

(1965) 03 AHC CK 0044
In the Allahabad High Court
Case No : S.A. No. 193 of 1960

Smt. Chunbadi and others

APPELLANT

Vs

Rameshwar Singh and another

RESPONDENT

Date of Decision : 08-03-1965

Acts Referred:

Citation : (1965) 35 AWR 348

Hon'ble Judges : S.S. Dhavan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.S. Dhavan, J.—This is a Defendants second appeal from the concurrent decisions of the courts below decreeing the Plaintiff Respondents' suit for their ejectment from several plots of land in the village. The Plaintiff Respondents, Rameshwar and others; alleged that they were the bhumidhars of these plots but the delendant Appellants, Chunbadi and others, had taken forcible possession; that these Defendants on 8.9.1952 filed a suit claiming to be the cobhumidhars of the plots which was dismissed by the trial court and by the appellate court on 21.3.1956; that after this decision the Defendants took forcible possession; hence the suit. In the alternative the Plaintiffs pleaded that if the court found that the Defendants were in possession from an earlier date, this possession was permissive and the Defendants as licensees were liable to ejectment. The Defendants contested the suit and raised pleas which had been rejected in the earlier suit-as for example, that they were cobhumidhars. In the alternative they claim to be the adhivasis of the plots. A number of other pleas of a technical nature were taken which need not be considered by me as they were not pressed before me. The revenue court referred two questions to the Munsif's court-namely, (1) whether the Plaintiffs were bhumidhars of the plots and (2) whether the Defendants were co-bhumidhars of the plots. The learned Munsif held that the Plaintiffs were bhumidhars and that the Defendants could not claim to be co-bhumidhars or adhivasis as this claim was barred by res judicata in view of the

decision in the previous suit. The revenue court accepted these findings. It also rejected the Defendants' plea that the suit was out of time, and decreed the suit for ejectment. On appeal by the learned Additional Civil Judge, Hamirpur confirmed the findings and the decree of the trial court. The Defendants have come to this Court in second appeal.

2. Two questions have been pressed before me-first, that the courts below erred in not deciding the issue of an adhvasi on merits and holding that the question was barred by constructive res judicata; secondly, that the suit was barred by limitation. Learned Counsel for the Appellant argued that the court below erred in applying the doctrine of constructive res judicata to the issue of adhvasi as the Defendant's claim to be an adhvasi on the basis of his cultivatory possession in the year 1359F could not have been asserted in the earlier suit because the Act on which it was based had not been passed when that suit was filed. But this Act (Uttar Pradesh Land Reforms Supplementary Act XXXI of 1952) merely added another ground on which a person could claim to be an adhvasi. The class of adhvasis was created by the UPZA and LR Act of 1950 but the Defendants did not plead in the earlier suit that they were adhvasis of the land. I am inclined to agree with the court below that the claim of the Defendants to be regarded as adhvasis of the land is barred by the principle of constructive res judicata.

3. Moreover, on merits I think the claim has no substance. It is common ground that the Defendants were zamindars of the plots, and the court below has rightly held that a zamindar could not be an adhvasi of the land of which he was the zamindar on the date of vesting. To hold otherwise is against the very nature of the concept of adhvasi created under the Act. Learned Counsel was unable to cite a single decision of this Court holding that a zamindar could be an adhvasi of land of which he was the zamindar.

4. Learned Counsel then argued that the Plaintiff's suit should have been dismissed as beyond time. It is necessary to give a few dates. The previous suit in which the Defendants claimed a declaration of their rights as co-bhumidhars against the present Plaintiffs was filed on 8.9.1952. It was dismissed by the trial court on 19.1.1954 and by the appellate court on 24.3.1956. The present suit for ejectment was filed by the Plaintiffs on 25.6.1957. Two questions arise in this case-(i) whether the Defendants by filing the earlier suit for a declaration of their title as co-bhumidhars and claiming possession as such asserted a title adverse to that of the Plaintiff; if so whether the period of limitation for the present suit commenced on 8.9.1952 when the earlier suit was filed or 24.3.56 when it was finally dismissed by the appellate court.

5. In my opinion the first question must be decided against the Defendants. A licensee who files a suit for a declaration of his right as a co bhumidhar (or co-owner) does not set up a title adverse to the licensor, nor does his possession after the assertion of this right become adverse to the latter. The Court had held in the earlier suit filed by the Defendant that he was in possession as a licensee. But it is now argued that by asserting his claim as co bhumidhar he set up a title

adverse to the present Plaintiffs, and in spite of the rejection of his claim by the court, his possession became adverse to them. In my opinion, a claim by a licensee in possession that he is the joint owner of the land does not amount to an assertion of a title adverse to the licensor nor does it make his possession adverse. Adverse possession is exclusive and means a complete denial of the title of the other party. But a party which asserts that he is a joint owner with another concedes that both have an equal right and admit the right of the other party to joint possession of every portion of the land. If he continues in possession after asserting his right to joint possession, his possession is not exclusive but also on behalf of the other co bhumidhar (or co-owner) He cannot, in a subsequent suit by the co bhumidhar (or co-owner) set up his joint possession as adverse possession to the other coowner. A person claiming adverse possession must prove that the other party was excluded from possession, but joint possession is not exclusion from possession. In view of this finding, it is not necessary to decide the second question, and I hold that the Plaintiff's suit is not out of time.

6. The appeal is dismissed with costs.