

Mahadeo Singh And Ors. vs Jagdeo Singh And Ors. on 21 February, 1951

Equivalent citations: AIR1954ALL23, AIR 1954 ALLAHABAD 23

JUDGMENT

Agarwala, J.

1. This is a defendant's appeal arising out of a suit for possession of a portion of plot No. 335. The plaintiff-respondent's case was that the portion in dispute had been given to him in exchange by the Revenue Court under Section 53, U. P. Tenancy Act, and that later on the defendant dishonestly had made constructions, over the same and dispossessed the plaintiff. The defence was that the order of the Revenue Court was without jurisdiction, as the land was not land as defined in the U. P. Tenancy Act and further that the constructions were more than twelve years old. The trial court decreed the suit in its entirety. There was an appeal and the case was remanded to the trial Court, which decreed the suit again with the exception of land covered by the 'ghari' (cattle-shed) and the well. Both sides appealed to the lower Appellate Court. The lower Appellate Court dismissed both the appeals but made one amendment in the decree of the trial Court. It ordered that "the 'ghari' referred to in the decree (of the Munsif) will be taken to be the 'ghari' with the exception of the portion marked 'EFGH'."

2. In this second appeal by the defendant two points have been urged before me. It has been urged that the learned Judge was in error in excepting the portion marked "EFGH" from the site covered by the 'ghari'. It is pointed out that the 'ghari' and the portion 'EFGH' are one and the same and that if you except 'EFGH' the whole 'ghari' is excepted. I have looked into the Commissioner's map and his report and I find that EFGH is indeed the whole of the 'ghari'. The Commissioner had reported that the northern verandah of this 'ghari' EFGH was two or three years old and the rest of the 'ghari' was over twelve years old. The lower Appellate Court intended to exempt from the area of the 'ghari' the portion covered by the northern verandah and not the entire area EFGH.

3. The other point urged before me is of some importance. It is urged that under Section 9 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act. 1950, (Act 1 of 1951). the land in dispute must remain with the defendant as it will be deemed to have been settled with him by the State Government. Section 9 runs as follows:

"Section 9: Private wells, trees in abadi and buildings to be settled with the existing owners or occupiers thereof: All private wells in holdings, grove or 'abadi', trees in 'abadi' and all buildings situate within the limit's of an estate, belonging to or held by an intermediary or tenant or other person, whether residing in the village or not, shall continue to belong to or be held by such intermediary, tenant or person, as the

case may be, and the site of the wells or the buildings with the area appurtenant thereto shall be deemed to be settled with by the State Government on such terms and conditions as may be prescribed."

4. It is pointed out that the land in dispute is situate within the limits of an estate, That it is covered with buildings, that the defendant falls under the category of "other person" and that, therefore, the case is fully covered by this section. At first sight the argument is plausible but on closer consideration I find it without force. Section 9 appears in Chapter II which deal's with the acquisition of the interests of intermediaries and its consequences. Section 4 (1) lays down the conditions under which estates situate in Uttar Pradesh shall vest in the State. It says:

"As soon as may be after the commencement of this Act, the Provincial Government may, by notification, declare that, as from a date to be specified, all estates situate in Uttar Pradesh shall vest in the State, and, as from the beginning of the date so specified (thereinafter called the vesting) all such estates shall stand transferred to and vest, except as hereinafter provided, in the State free from all encumbrances."

Sub-section 2 of this section empowers the State Government to issue the notification referred to in Sub-section 1 in respect of only a portion of an estate or other area as may be specified. It is obvious, therefore, that unless a notification has been issued by the State Government as provided in Section 4, no estate situate in Uttar Pradesh can vest in the State, with the result that the present owners of the estates or, as the Act calls them, "intermediaries" remain the owner's thereof till such notification is issued. Section 6 refers to the consequences of the vesting of an estate in the State. Section 7 saves certain rights in respect of the vesting of the estate in the State. We are not concerned with these rights and, therefore, they need not be detailed. Section 8 declares that contracts entered into after August 8, 1946 (the date on which the resolution for the abolition of zamindari in the legislature Seems to have been passed) shall become void from the date of vesting. And then comes Section 9 which deals with private wells, trees in 'abadi', buildings with building sites and lands appurtenant thereto. The effect of Section 9 is to declare that all these things shall be deemed to be settled with the existing owners or occupiers thereof by the State Government on certain terms which have to be prescribed. Now the section assumes that the estate in which wells, trees in 'abadi'. and buildings are situate has already vested in the State Government, for it is only after such vesting that it could be said that these things have been settled by the State Government with the owners or occupiers thereof. Before the estate has become vested it cannot be said that the State Government has any 'locus standi' to settle them with the owners or occupiers. It is true that it has not been expressly stated in Section 9 that the settlement which is to be deemed to have been made with the owners and occupiers by the State Government Shall take effect after the vesting of the estates. But it is clean that this is the intention of the Legislature. The drafting of this section is not what one would desire, but the meaning of Section 9, to my mind, is perfectly clear. The section cannot come into effect unless the notification mentioned in Section 4 has been made and the estates or other areas have vested in the State. It is agreed that no such notification has been issued by the State Government as yet. Section 9, therefore, cannot apply to the plots or land in dispute.

5. I, therefore, allow this appeal only to this extent that instead of the words and letters "with the exception of the portion marked "EFGH" in the last sentence of the judgment of the lower court the following words shall be substituted: "with the exception of the northern verandah thereof." In other respects the appeal is dismissed. As the appellant has substantially failed, he will pay the costs of this appeal to the respondent. Leave to appeal under the Letters Patent is allowed.