partly on evacuee lands subject to the condition that the allottees have continuously been holding the land from the date of the allotment and have been so recorded. The grantees shall be liable to the payment of land revenue assessed at village rates according to the class of soil which the land belonged to or has assumed on being cultivated or if there is no village rate available, to such land revenue as may be fixed by the Collector with regard to the assessment of similar land in the assessment circle in which such land is situated and also to the payment of ceases and other dues payable under any land for the time being in force.

4. Paragraph 15-B(2) of the Cabinet Order No. 578-C of 1954 conferred right on the allottee as also to the family members. It reads thus:

15-B(2) if an allottee dies his interest in the allotted land shall devolve on other members of his family in whose favour allotment of land has been originally made or regularized under these rules and on those who may have become members of the family by way of marriage, birth or adoption after such allotment excluding those who may have died earlier or may have left, the family on account of marriage or adoption.

5. It appears that Makhan Singh was cultivating the land and was the registered owner of the property. He was conferred proprietary rights. His name had been entered in the Jamabandi of 1966-67. It was Mutation No. 291 of Village Tariara, Tehsil Kathua. Makhan Singh was shown as the original allottee.

6. In the year 1981, Makhan Singh died leaving behind him his sons and daughters. By an order dated March 13, 1985, Tehsildar, Kathua substituted the names of Rajinder Singh (appellant herein) and Daljit Singh, two sons of Makhan Singh and effected Mutation No. 428 in Revenue Record.

7. Being aggrieved by the said entry in Revenue Record, Kuldip Kaur and Balbir Kaur (daughters of deceased Makhan Singh) preferred appeal before the Divisional Commissioner, Jammu, inter alia, contending that mutation made in favour of Rajinder Singh and Daljit Singh (sons) was illegal and the appellants who were daughters of deceased Makhan Singh were also entitled to the share in the property of their deceased father. The Divisional Commissioner, however, dismissed the appeal by an order dated January 29, 1990 observing that the succession devolved on two sons Rajinder Singh and Daljit Singh and daughters had no share.

8. Balbir Kaur preferred revision petition before the Financial Commissioner against the order passed by the Divisional Commissioner. But the revision

petition was also dismissed by the revisional authority on March 12, 1991. The review against the said order also met with the same fate.

9. Balbir Kaur, therefore, filed a Writ Petition No. 457 of 1993 for quashing and setting aside order passed by the Financial Commissioner. A prayer was made to allow the writ petition and to cancel mutation effected in favour of sons of deceased Makhan Singh by declaring mutation entry null and void. The learned single Judge, however, dismissed the writ petition.

10. The order passed by the learned Single Judge was challenged by filing a Letters Patent Appeal and as observed above, the appeal was allowed by the Division Bench setting aside all orders. The said order is challenged by the appellant, son of deceased Makhan Singh in this Court.

11. Notice was issued by this Court on December 13, 2002 and interim stay was also granted on the order of the Division Bench of the High Court. Leave was granted on July 25, 2005 and interim relief was ordered to continue.

12. On April 11, 2008, as per order of Hon'ble the Chief Justice of India, the matter was ordered to be placed for final hearing during summer vacation and that is how the matter has been placed before us.

13. The learned Counsel for the appellant contended that the Division Bench of the High Court was wholly wrong in allowing the Letters Patent Appeal and setting aside the orders passed by the Authorities as also by the learned single Judge. It was submitted that the Division Bench of the High Court was wrong in applying the provisions of Hindu Succession Act, 1956 ignoring the relevant provisions of law i.e. the Jammu and Kashmir Hindu Succession Act, 1956 as also the Jammu and Kashmir Tenancy Act, 1980. It was also contended that the view taken by the Division Bench was not in consonance with Section 3-A of the Agrarian Reforms Act, Section 67 of the Jammu and Kashmir Tenancy Act as also Rule 15-B(2) of Cabinet Order No. 578-C/1954.

14. It was urged that the contesting respondent herein was the daughter of Makhan Singh, who had already got married. She, therefore, could not be said to be a 'member' of Makhan Singh's family and was not entitled to inherit the property under the Jammu and Kashmir Act. According to the counsel, the action taken by the Authorities under the Tenancy Act and the order passed by the learned Single Judge were legal, valid and in accordance with law and could not have been interfered with in Letters Patent Appeal. It was, therefore, submitted that the impugned order deserved to be set aside by restoring the orders passed by the Authorities and confirmed by the learned Single Judge.

15. The learned Counsel for the respondents, on the other hand, supported the order passed by the Division Bench of the High Court and submitted that it was right in allowing the Letters Patent Appeal and in making the order. This Court in exercise of the power under Article 136 of the Constitution may not interfere with the order.

16. Having heard the learned Counsel for the parties, in our opinion, the High Court was not justified in entering into larger question in view the controversy before the Authorities under the Tenancy Act. From the facts stated above, it is clear that land was allotted to Makhan Singh as a Displaced Person and in Jamabandi 1966-67, his name was entered. Mutation was made in his favour by Entry No. 291 on October 19, 1966. After death of Makhan Singh in 1981, Tehsildar of Kathua entered names of sons of deceased Makhan Singh vide Mutation No. 428. The said action was challenged by respondent No. 2 herein (one of the daughters of Makhan Singh) and her sister Kuldeep Kaur. Their case was that being daughters, they were also entitled to inherit the property. The Authorities, in our opinion, unnecessarily entered into question of rights of parties as to title to the property.

17. It is well settled that Revenue Records confer no title on the party. It has been recently held by this Court in Suraj Bhan and Others Vs. Financial Commissioner and Others, , that such entries are relevant only for "fiscal purpose" and substantive rights of title and of ownership of contesting claimants can be decided only by a competent civil Court in appropriate proceedings.

18. It is clear from the record that grievance of respondent No. 2 daughter related to Mutation entry. If the Authorities under the Tenancy Act felt that the action was in consonance with law, it could have retained the entry. The inquiry, however, was limited to the entry in Revenue Records and nothing more. It had no bearing whatsoever as to right of ownership, inheritance or title to the property. In our opinion, therefore, neither the Authorities under the Tenancy Act nor the High Court could have entered into question of ownership, title or inheritance in the present proceedings and they ought to have decided the controversy limited to mutation entry in the Revenue Records.

19. The present appeal, therefore, deserves to be disposed of by leaving all the parties to take appropriate proceedings in accordance with law in a competent civil Court so far as substantive rights of ownership, title or inheritance are concerned. In view of the fact, however, that certain observations have been made and questions have been considered with regard to rights of sons and daughters in the property of father under the Hindu Succession Act as also under the Jammu and Kashmir Hindu Succession Act, we clarify that all those observations which were not relevant in view of the limited question before the Revenue Authorities, would have no effect in the proceedings before the Civil Court if such proceedings have been initiated in a competent Court.

20. We, therefore, dispose of this appeal by granting liberty to the parties to take appropriate proceedings in a competent Civil Court by making it clear that the observations made in the orders of Revenue Authorities as also by the High Court will not come in the way of the parties in a suit as and when proceedings have been initiated for the purpose of determination of substantive rights of ownership.

21. For the aforesaid reasons, the appeal deserves to be allowed and is

accordingly allowed by setting aside the order passed by the Division Bench and by granting liberty to the parties to take appropriate proceedings. On the facts and in the circumstances of the case, there is no order as to costs.