

Mt. Thakur Dei Kunwar And Ors. vs Bishwanath Singh And Ors. on 29 October, 1951

Equivalent citations: AIR1953ALL251, AIR 1953 ALLAHABAD 251

JUDGMENT

Mushtaq Ahmad, J.

1. This is a plaintiff's appeal in a suit for declaration that defendant 1 is the owner of a live anna zamindari share and certain houses in village Bhandewa, district Azamgarh. According to the allegations in the plaint, the name of Mt. Sukhna Kunwar defendant 4 who, as a Hindu widow, is entitled to a mere maintenance, is wrongly entered in the khewat against this zamindari property.

2. There were two brothers, Ran Bahadur and Ram Padarath, the former left a widow Mt. Sukhna Kunwar, defendant 4, and the latter two sons, Bishnath Singh defendant 1 and Har Bhan Singh. Bishnath Singh has two sons, Ghandra Bhukhan and Durga Prasad, defendants 2 and 3 respectively. The last two defendants presumably live with their father, defendant 1, as members of a joint Hindu family, and the declaration of title sought in the plaint was obviously intended to be in favour of these defendants also.

3. In July 1943, defendant 1 had agreed to sell a three anna 8 pie zamindari share in village Bahora (to be distinguished from Bhandewa, the village in dispute) to the plaintiffs-appellants. In the same year, the latter brought suit No. 422 of the Court of the Munsif, Azamgarh against the defendants 1 to 3 for specific performance of the said agreement. This was decreed on 29th August 1944.

4. When the plaintiffs sought to have a sale-deed executed in execution of the decree, the defendants raised an objection that the property covered by the decree was 'protected land' within the meaning of Section 2 (12), U. P. Regulation of Agricultural Credit Act, 14 of 1940 and that, therefore, the same could not be sold without a permission from the Sub-Divisional Officer. Then defendant 1, either by himself or along with defendants 2 and 3, applied for such permission. The Sub-Divisional Officer, finding that defendants 1 to 3 did not own the property now in dispute which was held by defendant 4 in her own right and not only in lieu of maintenance, declared the property covered by the decree aforesaid as "protected land", but he refused to allow its permanent alienation by defendants 1 to 3 by his order dated 29th March 1945. An appeal against this order was filed by the present plaintiffs to the Collector, but, before it was decided, defendant 1 or defendants 1 to 3, whoever had applied for permission under Section 24 of the Act, withdrew that application. On this the Collector/passed an order that the appeal be "filed".

5. Meanwhile the learned Munsif, in the course of execution of the decree for specific performance,

had directed the execution of a sale-deed which was in fact executed. It was after this that the present suit was filed for the reliefs I have already mentioned.

6. ONE of the assertions in the plaint was that the five anna share entered in the name of defendant 4 really belonged to defendants 1 to 3. There was a reference also in the plaint to the abortive application made by the defendants 1 to 3 to the Sub-Divisional Officer for permission to sell the three anna eight pie share in village Bahora in accordance with the agreement aforesaid. The object underlying this obviously was to suggest that such permission had been wrongly refused and that, as a matter of fact, the defendants 1 to 3, as owners also of the property now in dispute, could not claim the privilege of a proprietor of 'protected land' as they paid local rate exceeding RS. 25 per annum. It was, therefore, claimed that in determining the status of defendants 1 to 3 the five anna share recorded in the name of defendant 4 should also be treated as property owned by these defendants, so that, if the local rate payable in respect of both the items of property were taken into account, they could not come within the definition of 'protected land' in Section 2 (12) of the Act.

7. The defence taken was that defendant 4, in whose name the property in dispute, namely, the five anna share in village Bhadewa stood, was the real owner of that property with which the defendants 1 to 3 had nothing to do, that the jurisdiction of the civil Court was barred by Section 7, U. P. Act 14 of 1945, and that the suit was barred by Section 42, Specific Relief Act.

8. The trial Court decreed the suit, holding that the defendants 1 to 3 were the owners of the entire property, including the five anna share in the name of defendant 4, that the suit was cognizable by the civil Court and that it was not barred by Section 42, Specific Relief Act.

9. The lower appellate Court reversed this decree and dismissed the suit, holding that the defendants 1 to 3 were owners of only a half share in the property in dispute, that the jurisdiction of the civil Court was barred under Section 7 of the aforesaid Act and that the suit was also barred by Section 42, Specific Relief Act.

10. It is only the findings on the legal issues that have been challenged before me by the learned counsel for the plaintiffs-appellants. He argued in the first instance that the civil Court had jurisdiction to entertain the suit. The ground on which the lower appellate Court had repelled this contention is, to my mind, not easily intelligible. It observed:

"If the appellate order of the revenue Court meant the dismissal of the appeal and refusal to give permission of sale that order could be challenged in the manner laid down in Section 31 of the Act. The jurisdiction of the civil Court to question that order is expressly barred by Section 7 of the Act."

11. In the first place, the appellate order referred to in the above passage had itself been made in an appeal filed under Section 31 of the Act. There is no provision in the Act under which it could be challenged by a further appeal. In the second place, the present suit was not to question that order but for an entirely different relief which I have already specified. This relief was for a declaration of the title of defendants 1 to 3 to a certain property which was not part of the property covered by the

agreement entered into by defendants 1 to 3 to sell property to the plaintiffs and, therefore, not covered by the decree dated 29th August 1944, for specific performance of contract, but was in respect of a property distinct from the subject-matter of the said agreement and the said decree. It may not be denied that the object underlying the suit was to deprive the defendants' 1 to 3 of the privileges conferred by Act 14 of 1940 by getting it affirmed by the civil Court that the properties held by them did not come within the purview of 'protected land' within this Act. All the same there was no declaration sought in the suit that a previous order declaring a certain property as 'protected land' under Section 4 or under Section 6 of the Act had been wrongly made. The simplest approach to appreciate this position would be to ask one-self whether the declaration prayed for in the present suit in respect of the five anna share in Bhadewa could, in any way, be affected by the position of defendants 1 to 3, qua the property in Bahora to which the agreement to sell and the decree for specific performance related. In my view, it is manifest that the declaration desired could be made, whatever the position was with 'regard to the latter property. It is one thing to say that the object or motive underlying the suit was to have a certain order of the Sub-Divisional Officer made ineffective ultimately, but it is quite a different thing to say that the suit itself was to question any declaration made by that officer either under Section 4 or under Section 6 of the Act.

12. Learned counsel for the defendants-respondents, relying on the provisions of Section 6 of the Act, contended that it was open to the plaintiffs to have applied to the Assistant Collector in charge of the Sub-Division for a declaration that a certain land was or was not a 'protected land.' The answer is that the plaintiffs-appellants simply does not and need not want any such declaration. It is true that, if the property covered by the agreement was 'protected land,' such a position may cease to exist if the relief in the present suit, namely that the defendants 1 to 3 were the owners of the five anna share entered in the name of defendant 4 in Bhadewa was allowed in whole or in part. In these circumstances, I am definitely of the opinion that the question of title with reference to this property in Bhadewa is an entirely independent question, in every way distinct from the question relating to the property in Bahora, even though the granting of a declaration, as desired by the plaintiff, may have a 'negative effect on the incidents of the property in Bahora under the provisions of Act 14 of 1940. This aspect alone does not bring the suit within the prohibition created by Section 7 of the Act.

13. As regards the second question of the bar of Section 42, Specific Relief Act, the position is much simpler. The lower appellate Court accepted the plea as it thought that the plaintiffs could not ask for a declaration of a third party's title. The learned District Judge did note the instance of a suit under Order 21, Rule 63, Civil P. C., in which a plaintiff does want a declaration of title of a third party. But instead of taking the same in negation of the bar he treated it as an exception to the rule. The matter did not, in my opinion, admit of a solution on such a narrow basis. In every case, the test should "be whether the plaintiff has an interest in seeking such a declaration. If that is the test, there should be no difficulty in applying it particularly in the present case. That there can be such instances of a declaration of a third party's title in the interest of the plaintiff himself has not been shown as an impossible proposition because of any statutory provision. I take it that the lower appellate Court negatived it merely because it was not the common rule. Nonetheless, each set of facts may admit only of a rule which is applicable to that alone and not to other combinations. I do not, therefore, see anything wrong in holding that, in a case like the present, the plaintiff could only sue for a declaration of title and for no other relief. Hence I disagree with the finding of the learned

District Judge that the suit was barred by Section 42, Specific Relief Act.

14. The learned Judge found that the defendants 1 to 3 were owners of only a half share in the property in dispute. That is a finding of fact which cannot be disturbed in second appeal.

15. For these reasons I set aside the decree of the lower appellate Court, modify the decree of the trial Court by allowing the plaintiffs' claim only in respect of a half share in the property in dispute. In these circumstances each party shall bear its own costs throughout.

16. Leave to appeal to a Bench is granted.