Radha Kishun And Ors. vs Hari Prasad And Anr. on 3 March, 1952

Equivalent citations: AIR1953ALL575, AIR 1953 ALLAHABAD 575

JUDGMENT

Mushtaq Ahmad, J.

1. The appeal first mentioned was filed by the landlords-applicants against certain claimants in a case under the Encumbered Estates Act and the appeal next mentioned was filed by another, set of claimants in respect of another property against the same landlords under the said Act in the same proceedings. I propose to deal with and dispose of these appeals seriatim, F. A. No. 479 of 1942:--

2. It would be convenient to preface this judgment with two short pedigrees. The landlords' pedigree stands as follows:

RAGHUNATH SINGH _____|_____ | | Ram Bahadur Singh Bir Bahadur Singh | | Shamsher Bahadur Radha Kishan _____|_____ Singh | | | Bijai Bahadur Balram Bahadur Sri Ram Singh The claimants' pedigree stands as follows :

Raghubar _____|_____ | | Salik Lalit _____|_____ | | | Puran=Mt. Balraji Sarl Hari Prasad

3. The landlords-appellants are either the sons or grandsons of Bir Bahadur in the first pedigree, and the claimants-objectors are the sons of Salik in the second pedigree.

4. The items of property claimed by the respondents-objectors under Section 11, Encumbered Estates Act, in denial of the title of the landlords-applicants were these.

In village Pokhranda: (1) (Grove' No. 194) purchased in the name of Salik under a sale-deed (page 53) dated 23-9-1895, for Rs. 49/-, and (2) certain fixed-rate holdings purchased at an auction (page 57) sale-certificate and (page 5& dakhalnama) in the name of Salik aforesaid on 21-3-1896, for Rs. 24/-.

In village Kharauni: (1) 4 tenancy plots purchased in the name of Puran on 10-12-1919 (page 61) for Rs. 550/-, (2) some tenancy plots purchased in the name of the same Pui an under a sale-deed dated 2-4-1920, (not printed), and (3) a portion of a house occupied by the claimants the other portion being occupied by Balraji, widow of Puran.

5. The case of the appellants who are the owners of the two villages referred to above was that they had with their own money acquired the first four items of property aforesaid in the names of their servants Salik and Puran, and on that basis they included those items in the schedule of their own properties. The case of the claimants of course was that their father Salik had purchased the first two-items and their cousin Puran the third and fourth items of property with their own money and for themselves ana not for the landlords applicants or their predecessors. About the house, the landlords' case was that they had constructed it and allowed their servants to live in it, whereas the claimants alleged that, they were the owners of the same.

6. The Court below having allowed the claim of the respondents under Section 11, Encumbered Estates Act, excluded the aforesaid items of property from the schedule of properties owned by the landlords applicants. The appeal with which I am dealing is one against that decree.

7. The only point to be determined is whether the sale-deed and the auction-sale, referred to above, had been effected in the names of Salik .and Puran only 'benanii' for the ^amin-dars or actually in favour and for the benefit of those persons. The case of the landlords was that those men were their family servants and as such the amounts of consideration paid under the various transactions had been provided by themselves without any idea of making a gift of them to the ostensible transferees and that the latter therefore never acquired any interest in the properties in question. (After discussing the evidence the judgment proceeded:) The learned Special Judge was not inclined to think that the above evidence was sufficient to discharge the onus that lay on the appellants to prove that they and not the estensible vendees, were the owners of the particular items of property in question. He pointed out that, apart from the fact of the title-deeds having been produced by the zamindars, it was the names of Salik and Puran which had been recorded in the papers all along and that the claimants presumably were in possession of the plots. On this point also I am inclined to agree with the learned Judge.

8. Learned counsel then called my attention to the registration endorsement on the sale-deed of 23-9-1895 which mentioned that the executant of the deed had said before the Sub-Registrar that the same might be given to Babu Ram Bahadur Singh after the registration. He .also pointed out that Salik Kamkar had himself requested that the sale-certificate relating to the auction- sale of 21-3-1896 be handed over to a person named Syed Ahmad in whose favour a 'mukhtarnama' stood. It is not c]ear who had executed this 'mukhtaenama', and the learned counsel argues that Salik being a man of low status the deed must have been executed by the zamindars, so that the sale-certificate was desired by Salik to be handed over to a man of the zamindars. From this he contends that it is the zamindars who must have purchased the property covered by the sale-deed and the sale-certificate, I do not think any conclusive argument can be based on this circumstance. If Salik and Puran had long been connected with the zamindars' family as servants, then, they being probably illiterate also, it was not unnatural that the documents had been agreed to be delivered to the zamin-1 dars instead of to those servants for safe keeping. A question of ownership being one of pure fact and the learned Special Judge having taken all relevant aspects of the case into ac-count and come to a definite conclusion, I do not find myself in a position to reject his find-I ing as wrong.

9. There is thus no force in this appeal and I dismiss it. The respondents not being represented before me, there is no question of their costs in this Court.

First Appeal No. 189 of 1943: --

10. As already said, this appeal was filed by certain claimants of a different property than those claimed in the other appeal by the respondents thereof. In this appeal the property in question comprised certain fixed-rate tenancy plots which the appellants claimed under Section 11, Encumbered Estates Act, tc have acquired under a deed of gift of the year 1930 from a woman Nanka Kumari, widow of cue Narain Shukal who had a brother called Tilku. The appellants' case of course was that these two brothers Narain Shukal and Tilku were the original tenants-in-chief.

11. The landlords-applicants (respondents) had, on the other hand, claimed these plots as their tenancy lands under a sale-deed dated 22-5-1893. executed by one Onkar Pandey.

12. The learned Special Judge rejected the appellants claim and the present appeal was filed against the decree passed to that effect under Section 11 of the Act.

13. The finding of the learned Special Judge that the landlords-applicants and not the claimants were the tenant-in-chief of these plots was based on a number of entries in the village papers and also on the oral evidence before him. He pointed out that, while in the khasra of 1240 Fasli and the khataoni of 1270 Fasli, the name of Chhakauri Pande, grand-father of Onkar Pande, the executant of the sale-deed relied upon by the landlords, was entered as a tenant-in-chief of four plots which are the present equivalents of the former eight plots and further, while in the settlement khasra of 1290 Fasli and in the khasras of 1279 and 1298 Fasli the name of Onkar Pande had been recorded as a tenant-in-chief and the names of Tilku and Narain Shukal as Sub-tenants and lastly, while in 1326 to 1341 Faslis the landlords had been shown as tenant-in-chief and Mst. Nanka Kumari as Shikmi, the name of Tilku had been recorded in the jamabandi of 1289 Fasli as a tenant-in-chief of the plots in dispute. The position, therefore, briefly was that, except in a particular year, 1289 Fasli', the names either of the predecessor of Onkar Pande or of Onkar himself or even of the landlords-applicants were entered as tenants-in-chief right from 1240 up to 1341 Fasli, although in 1290, 1297 and 1298 F. the claimants or their predecessor were entered as Shikmi tenants. From these entries which, on the face of them, heavily weighed in favour of the landlords and also on the oral evidence before him, the learned Special Judge held that the landlords and not the claimants were the tenants-in-chief of these plots. He also found that one-half of the area of these plots had come within the ambit of the abadi, only the remaining area still being agricultural. Lastly, there was a finding by him that none of the plots in dispute were covered by the gift of 1930 relied upon by the claimants and that in fact the claim put forward by them had a much later origin. On these findings, as already mentioned, the claim, put forward by the appellants was rejected.

14. Only two points have been raised by Mr. J. N. Chatterji, learned counsel for the appellants: (1) that, under Section 288, U. P. Tenancy Act, 1939, the learned Special Judge ought to have framed an issue on the plea of tenancy raised by the appellants and referred it to the revenue Court for decision at least with regard to the one-half area found to be agricultural, and (2) that, even if the landlords

were the tenants-in-chief and the claimants only subtenants of these plots, the same could not be sold in liquidation of the landlords' debt, as otherwise the Sub-tenancy rights would be automatically destroyed.

15. As regards the first point it was, to begin with, not urged in the Court below nor even taken in the grounds of appeal before me. Learned counsel argued that the matter being one of jurisdiction could be allowed to be raised at any stage and that I should therefore, entertain it even in appeal. Assuming I entertained it, the point was open to two answers. Firstly, under the clear terms of Section 11(S), Encumbered Estates Act, it is the bpunden duty of the Special Judge to determine all claims made under the section. This must mean that he should himself determine such claims. On the contrary Section 288(1), U. P. Tenancy Act, makes it obligatory on the civil Court in a suit where a question of tenant right has been raised to frame an issue and refer it to the revenue Court. This section has no such words as "notwithstanding anything to the contrary in any other law". Surely, there is a great deal in Section 11(3), U. P. Encumbered Estates Act, contrary to Section 288(1), U. P. Tenancy Act, for, while the one requires determination by the Special Judge himself, the Other makes it incumbent that it should be made through the channel of the revenue Court. Secondly, a suit contemplated by Section 288(1), Tenancy Act, is obviously a suit instituted in a civil Court, as would also appear from the words of a later section, 290 of the Act. I cannot imagine how a claim tiled under Section 11, Encumbered Estates Act, can be said to be a suit instituted in a civil Court". The proceedings initiated on such a claim may take the nature of a civil suit and the final order passed may be deemed to be a decree, as provided by Sub-section (4) of that section, but this is quite different from saying that there was ever a suit instituted in a civil Court. No authority has been, shown ' in support of this contention either.

16. As regards the second point, it is obviously based on a disregard of the actual pleadings before the Special Judge. The case of the landlords-applicants was that they were the chief tenants of the plots in dispute, while that of the claimants was that they and not the landlords were the chief tenants. The issue naturally arising on these rival assertions was whether the landlords or the claimants were the chief tenants. It was no part of anybody's pleadings that any one on the side of the claimants had ever been a Sub-tenant of any one of the plots. The reference to Sub-tenancy in the judgment of the Court below came in only because, in three of the several village records there was an entry of such tenancy, the landlords themselves being entered as the chief tenants. The learned Special Judge also treated the issue strictly as it had framed it and with perfect justification. He held that the landlords, and not the claimants, were the chief tenants of these plots. In this perspective, obviously no question of any Sub-tenancy arose and, therefore, no question of the plots not being saleable in liquidation of the landlords' debts on that score also arose, particularly when it was further held that the landlords and no one else had been in possession of the plots. If the point now raised before me had been taken before the Court below and accepted, I need not decide what would have been the position. As it is, I am not inclined to allow it tp be raised in complete replacement of the pleadings actually advanced by the claimants at the stage of enquiry.

17. So far as the finding that the landlords and not the claimants were the fixed-rate tenants of these plots is concerned, it was based on a careful scrutiny of the various entries in the village papers extending, as I have shown, over a vast period and also on oral evidence. The landlords filed a

number of rent decrees showing their possession .over the plots in question. The claimants sought to nullify the effect of these decrees by filing receipts of rent granted by the zamindars in respect of the period covered by those decrees. It is obvious that the receipts granted in such circumstances had their origin in suspicion and carried no weight to prove any tenancy rights in favour of the claimants. In fact it was found that the zamindars were actually siding with the claimants in granting those spurious receipts.

18. No other point was raised, and I do not find it possible to disturb the judgment of the Court below. I accordingly dismiss this appeal also, the appellants in this case paying the costs of the respondents and bearing their own.