

Sheo Behari Singh And Anr. vs Raja Ram on 7 March, 1951

Equivalent citations: AIR1952ALL174, AIR 1952 ALLAHABAD 174

JUDGMENT

Chandiramani, J.

1. This is the plaintiff's second appeal against the appellate decree of Sri Abul Qasim Zaidi, Civil Judge, Sitapur, dated 5-2-1945.

2. Plaintiff Hanwant Singh, who died during the pendency of the present appeal and is now represented by his son Sheo Behari Singh and his grandson Maheshwar Bus Singh was a cosharer in patti No. 2 in village Kathwa. In that Patti lies grove plot No. 67. Ram Ghulam, maternal grand-father of Raja Ram respondent, was its grove-holder. According to the plaintiff Ram Ghulam died in 1934 and was succeeded by the defendant respondent, who used to live with him. The plaintiff's case was that in 1937 or so Raja Ram abandoned the grove and went away to live in village Shivpuri, a village not owned by the zamindars of the grove and that according to the village custom the grove thus escheated to the zamindars. The plaintiff claimed in these circumstances to recover possession from Raja Ram, whom he alleged to be a trespasser.

2a. The defence was that Raja Ram inherited the grove from his maternal grand father on his death in 1930, that he never lived with his maternal grand-father and the cause of action, if any, arose in 1930 and as the suit was filed in 1944 it was time barred. The custom pleaded by the plaintiff was denied and it was stated that even if such a custom did exist it ceased to be effective in view of the provisions of Section 206 (a), U. P. Tenancy Act of 1939.

3. The trial Court hold that Ram Ghulam. died in 1930 and Raja Ram defendant inherited the grove from him, that Raja Ram never lived with his maternal grand-father and the suit was barred by time. It held that the custom of escheat pleaded by the plaintiff was proved, but it had no effect in view of the provisions of Section 206 (a), Tenancy Act of 1939. In the result the suit was dismissed.

4. On appeal the learned lower appellate Court has held that Ram Ghulam died in 1931 and not in 1930 that at the time of his death Raja Ram was living with him, that Raja Ram abandoned the grove in 1837, that the custom of escheat was proved, but as Section 266 (a) was retrospective in operation the custom had no effect. It held that the suit was not barred by time. It held that in view of the provisions of Section 206 (a), Tenancy Act, the plaintiff's suit must fail. The appeal was accordingly dismissed.

5. The only point now urged in appeal is that the lower appellate Court was wrong in holding that Section 206 (a), Tenancy Act, is retrospective in operation and the custom proved does not in the circumstances affect the rights of the defendant-respondent, I have heard the learned counsel and

am satisfied that the view of the learned lower appellate Court is incorrect.

6. Section 206, U. P. Tenancy Act of 1938 deals with the rights and liabilities of a grove-holder under that Act, Section 266 (a) reads :

"Notwithstanding anything in this Act, or any custom or contract to the contrary the rights of a grove-holder shall, subject to the provisions of Clauses (a) and (b) and Clauses (d) to (f) of Section 45 which shall apply to grove holders as they apply to tenants, subsist so long as grove-land retains its character as such. On the land ceasing to be grove-land the holder shall become a hereditary tenant of such land."

The reference to the sub-clauses of Section 45 is a reference to the mode in which tenancies become extinguished and so Clause (a) of Section 206 also mentions the manner in which the rights of grove holders are extinguished.

7. If it can be shown that Raja Ram defendant-respondent is a grove holder under the U. P. Tenancy Act of 1939, then the provisions of Section 206 (a) will apply and the custom will not apply at all. A grove-holder under the Tenancy Act, 1939, is defined in Section 205. It has been found as a fact that Ram Ghulam was the grove-holder. Under Section 3 (1) of the Act unless there be something repugnant in the subject or the context, all words, expressions used to denote the possessor of any right, title or interest in land whether the same be proprietary or otherwise, shall be deemed to include the predecessors and successors in right title or interest of such person. If, therefore, Raja Ram can be shown to be in possession as successor-in-interest of Ram Ghulam at the commencement of the Tenancy Act of 1939, he would be a grove-holder and he will have the rights under Section 206 and the custom of escheat will not take away his rights.

[8] Now it is a finding of fact, which cannot be challenged in second appeal, that there is a custom of escheat and further that the abandonment on which the escheat takes effect in favour of the zamindar took place in 1937. The right of Raja Ram, therefore, to hold the grove as successor-in-interest of Ram Ghulam came to an end in 1937 and his possession thereafter could not be in any capacity other than that of a trespasser. On the commencement of Tenancy Act of 1939, therefore, he would not be a grove-holder, but a trespasser and Section 206, Tenancy Act 1939 would not apply to him and the custom established must operate against him.

9. It will be seen that in 1937 Raja Ram lost his right to possession and the plaintiff as one of the zamindars acquired the right to possession. Normally every enactment is deemed to be prospective in operation and Section 6, U. P. General Clauses Act 1904, lays down that:

"Where any United Provinces Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not

(a) revive anything not in force or existing at the time at which the repeal takes effect
or

(e) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed.' There is nothing in Section 206 (a), Tenancy Act of 1939 to show that rights lost by grove holders before the Act came into force were being revived or vested rights of the zamindars, the owner of grove land, were being taken away. Section 206 (a) is, therefore, not retrospective in its operation.

10. The learned lower appellate Court relied on *Shyam Manohar v. Anandi Din* 1943 Oudh W. N 93 in which it was held that Section 206 (b), Tenancy Act, 1939 was retrospective, This case is clearly distinguishable from the case with which I am dealing. The express language of Clause (b) in Section 206 shows that the provision there is retrospective to a specified extent. The learned counsel for the respondent also referred me to *Salik Ram v. Subedar Singh*, A. I. r. (35) 1948 Oudh 270. That case is entirely irrelevant and has no bearing on the point now under consideration. In that case the question was whether a grove-holder Can sell his interest in trees notwithstanding a custom to the contrary. On the express language of Section 206 it was held that every holder of interest of a grove, holder and not only the grove-holder himself can exercise the right of transfer.

11. The learned counsel for the appellant referred me as to a decision of the Board of Revenue in *Madho Prasad v. Chandra Shelchar* 1945 R. d. 463. In that case a grove had ceased to be a grove before the Tenancy Act of 1939 came into force. The grove holder had also not planted any trees within the time allowed to him under Clause (b) of Section 206. The zamindar sued to eject the grove-holder on 30-1-1943 as a trespasser, The grove- holder claimed to be a statutory tenant under Section 206 (a). It was held that as the grove had ceased to be a grove before the Tenancy Act of 1939 came into force, the grove-holder had become a trespasser, and Section 206 had no application to him and Section 206 (a) was not retrospective. This view appears to be correct.

12. I am satisfied that Section 206 (a) is not retrospective in its operation and that Raja Ram defendant-respondent having lost his rights in 1937 by abandonment under the custom of escheat, his possession at the date of the suit was that of a trespasser and Section 206 (a) does not apply to him and the plaintiff was in the circumstances entitled to succeed.

13. The result is that I allow the appeal, set aside the decrees of the lower Courts and decree the plaintiffs' suit with costs in all the Courts.