

The Deputy Commr. vs Raja Ram on 25 April, 1952

Equivalent citations: AIR1952ALL805

JUDGMENT

1. Rai Krishnapal Singh was a taluqdar of taluqa Birapur in the district of Partabgarh. On 21-10-1939, the estate was taken over by the Court of Wards under the U. P. Court of Wards Act (No. IV [4] of 1912). Section 37 of the Act provides that :

"A ward shall not be competent.

(a) to transfer or create any charge on, or interest in, any part of his property which is under the superintendence of the Court of Wards. . . ."

Rai Krishnapal Singh executed three documents dated 1st December 1939, Ext. A3, 23rd December 1939 Ext. A2, and 16th January 1941, Ext. A1 under which he granted certain plots of land to the defendant for planting trees and to remain in possession thereof generation after generation and utilise the fruits and the wood of the trees. The third document was registered, the first two were unregistered.

2. The Court of Wards filed the suit out of which this appeal has arisen for possession of the plots given to the defendant by removing the trees planted by the defendant. It claimed that after it had taken charge of the estate Rai Krishnapal Singh had no right to execute the three documents mentioned above.

3. As regards the third document dated 16th January 1941 which was executed after the U. P. Tenancy Act (No. XVII of 1939) came into force on 1st January 1940 learned counsel for the respondent has admitted that the document must be considered to be bad and beyond the competence of Rai Krishnapal Singh. He has drawn our attention to Sections 205 and 206, U. P. Tenancy Act and has admitted that the grove-holder having a transferable and heritable right in the grove the transfer must be deemed to be a transfer of interest in a part of the property which is under the superintendence of the Court of Wards.

4. As regards the first and second documents, Exs. A3 and A2, dated 1-12-1939, and 23-12-1939, he has urged that these documents do not transfer any interest in property and were, therefore, not beyond the competence of Rai Krishnapal Singh. These two documents having been executed before 1-1-1940, they were not governed by the U. P. Tenancy Act and learned counsel has urged that before 1-1-1940, the relationship between a grove-holder and the landlord in Avadh was governed by custom recorded in the wajib-ul-araiz or by contract. Learned counsel has referred us to a passage in Mata Prasad's Rent Law in Oudh, 1935 Edn. page 305, where the learned author has quoted certain authorities in support of his proposition that a grove is constituted by a person having no title to the land obtaining permission of the zemindar to plant trees on the zemindar's land. A grove, therefore, which is owned not by a zamindar but by a person other than the zemindar, can come into existence

only when it is planted with zamindar's consent. Learned counsel has urged in Avadh neither a tenant nor a grove-holder had any right in the land itself. It is urged that it could not, therefore, be said that, when permission was granted to the defendant to plant a grove and to hold the land generation after generation so long as the trees lasted, no interest in the property was being transferred. In other words, learned counsel's contention is that it was a mere licence by which no interest in the property being transferred, the document could be executed in spite of the fact that the estate had been taken over by the Court of Wards.

5. We have here to construe the words "interest in any part of the property of the ward". The lower Courts have held in favour of the defendant on the ground that the words "interest in the property" must have the same meaning in the Court of Wards Act as in the Transfer of Property Act and, as no title in the land was transferred to Raja Ram, defendant, it could not be said that any interest in the property was transferred to him. Learned counsel for the Court of Wards has, on the other hand, relied on the definition of immoveable property in Section 4 (23), U. P. General Clauses Act (No. 1 of 1904) which defines "immoveable property" as including land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth but not including standing timber, growing crops or grass. Learned counsel has urged that the trees are permanently attached to, the earth and they were fruit bearing trees and not timber. He has further relied on the fact that Raja Ram and his descendants were entitled to enjoy the fruits of the trees. We have also been referred to Section 17(1)(b), Registration Act (No. 16 of 1908) which requires a document to be registered if it creates, declares, assigns, limits or extinguishes, whether in present or in future, any right, title or interest in immoveable property of the value of Rs. 100 and upwards. Stress has also laid on the difference between a lease and a licence.

It is not necessary to go into the various other Acts to which reference has been made, to decide whether the words "interest in the property" in Section 37, Court of Wards Act mean the same thing as transfer of some interest in the property itself or the transfer of proprietary title. Under the Court of Wards Act the estate vests in the Court of Wards. The disqualified proprietor has no right to deal with it and it is the Court of Wards which is competent to grant leases, licences or execute other deeds dealing with that property. Even the personal rights of the disqualified proprietor are to some extent limited. He cannot create debts for which his estate, which is in the possession of the Court of Wards, can be made liable. It would be anomalous if, while the Court of Wards is in possession of the property, the disqualified proprietor is held to be competent to give away land for planting of trees or for other purposes. It is not merely a fugitive right of use. Here the defendant Raja Ram has been given exclusive possession of the land with a right to plant trees on it and to enjoy the fruits and the timber, generation after generation. The mere right to appropriate the fruits and the timber would make it a licence coupled with a grant as defined in *Partab Singh v. Dhum Singh*, 13 ALL. L. J. 886. It may be useful to refer to *Glenwood Lumber Co. Ltd. v. Phillips*, (1904) A C. 405, where it was held that, if the effect is to grant an exclusive right of occupation of the land, it amounted to a demise of the land itself. It is not necessary that any title in the land should have been transferred to bring the case under Section 37, Court of Wards Act. When a heritable right is given in the land and a person is entitled generation after generation to plant trees and enjoy the usufruct it is difficult to hold that he has not been given any interest in the property, which was clearly vested in the Court of Wards and was not vested in the grantor, Rai Krishnapal Singh. In the circumstances we are of

opinion that the decisions of the lower Courts are wrong and must be set aside.

6. We, therefore, allow this appeal, set aside the decrees of the lower Court and decree the plaintiff's suit with costs in all the Courts.