(1972) 09 AHC CK 0066

In the Allahabad High Court

Case No : Sp. A. No. 616 of 1966

Smt. Lachma Devi and Others — APPELLANT

Vs

Board of Revenue and Others — RESPONDENT

Date of Decision : 01-09-1972

Acts Referred:

Citation : (1972) 42 AWR 763

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

Bench : Division Bench

Advocate : L.M. Pant, for the Appellant;

Final Decision : Dismissed

Judgement

Satish Chandra, J.—This special appeal arises out of a suit for cancellation of a sale deed.

2. Dhan Singh and Musa Singh, Respondents 9 and 10, on 1-9-1959 executed a sale deed in respect of their share in the Khaikari holding situate in village Pipna, district Almora, in favour of Respondents 3 to 8. The Appellants instituted a suit for cancellation of this sale, in a representative capacity, claiming it to be on behalf of the entire Khaikari body of the village. Their case was that village Pipna was a pucca Khaikari village. In law pucca Khaikari rights were heritable but not transferable. The sale deed was illegal and liable to be cancelled.

3. In defence it was pleaded by the vendees that they were also members of the Khaikari body of the village. A sale in their favour was valid.

4. The trial court upheld the plaint case and decreed the suit. On appeal the decree was affirmed. The Defendants preferred a second appeal Under Rule 14 of the Kumaun Tenancy Rules. The Commissioner, Kumaun Division, on 29-1-1959 allowed the appeal. He held that a transfer of Khaikari rights was not void ab initio but only voidable. The Khaikari body was entitled to challenge the transfer but in doing so they had to show reasonable and cogent reasons against the

transfer. In the present case no such reasons are forthcoming. The interests of the Khaikari body are not adversely affected because a transfer has been made in favour of some of the members of the Khaikari body. There are, therefore, no valid reasons for cancelling the sale deed. On these findings the suit was dismissed. The Plaintiffs then went up to the Board of Revenue in revision. The Board upheld the reasoning and the conclusion of the Commissioner and dismissed the revision. The dispute was carried by the Plaintiffs to this Court in a writ petition which was also dismissed. In the present appeal Mr. L.M. Pant appearing for the Appellants reiterated the plaint case and urged that as far back as 1930 the Board of Revenue had in the case of Dharma Nand v. Debi Dutt Selected Revenue Decision No. 13 of 1929-30 held that transfer of Khaikari rights was voidable at the instance of the Khaikari body. It was thus the discretion of the Khaikari body to sue for the setting aside of a sale. The suit could not validly be dismissed on the ground that the Plaintiffs must show that their interests have been adversely affected.

5. In Dharma Nand''s case the mother of the Plaintiff had, during the Plaintiff''s minority, executed the sale deed for legal necessity. The sale deed recited the necessity. The Plaintiff instituted the suit for cancellation of the sale deed under the guardianship of his uncle. One of the pleas advanced by the Plaintiff was that the sale was not for legal necessity. It was also pleaded that the Khaikari rights were not transferable and as such the sale was invalid.

6. The Board of Revenue held that the sale was for legal necessity. In regard to the transferability of the pucca Khaikari rights, the Board observed:

Sir Henry Ramsay, describing the position of the pakka khaikars said ''they are in all respects equal to proprietors with the exception that they cannot sell their holdings and they pay a small sum in addition to the quota of revenue due from the land recorded in their names.'' Later on as related on page 92 of Mr. Stowell''s Manual Colonel Fisher held that Khaikars in a wholly khaikari village cannot transfer their holding by sale or gift. Mr. Stowell went on to give reasons for doubting the correctness of this view and it is believed that the question has never come before the Board for final decision.

For the purposes of the present case the proposition may be accepted that Khaikars have no right of transfer but it is to be considered whether a transfer made under the circumstances of the present case is absolutely void or merely voidable. Such transaction is not definitely forbidden by any law and it is neither immoral nor contrary to the public interest. This being the case it must be held that the transaction was not void ab initio but that it can be challenged by any person having right to do so.

The hissedar has no rights in a pakka khaikari village beyond receiving the revenue and malikana at settlement and when khaikari holdings falls in owing to the death of a khaikar without leaving any heir the persons who benefit thereby are the surviving members of the khaikari body and not the hissedars.

From this it follows that the only person entitled to challenge a transfer of this nature is the khaikari body as a whole. The minor Plaintiff is also entitled to challenge it if he can show that it was made contrary to his interests. This as already shown is in no way established.

I would therefore hold that the suit was not barred by limitation but that no adequate ground has been shown for cancelling the transfer on the merits. I would set aside the order of the Commissioner and restore that of the Deputy Commissioner with costs to the Applicant in both courts and pleader''s fee of Rs. 15.

7. The Board held that the Khaikari rights were heritable. This is also clear from the decision of a Bench of this Court in Gaja Singh v. Musammat Uchabia D/- 7th January, 1929 and reported in Selected Revenue Decisions of Kumaun by T.D. Gairola (1933 Ed.) page 112. In this case it was held that reversioners were entitled to succeed to a pucca khaikari right on the death of the widow. Thus personal heirs are entitled to inherit these rights. Failing them the rights of a Khaikar in pucca Khaikari village revert to the Khaikari body and not to the proprietor called hissedar. It is because of this entitlement to succeed that the heirs as well as the Khaikari body have been held entitled to challenge a transfer of the Khaikari rights. The aforesaid judgment of the Board of Revenue shows that such a challenge can be made on the ground that it was contrary to their interests. For instance, if a transfer is made to a person who is not a member of the Khaikari body but a stranger, the Khaikari body may sue for the cancellation of the sale because by the introduction of a stranger the rights of the Khaikari body in the village may be said to be adversely affected. Since it was necessary for the Plaintiff to show that the sale was contrary to his interests, the Board went into the question whether the sale was for legal necessity. On the finding that it was for legal necessity, the suit was dismissed. This case, therefore shows that the law was that sale by a Khaikar was not void ab initio but was challengeable by a person having a right to do so, such persons being the heirs or successors of the transferor, including the Khaikar body.

8. Mr. Pant emphasised that the Board had held that the Khaikar had no right to transfer. This observation has to be read in the light of the other findings. The Board was at pains to emphasise that though Sir Henry Ramsay and Colonel Fisher had described that the pucca Khaikars transfer their holding by sale or gift, yet Stowell in his manual had given reasons for doubting the correctness of this view. It is true that the Board did not in this case discuss the matter further but contended itself by saying that for the purposes of that case the proposition might be accepted that Khaikars have no right of transfer. The Board then went on to emphasise that such a transaction is not definitely forbidden by any law and it is neither immoral nor contrary to the public interest. It cannot hence be held to be void ab initio. This mellows down considerably the earlier observation that Khaikars have no right of transfer. Reading the judgment of the Board as a whole, it appears to us that the true position was that the Khaikars have a right

of transfer; the transfer was voidable at the instance of the heirs or successors on a valid ground available in law, inter alia, on the ground that the sale was contrary to their interests.

9. In the present case the finding is that no such ground has been established. In that view, the suit was rightly dismissed.

10. We find no merit in this appeal and dismiss it with costs.