

Mata Badal Pandey vs Bal Karan Pandey And Ors. on 15 November, 1950

Equivalent citations: AIR1953ALL508, AIR 1953 ALLAHABAD 508

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

V. Bhargava, J.

1. This appeal arises out of a suit brought by the plaintiff-respondents for a declaration that they are the sir-holders of the plots in suit and for possession over those plots by ejectment of the defendant-appellant.

2. It is the admitted case of both the parties that the plots in suit originally belonged to one Bam Jas who was the sole and separate proprietor of all of them. Ram Jas had three brothers Sheo Ratan, Sri Nivas and Mata Badal, who were separate from him. The present appellant is Mata Badal and the present respondents are the sons or Sheo Batan and Sri Nivas. In 1921 Ram Jas executed a registered deed of agreement by which he gave possession over the plots in suit to his widowed daughter-in-law Sm. Bachcha in lieu of her maintenance. She entered into possession over these plots in pursuance of that agreement. Thereafter Bam Jas died. Before the death of Sm. Bachcha, Mata Badal transferred all his property including his proprietary rights in the plots in suit to one Gopi Chaubey. Sm. Bachcha died some time in the year 1940. Thereafter a dispute arose as to who was entitled to mutation in respect of these four plots of land. The Commissioner who finally decided the mutation proceedings directed that mutation be made in favour of Mata Badal appellant. Consequently, the respondents brought this suit for declaration of their rights in the plots in suit and for possession against Mata Badal.

3. Both the lower Courts held that Mata Badal had transferred his proprietary rights in the lifetime of Sm. Bachcha and the right to possession over the plots in suit by either of these two parties came into existence only after her death and since by the time of her death, Mata Badal had already lost his proprietary rights in these plots, he could not claim 'sir' rights in them nor could he claim ex-proprietary rights. They consequently held that the respondents had become the sole 'sir-holders' of these plots and, therefore, decreed the suit in their favour.

4. Mata Badal has come up in appeal challenging these decisions by the two lower Courts. It appears to me that the view taken by the two lower Courts that no ex-proprietary rights accrued to Mata

Badal at all is incorrect though their decision that he should not claim any 'sir' rights is perfectly correct. It has already been found by the lower Courts that Ram Jas had not transferred any proprietary rights in these plots to his daughter-in-law, Sm. Bachcha. All that he had done was to give possession of these plots to Sm. Bachcha to cultivate them and to enjoy them in lieu of her maintenance. Consequently, when Ram Jas died, his proprietary and 'sir' rights in these plots passed, according to the Law of Succession, to his three brothers, Sheo Ratan, Sri Nivas and Mata Badal, in equal shares. At the time when Mata Badal transferred his proprietary rights in favour of Gopi Chaubey, Mata Badal possessed one-third proprietary rights and one-third 'sir' rights in these plots; the transfer being only of proprietary rights, ex-proprietary rights in one-third of these plots automatically accrued in law to Mata Badal at the time of that transfer. The actual possession at that time was with Sm. Bachcha on behalf of all the three brothers of Ram Jas, viz., Sheo Ratan, Sri Nivas and Mata Badal. Even after the transfer of his proprietary rights by Mata Badal, Sm. Bachcha continued to be in possession as before so that it must be held that she continued in possession on behalf of all the three brothers, Sheo Ratan, Sri Nivas and Mata Badal. Naturally, after that transfer, it must be held that she was in possession on behalf of Sheo Ratan and Sri Nivas who were the 'sir-holders' and on behalf of Mata Badal who was ex-proprietary tenant, each of the three being entitled to one-third share in these plots in exercise of these rights. The possession of Sm. Bachcha must, therefore, be deemed to be the possession of Mata Badal also in addition to its being on behalf of Sheo Ratan and Sri Nivas. When Sm. Bachcha died in 1940, Sheo Ratan, Sri Nivas and Mata Badal acquired the right to take actual possession over these plots. In taking possession, they were entitled to one-third share each, Sheo Ratan and Sri Nivas as 'sir-holders' of their shares and Mata Badal as ex-proprietary tenant of his share. It, however, appears that Mata Badal took possession over the entire plots to the exclusion of Sheo Ratan and Sri Nivas or their heirs. In these circumstances, it is obvious that if the rights of all the three parties are properly enforced, all the three of them should be put in joint possession over these plots of land. In accordance with the provisions of the U. P. Tenancy Act, 1939, which applied at the time when Sm. Bachcha died, the duty rested on the revenue authorities to demarcate the area which had become the ex-proprietary tenancy of Mata Badal and to leave the remaining area in possession of the heirs of Sheo Ratan and Sri Nivas as their sir. The law nowhere lays down that it is the duty of the ex-proprietary tenant to have such demarcation made. Ex-proprietary rights accrue to a proprietor in his 'sir' land automatically as soon as he transfers his proprietary rights and in case, even after the transfer, that proprietor continues in possession of the land, his ex-proprietary rights cannot get extinguished. It is only in those cases where the person acquiring ex-proprietary rights is out of possession that it is necessary for him to put in a claim in respect of his exproprietary rights. Where, as in this case, the person acquiring ex-proprietary rights is in actual possession either himself or through another person holding possession on his behalf, there is no need for claiming ex-proprietary rights. In this case, therefore, there was no question of Mata Badal having to claim his exproprietary rights at any time after he had made the transfer of his proprietary rights in favour of Gopi Chaubey. The question of putting forward his claim in respect of ex-proprietary rights could arise only after the death of Sm. Bachcha and, at that time, he only came into possession himself. Again, therefore, there was no question of his claiming ex-proprietary rights and asking for demarcation or partition.

5. The contention on behalf of the respondents that Mata Badal has lost his rights because he failed to claim his ex-proprietary rights after he had made his transfer in favour of Gopi Chaubey has,

therefore, no force at all. In the present case, the rights of the parties, as they exist now, require that all the three be put in joint possession but, in accordance with the law now in existence, demarcation has to be made by the revenue authorities separating the one-third ex-proprietary tenancy area of Mata Badal appellant from the two-thirds 'sir' area of the respondents. Of course either party can move the revenue authorities to do so. In this case, the proper order would be that the respondents be put in joint possession with the appellant.

6. As a result, I partly allow this appeal and amend the decree passed by the lower Court inasmuch as the suit of the plaintiff-respondents will be decreed only for joint possession with the defendant-appellant. In the circumstances of this case, I would direct parties to bear their own costs throughout.