

(1982) 03 AHC CK 0024

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 932 of 1977

Surendra Kumar and Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 30-03-1982

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143,
143(2), 154, 176, 178

Citation : (1982) AWC 482 : (1982) RD 276

Hon'ble Judges : R.S. Singh, J

Bench : Single Bench

Advocate : G.N. Verma, for the Appellant; V.K.S. Chaudhary, M.C. Gupta and S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.S. Singh, J.—The Petitioners have filed this writ petition under Article 226 of the Constitution of India challenging the order of the Board of Revenue dated 31st December, 1976.

2. The facts of the case in brief are that Smt. Kamla Devi, Respondent no 3, filed a suit u/s 176 U.P. Zamindari Abolition and Land Reforms Act (hereinafter referred to as Act) against Shankar Lal, father of the Petitioners and Badri Prasad, Respondent No. 4 impleading Gaon Sabha. The suit was filed on the allegation that Plaintiff, Shankar Lal and Badri Prasad have got 1/3 share each in the disputed land. A preliminary decree was accordingly passed declaring all the 3 co-tenure-holders having 1/3 share each. The preliminary decree passed on 3-2-1966 was not challenged by any of the parties to the suit and became final.

3. On 16-3-1966, the Plaintiff filed an application that the total area of the holding in dispute is less than 3 1/8 acre, therefore, the same is required to be sold and for that purpose, the valuation of the plot in dispute be obtained. On receipt of the valuation of the land in dispute, the Plaintiff moved another

application on 21-11-1966 to the effect that she has no other land except the land in dispute whereas the other Defendants, co-tenure-holders have other land as well besides the land in dispute. Therefore, the land may be given to her on the aforesaid valuation. The Sub-Divisional Officer on the same date ordered that Shankar Lal and Badri Prasad have other land. The husband of Smt. Kamla Devi had also land. Therefore, all the three are in same position and the land be sold. An appeal was filed by Smt. Kamla Devi against the order of the trial court, which was allowed and the case came back before the Sub-Divisional Officer again, This time again, by order dated 26-11-1968, the Sub-Divisional Officer decided that other land of the other two co-tenure-holders are not used for agricultural purpose, therefore, all the three tenure-holders are in the same position and all the three are entitled to participate in this sale. The Plaintiff again challenged the order of the trial court in appeal. The first appellate court allowed the appeal on the finding that the land of the husband of the Plaintiff cannot be taken into consideration in this case and further that other two Defendant-co-tenure-holders have got other land. Therefore, the Plaintiff has got a preferential right to get the land in dispute on the valuation obtained in this case. The order of the Addl. Commissioner was affirmed by the Board of Revenue and the second appeal filed by Shankar Lal. was dismissed. The Petitioners, who are the sons of Shankar Lal, have challenged the order of the Board of Revenue aswell as that of Addl. Commissioner in the present writ petition before this Court.

4. There is no doubt about the fact that the total area of the holding in dispute is less than 3 1 /8 acre and according to the preliminary decree all the three tenure-holders have got 1/3 share each. According to the Plaintiff she has got no land other than the land in dispute whereas other two co-tenure-holders have got other land as well. Therefore, she has got preferential right of purchase. The case of the other Defendant-co-tenure-holder Shankar Lal was that other land held by him had been declared to be Abadi u/s 143 of the Act whereas the husband of the Plaintiff has got certain land. Therefore, he has the preferential right of purchase and not the Plaintiff. Badri Prasad, the other Defendant-co-tenure-holder also put up his case for preferential right of purchase.

5. Section 176 of the Act gives right to file a suit for division of holding or holdings to bhumidhar and sirdar impleading Gaon Sabha concerned. Section 178 provides that where the court finds the aggregate of the holding or holdings to be devided does not exceed 3 1 /8 acres, the court shall instead of proceeding to devide the holding or holdings, direct the sale of same and distribution of proceeds thereof, in accordance with such principles as may be prescribed. In case, where the area is found to be less than 3 1/8 acre, u/s 179 of the Act the Court shall order for valuation according to the rules and then the court shall offer to sell the same at the price thus ascertained to the co-sharers in the order of preference. If there is only one tenure-holder having preferential right of purchase, he is entitled to get the land on the valuation obtained and the sale proceed is to be distributed amongst other co-tenure-holders according to their

respective shares in the holding in dispute. According to Section 180 of the Act, if two or more co-tenure-holders having an equal preferential rights severally ask for leave to buy, the court shall order the sale of the same to such one of them as offers to pay the highest price above the price ascertained u/s 179. Rules have also been framed in this regard.

6. The question for consideration in this case is which of the co-tenure-holders has got a preferential right of purchase ? All the three co-tenure-holders are co-sharers of equal share. Now it has to be considered whether any one or all of them have got land other than the land in dispute. The Plaintiff has got no land other than the land in dispute. But no doubt, her husband is tenure holdar of other land. The question is as to whether for the purpose of this case, the land of the husband could be taken into consideration ? Section 154 places restriction on the transfer by a bhumidhar. According to this section no bhumidhar shall have the right to transfer by sale or gift, any land other than tea gardens to any person where the transferee shall, as a result of such sale or gift, become entitled to land which together with land, if any, held by his family will in the aggregate, exceed 12.50 acres in Uttar Pradesh. For purpose of this section, the family shall mean transferee, his or her wife or husband as the case may be and minor children, and where the transferee is a minor also his or her parents. Sections 179 to 181 contemplate sale to co-tenure-holders and no restriction as contemplated u/s 154 of the Act has been placed in acquiring sale under these provisions. Section 154 contemplates a voluntary sale and not sale through Court. A tenure-holder getting land of the other tenure-holders of the holding through the provisions of Section 179 to 181, does not get through voluntary sale but he purchases through order of the Court and a decree is passed to that effect. In Gaon Sabha v. Deputy Director of Consolidation 1968 RD 168 it has been held that "Section 154 places a personal restriction upon the bhumidhar himself in relation to his right of transfer voluntarily. That restriction is not applicable to compulsory sales."

Therefore, in the instant case, even if the husband of the Plaintiff is the tenure-holder of some other land, that could not be taken to be the land of the Plaintiff who has to purchase the land of the holding from other tenure-holders under the provisions of the Act through the decreer of the Court.

7. Now, it has to be considered whether the other two Defendant-co-tenure-holders have got some other land than the holding in dispute. There is no doubt that at the lime when the preliminary decree was passed, they had other land other than the holding in dispute but according to Shankar Lal, he subsequently obtained a declaration u/s 143 of the Act that the other land was Abadi and not land. From the bare perusal of Section 143 (2), it is clear that upon the grant of declaration under this section, the provisions of the Act shall cease to apply to the bhumidhar and he shall thereupon be governed in the matter of devolution of the land by personal law. Therefore, so long the declaration is not made, he continued to be governed by provisions of the Act. This declaration granted u/s

143 of the Act in favour of Shankar Lal was not in existence when the preliminary decree was passed. According to the learned Counsel for the Petitioner, subsequent events can be taken into consideration. He placed reliance on *Sheo Kumar v. Board of Revenue* 1973 RD 321. In that case, the Plaintiff on the death of his father immediately became entitled to other land in the same circle. Therefore, the Plaintiff could no longer claim to be a co-tenure-holder who does not hold any land in the circle other than his interest in the holding in dispute. Consequently, he did not have any right of preferential purchase. But in that case voluntary act of transfer made by the Defendants during the pendency of litigation was not recognised in the proceeding of sale of the holding. It was held that the sale of holding could be ordered between co-sharers whose rights had been declared by the preliminary decree. Subsequent transfers by the co-sharers in holding could not affect the question of sale of the holding amongst the co-tenure-holders. Therefore, this case does not support the case of the Petitioners.

8. In *Rameshwar and Others Vs. Jot Ram and Another*, relied upon by the learned Counsel for the Respondents, it has been held that:

It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceedings. This is an emphatic statement that the right of a party is determined by the facts as they exist on the date the action is instituted. Granting the presence of such facts than he is entitled to its enforcement. Later, developments cannot defeat his right. The court's procedural delays cannot deprive him of legal justice or rights crystallised in the initial cause of action.

Courts can however take note of subsequent events and mould the relief accordingly but this can be done only in exceptional circumstances. Rights vested by statute cannot be divested by this equitable doctrine.

9. Moreover, the declaration obtained by Shankar Lal had been challenged by the Plaintiff-Respondent on the grounds that it was obtained behind her back without her knowledge or information and she was no party to that proceeding. The correct position is that originally rights of the parties are decided on the date of the suit and it is only in exceptional circumstances that the court can take note of subsequent events and mould the relief accordingly. However all types of subsequent events can possibly never be taken into consideration otherwise one transfer or the other event may go on and the case may never be finally decided. This declaration came in existence much after the preliminary decree became final. In this case the rights of the parties are to be taken into consideration on the date when the share is determined and the court directs for the sale of the same, therefore, on the relevant date, undoubtedly, Shankar Lal, the father of the Petitioners had land other than the disputed land and they had no preferential right over the right of the Plaintiff-Respondent.

10. In view of the above discussions, I am of the view that appellate courts have taken a correct view that Smt. Kamla Devi, Plaintiff-Respondent No. 3 had a

preferential right of purchase of the holding in dispute. No illegality has been shown to have been committed by the Board of Revenue which may justify interference in the writ jurisdiction.

11. In the result, the petition fails and is accordingly dismissed without any order as to costs.