Debi Prasad And Ors. vs Khelawan And Ors. on 30 September, 1955

Equivalent citations: AIR1957ALL67, AIR 1957 ALLAHABAD 67, 1956 ALL. L. J. 13

JUDGMENT

Agarwala, J.

1. This is a special appeal against an order of a learned Single Judge of this Court dismissing a writ petition. The respondents along with several other persons made an application to the Sub-Divisional Officer, Dumariaganj, on 6-3-1953, praying that an enquiry be held as to their possession over certain land lying in village Tandauthi. It was not stated in the application under what provisions of law it was being made, but it is conceded that this was an application under the U. P. Land Reforms (Supplementary) Act (Act 31 of 1952).

Although the year was not mentioned in the application it was probably intended that the enquiry was to be made about the possession of the applicants in the year 1359 Pasli. Such an enquiry is envisaged in Section 4 of the aforesaid Act upon an application made within six months from the commencement of the Act. The Act came into force on 7-11-1952 and the application having been made on 6-3-1953 was within time.

2. Upon this application the Sub-Divisional Magistrate ordered the Tahsildar to make an enquiry and to submit his report. The Tahsildar made an enquiry through the Girdawar Qanungo who appears to have gone on the spot and enquired from the applicants about the details of the plots in respect of which they wanted an enquiry to be made.

As already stated, the plots were not mentioned in the application nor were the names of the zamindars mentioned. The Girdawar Qanungo reported that as neither the plots in possession of each individual applicant were known nor the names of the zamindars were known, it was impossible to make the enquiry about the possession of the applicants and he suggested that the application be dismissed and the applicants be directed to file a regular suit for correction of papers.

This report was forwarded by the Tahsildar to the Sub-Divisional Officer with the remark that the application may be filed, and the applicants should be asked to file a regular case for correction of the papers. When this report came to the Sub-Divisional Officer he passed an order on 3-6-1953 to the following effect :--

"Seen File. Inform the applicant to file a regular suit."

3. Later on, on 1-7-1953, a second application was made by some of the original applicant including the present respondents. This application is not before us. but we are informed that this was an application for an enquiry to be made as to the possession of the applicants and probably in this application the details of the plots in respect of which the enquiry was sought to be made were given.

4. On 21-7-1953 this application was dismissed as barred by time. It will be seen that the application of 1-7-1953 was made beyond six months of the commencement of the Act.

5. A third application was made by the respondents on 4-8-1953. This application is also not before us, but we presume that under this application the respondents wanted enquiries regarding their possession in 1359 Fasli over the plots which were specified in the application.

Upon this application the Sub-Divisional Magistrate passed an order saying that as no local enquiry was done on the first application and the applicants were directed to file regular suits "I think an enquiry under that section (Section 4) should have been done and the application should not have been summarily rejected". He went on to observe that "I, therefore, review that order and hold that enquiry shall be done on that application now regarding possession of the applicants in 1359 Fasli. "It is this order which was challenged by the appellants by means of a Writ application presented to this Court which was dismissed by the learned Single Judge.

6. The main ground upon which the order of the Sub-Divisional Officer was challenged was that the Sub-Divisional Officer had no power to review the order dated 3-6-1953 and to order an enquiry.

7. The learned single Judge dismissed the petition under Article 226 of the Constitution on two grounds : Firstly, that the order of 8-12-1953 was passed in the course of proceedings which did not decide any legal right of the parties and therefore could not be made the subject matter of a Writ petition; and secondly, that the petition was premature because the Sub-Divisional Magistrate had only ordered that an enquiry should be made and no final order upon the enquiry had been made so far.

8. Against this order the above special appeal has been filed and it has been urged that the order did affect the legal rights of the parties and that the order reviewing the earlier order of the 3rd June could be quashed by the issue of a writ of certiorari and further proceedings regarding an enquiry as to possession are being held without jurisdiction and could be quashed by the issue of a writ of prohibition.

It has been further urged on the merits that the Sub-Divisional Officer had no power of review of the previous order passed by his predecessor as the power was not conferred on him by the aforesaid Act. It has been further urged that, even if the officer had the power to review the earlier order, the conditions for exercising the power were totally absent and that therefore he exercised a jurisdiction not vested in him by law.

9. The U. P. Land Reforms (Supplementary) Act is an Act which is intended to supplement the provisions of the U. P. Zamindari and Land Reforms Act for certain purposes.

By Section 3 it is provided that persons in cultivatory possession in 1359 Pasli not being persons who as a consequence of vesting under Section 4, U. P. Zamindari Abolition and Land Reforms Act had become Bhumidhars, Sirdars, Adhivasis or Asamis under Sections 18 to 21 of the said Act, shall become either Asamis or Adhivasis according to the circumstances mentioned in Clauses (a) and (b) of Section 3 and shall be entitled to all the rights and liabilities conferred or imposed upon an Asami or Adhivasi in the principal. Act. Then, under Section 4 a provision is made for an enquiry being made by a Special Officer. The section runs as follows :--"(1) With a view to ascertain whether any person referred to in Sub-section (1) of Section 3 was in cultivatory possession of the land during 1359 Fasli, the State Government may, as soon as may be, alter the commencement of this Act, appoint an officer, not lower in rank than an Assistant Collector of the Second class, for the correction of the record of rights for 1359 Fasli in any area.

2. It shall be the duty of such officer either suo motu or on the application of any person presented to him within six months of the date of commencement of this Act, after such local investigation as he may consider necessary to enter the name of every such person as occupant of the land in the record of rights for the year 1359 Fasli, any law to the contrary notwithstanding."

Section 5 then, provides :--

> "The entry made in the record of rights in pursuance of Section 4 shall be deemed to be correct unless the party challenging proves it to be wrong."

The effect of these provisions clearly is that if as a result of an enquiry made by the Special Officer under Section 4 it is found that a certain person was in cultivatory possession in 1359 Fasli, then an entry to that effect shall be made in the revenue papers and such an entry will be deemed to be correct unless the contrary is established. From the fact that the entry will be deemed to be correct, it clearly follows that the finding that he was in cultivatory possession in the year 1359 Fasli will also be deemed to be correct, unless the contrary is established.

Under Section 3 a person who is found to be in cultivatory possession of the land during 1359 Fasli will get the rights of an Asami or Adhivasi. It is clear, therefore, that where after an enquiry under Section 4 it is found that a certain person was in cultivatory possession in 1359 Fasli, and an entry is made in the record of rights, then the entry has the effect of conferring upon the person so found to be in cultivatory possession the right of an Asami or Adhivasi so long as the entry stands and is not set aside in other proceedings.

The contention of the learned counsel for the appellants that the enquiry under the Act affects the rights of parties must be accepted. A person found to be in cultivatory possession in the year 1359 Fasli gets certain specified rights of tenancy even though these rights are liable to be questioned in separate proceedings.

10. The second ground also upon which the petition was dismissed does not, with respect, appear to be sound. The enquiry which is now being proceeded with before the Sub-Divisional Officer is the outcome of an order setting aside the order of dismissal dated 3-6-1953. If the Sub-Divisional

Officer had no jurisdiction to review the order of 3-6-1953, his order setting aside that order is clearly vitiated and the enquiry which he is holding as a result of quashing the order of 3-6-1953 is also being held without jurisdiction.

Even though, therefore, no final order has been passed upon the enquiry, the enquiry itself is being held where no jurisdiction exists of holding it and thus it is a case which calls for the exercise of the jurisdiction of this Court to issue a writ of certiorari to quash the order by which the order of 3-6-1953 was set aside and also to issue a writ of prohibition prohibiting the officer concerned from proceeding with the enquiry, provided that it is held that the officer concerned had no jurisdiction to review that order.

11. This brings us to the merits of the application of the appellants. The Land Reforms (Supplementary) Act by itself does not make any provision for a review of the order of the Sub-Divisional Officer. It was contended on behalf of the respondents that this power may be inferred on two grounds:--First that there is inherent jurisdiction in every Court to review its own orders, and second that the provisions of review contained in Order 47 Rule 1 Civil P. C., apply either by virtue of Section 141, Civil P. C., or by reason of Section 341, U.P. Zamindari Abolition and Land Reforms Act, 1951.

12. As regards the inherent power of Courts of law to modify or set aside their orders, the law may be stated thus:

13. As a general rule no Court or Judge has power to rehear, review, alter or vary any judgment or order after it has been entered or drawn up respectively, see Halsbury's Laws of England (Hailsham Edition) Vol. 19 p. 260; see Order 20 Rule 3, Civil P. C.

14. In 'Drew v. Wills; Ex Party Martin', (1891) 1 QB 450 (A), it was stated by Lord Esher M. H.-

> "No Court has such a power of setting aside an order which has been properly made, unless it is given by Statute."

The same view was expressed in 'Hession v. Jones', 1914-2 KB 421 (B), 'Charles Bright & Co., Ltd. v. Seller', 1904-1 KB 6 (C), 'Baij Nath Ram Goenka v. Nand Kumar', ILR 40 Cal 552 (PC) (D), 'Nanak Chand Shadi Ram v. Mahabir', AIR 1935 All 403 (E).

15. This rule is based on the principle of finality of litigation--'Flower v. Lloyd', (1879) 10 Ch D 327 (333) (F).

16. But the rule is subject to certain qualifications.

1. Until a judgment or order has been delivered and signed there is inherent in every Court the power to vary its own orders so as to carry out what was intended and to render the language free from doubt, or even to withdraw the order so that the decision may be recognised--Halsbury's Laws of England (Hailsham Edition) Vol. 19, p. 261; 'Lawrie v. Lees', (1881) 7 AC 19 (35) (G).

2. After the judgment or order has been entered or drawn up or signed, there is power both under Section 152, Civil P. C., and inherent in the Judge who gave or made the judgment or order to correct any clerical mistake or error arising from any accidental slip or omission so as to do substantial justice and give effect to his meaning and intention (1881) 7 AC 19 (G).

3. If an order for judgment has been made or judgment entered without notice to a party when that party had the right to be heard, the Court or Judge may set it aside--The Bolivier 1916-2 AC 203 (H); Halsbury's Laws of England (Hailsham Ed.) Vol. 19, p. 263.

4. If an order has been signed by inadvertence or failure of memory when it was intended that it should not be signed at that stage, the Court or Judge may recall the order--Jai Karan v. Panchaiti Akhara Chota Naya Udasi Nanak Shahi', AIR 1933 All 49 (I).

5. Where a decree has been passed against a dead person, the order may be vacated and the case reheard--Debi Baksh Singh v. Habib Shah', ILR 35 All 331 (PC) (J). The same rule applies to an order passed against a company which has already been dissolved or which was non-existent--Lazard Brothers & Co. v. Barque Industrielle de Moscou 1932-1 KB 617 (624) (K), S. C. on appeal Lazard Brothers & Co. v. Midland Bank Ltd., 1933 AC 289 (296) (L).

6. A Court has larger power of modifying or getting aside interlocutory orders than it has in respect of final orders. Thus an order for sale of unsaleable property may be set aside--Tafazzul Hussain Khan v. Raghoonath Prasad', 14 Moo Ind App 40 (PC) (M).

17. It will thus be seen that unless authorised, by Statute a Court or Judge has no inherent power to set aside or modify a final order once made merely because it is wrong. None of the grounds on which Judge may exercise his inherent power to modify or alter his previous order exist in the present case.

18. As regards the second ground the provisions under Section 141 make the "procedure" relating to suits applicable to other proceedings. The provisions relating to review and appeals do not become applicable to all proceedings by virtue of Section 141 as they are provisions not so much of "procedure" as of "substantive rights", vide 'Mt. Siraj Fatma v. Mahmood Ali', AIR 1932 All 293 (FB) (N), 'Mt. Abhilaki v. Sada Nand', AIR 1931 All 244 (PB) (O), 'Anantharaju Shetty v. Appu Hegade', AIR 1919 Mad 244 (P). .

19. Section 341, U. P. Zamindari Abolition and Land Reforms Act provides :--

> "Unless otherwise expressly provided by or under this Act, the provisions of the Indian Court-fees Act, 1870, the Code of Civil Procedure (Act V 5 of 1908), and the Indian Limitation Act, 1908, shall apply to the proceedings under this Act."

As this section makes all the provisions of the Code of Civil Procedure applicable to the proceedings under the U. P. Zamindari Abolit on and Land Reforms Act, 1951, the provisions of review are applicable to such proceedings. But the section clearly refers to the proceedings under the U. P.

Zamindari Abolition and Land Reforms Act and does not of its own force refer to the U. P. Land Reforms (Supplementary) Act 1952.

But is urged that this later Act should be treated as part of the U. P. Zamindari Abolition and Land Reforms Act. Assuming, without deciding, that the U. P. Land Reforms (Supplementary) Act 1952 must be so treated, and that by virtue of Section 342 the power of review as provided in Order 47 Rule 1 Civil P. C., is vested in the sub-Divisional Officer acting under the aforesaid Act, no case has been made out for a review of the order dated 3-6-1953 under the provisions of Order 47 Rule 1, Civil P. C., i.e. upon the grounds of (a) fresh evidence, (b) error on the face of the record or (c) for other sufficient reason.

20. In the present case, as we have already stated, the application dated 6-3-1953 did not specify the plots in respect of which investigation was desired. The Girdawar Qanungo reported that in view of this omission and in view of the fact that the applicants were not able to specify the plots which each individual applicant as sorted to be in his possession in the relevant year, the enquiry could not be made and the application was bound to be dismissed. This report was the basis of the order of the Sub-Divisional Officer passed by him on 3-6-1953.

It cannot be said that the order of the Sub-Divisional Officer was erroneous on the face of the record. There is no question of fresh evidence in the case. Sufficient reason mentioned in Order 47 Rule 1, Civil P.C. must be ejusdem generis with the other two grounds on which a review may be sought. No such ground exists in the present case.

21. I am therefore of opinion that the order of 8-12-1953 by which the Sub-Divisional Officer set aside the previous order of 3-6-1953 was made wholly without jurisdiction and the subsequent proceedings which he has ordered to be proceeded with are also without jurisdiction. In the circumstances the order of the 8th December must be quashed and the officer must be restrained from proceeding with the enquiry.

22. I would, therefore, allow the appeal, set aside the order of the learned single Judge, allow the application of the appellant under Article 226, and issue a writ of certiorari quashing the order of the Sub-Divisional Officer dated 8-12-1953, and direct that he shall abstain from proceeding with the enquiry which he has ordered to be held.

23. The appellant is entitled to his costs of the proceedings before the learned single Judge as well as of this appeal from the respondents.

Mootham, C.J.

24. I agree that this appeal must be allowed. The Sub-Divisional Officer had no statutory power to review his predecessor's order dated 3-6-1953, and in my opinion he had no inherent power to do so. That order was not made inadvertently nor under any misapprehension as to the fact; on the contrary it was made after consideration of the Qanungo's report and was in my opinion a proper order in the circumstances. I agree with my brother that the provisions of the Code of Civil

Procedure have no application, and for the reasons which he has given that this is a case in which a writ of certiorari should issue and further proceedings in the enquiry be prohibited.

BY THE COURT:

25. We allow the appeal, set aside the judgment of the learned single Judge and quash the order of the Sub-Divisional Officer dated 8-12-1958 and direct that he shall abstain from proceeding with the enquiry which he has ordered to be held.

26. The appellant shall have his costs of the proceedings before the learned single Judge and of this appeal.