Raja Ram vs Sheo Behari Singh And Anr. on 10 February, 1953

Equivalent citations: AIR1953ALL709, AIR 1953 ALLAHABAD 709

JUDGMENT

Agarwala, J.

1. This is a defendant's special appeal from the judgment of a learned single Judge of this Court. The facts may be briefly stated as follows:

2. Hanwant Singh, plaintiff, who died during the pendency of the appeal before the learned single Judge and is now represented by his son, Sheo Behari Singh and his grandson Maheshar Baksh Singh, was cosharer in patti No. 2 in village Kathwa in which grove plot No. 67 was situated. Ram Ghulam the maternal grandfather of Raja Ram, appellant, was its groveholder. The plaintiff's case was that Ram Ghulam died in 1934 and was succeeded by defendant-appellant who used to live with him, that in 1937 Raja Ram abandoned the grove and went away to live in village Shivpuri which was not owned by the Zemindars and according to the village custom the grove escheated to the zemindars including the plaintiff. On these allegations the plaintiff claimed to recover possession from Raja Ram who was alleged to be a trespasser.

3. Raja Ram's defence was that he had inherited the grove from his maternal grandfather who died not in 1934 but in 1930, that he never lived with his maternal grandfather and that the cause of action, if any, arose in 1930, on the death of Ram Ghulam and as the suit was filed in 1944, it was time barred. The custom pleaded by the plaintiff was also denied and it was further urged that any such custom had no effect in view of the provisions of Section 206(a), U. P. Tenancy Act, 1939.

4. The trial Court dismissed the suit. The lower appellate Court also affirmed the decree taut on different grounds. According to the findings not now challenged before us, Ram Ghulam died in 1931, Raja Ram abandoned the grove in 1937, the custom alleged by the plaintiff was held to be proved and according to that custom the grove escheated to the zemindars in 1937. The lower appellate Court, however, held that under Section 206(a), U. P. Tenancy Act the custom did not apply to the case and that Raja Ram continued to be groveholder of the grove. The learned single Judge in second appeal, however, overruled this contention of the defendant-appellant and held that Section 206 applied only to groveholders who had not ceased to be groveholders before the Act came into force and since Raja Ram had abandoned the grove and according to the custom, the grove had escheated to the zemindars, he had ceased to be a groveholder when the U.P. Tenancy Act came into force and as such Section 206 did not help him at all.

5. The only point for decision in this special appeal is whether Section 206(a), U. P. Tenancy Act applies to the facts of this case and whether the custom pleaded by the plaintiff-respondent could

not apply in view of that section. In our opinion the view taken by the learned single Judge of this Court was correct. According to the custom, Raja Ram had ceased to have any right in the grove. He, therefore, became a trespasser. He could not be said to be a groveholder after 1937 and was not such when the U.P. Tenancy Act came into force. Section 206(a) preserves the rights of grove-holders, that is to say, persons who were groveholders on the date the Act came into force.

It was, however, urged that Section 206(a) was retrospective in operation. No doubt the chapter relating to groveholders was retrospective in the sense that it applied not only to groves planted by groveholders after the commencement of the Act but also to persons who were groveholders on the date on which the Act came into force. But it was not retrospective in the sense that the rights that had been forfeited or lost before its commencement were revived by it. Those persons who had ceased to be groveholders before the commencement of the Act did not become groveholders after its commencement and, therefore, Section 206 could not be of any help to the defendant-appellant.

6. In this view of the matter there is no force in this appeal. It is dismissed. As no one appears on behalf of the respondent, we make no order as to costs.