Bachan Singh & Ors vs Gauri Shankar Agarwal & Ors on 26 March, 1971

Equivalent citations: AIR 1971 SUPREME COURT 1531, 1972 4 SCC 257, 1971 ALL. L. J. 745, 1971 U J (SC) 571, 1972 (1) SCJ 9

Bench: G.K. Mitter, K.S. Hegde, A.N. Grover, P.J. Reddy

```
           CASE NO.:
Appeal (civil)  1274 of 1970

PETITIONER:
BACHAN SINGH & ORS.

RESPONDENT:
GAURI SHANKAR AGARWAL & ORS.

DATE OF JUDGMENT: 26/03/1971

BENCH:
S.M. SIKRI (CJ) & G.K. MITTER & K.S. HEGDE & A.N. GROVER & P.J. REDDY

JUDGMENT:
```

JUDGMENT 1971 AIR (SC) 1531 = 1972(4) SCC 257 The Judgment was delivered by HEGDE, J. :

> HEGDE, J. for the There is little substance in this appeal by certificate under Article 133(1)(a) of the Constitution.

2. The facts of this case are as follows.

Respondents 1 and 2, who are husband and wife, filed a suit under Section 180 of the U.P. Tenancy Act on October 17, 1951 seeking possession of the suit properties alleging that they had taken on lease the suit properties from Raja Harish Chandra but the appellants had taken wrongful possession of the same in October, 1950. The appellants resisted the suit on various grounds. In particular they contended that the suit properties had been leased to their predecessor by the agent of Raja Harish Chandra in 1946 and ever since then their predecessor and thereafter they have been in possession of the same. They further contended that the suit was barred by limitation. The trail Court upheld the lease in favour of the appellants and consequently it concluded that the lease in favour of respondents Nos. 1 and 2 was not valid. It also came to the conclusion that the suit was barred by limitation. It accordingly dismissed the suit. Respondents Nos. 1 and 2 took up the matter in appeal to the Additional Commissioner. The Additional Commissioner allowed the appeal ex parte and decreed the suit as prayed for. Thereafter the matter was taken up in second appeal to the Board of Revenue by the present appellants. The Board of Revenue allowed the appeal and remanded the case to the Additional Commissioner for disposal on merits. After remand, the appeal

was reheard by the Additional Commissioner. By his judgment dated June 16, 1964, he again allowed the appeal and decreed the suit as prayed for. He came to the conclusion that the lease in favour of the appellants is invalid as the agent of Raja Harish Chandra had no authority to give the properties on lease without the consent of Raja Harish Chandra or his manager. It further came to the conclusion that the appellants took possession of the properties only in 1950. As such the suit was within time. Aggrieved by that order the appellants took up the matter in second appeal to the Board of Revenue. The Board of Revenue concurred with the conclusions reached by the Additional Commissioner. It came to the conclusions that the finding of the Additional Commissioner that the appellants came into possession of the properties only in 1950 being a finding of fact, was binding on it. The appellants challenged the decision of the Board of Revenue before the High Court of Allahabad by means of a writ petition under Article 226 of the Constitution. The matter was, at the first instance heard by a single Judge of that Court. The learned single Judge allowed the writ petition and remanded the case back to the Board of Revenue for fresh disposal. Against that order of the learned single Judge, respondents Nos. 1 and 2 filed an appeal before the Letters Patent Bench. The Letters Patent Bench reversed the decision of the learned single Judge and affirmed that of the Board of Revenue. Thereafter this appeal has been brought after obtaining a certificate under Article 133(1)(a).

3. The two questions that have been primarily canvassed before us are : (1) that the lease in favour of the appellants is a valid lease and thereafter the lease in favour of respondents Nos. 1 and 2 is invalid and (2) that the suit was barred by limitation.

4. So far as the lease in favour of the appellants is concerned, admittedly that lease had not been granted by Raja Harish Chandra. According to the appellants the properties of the Raja were under the management of Court of Wards in 1946. One Aziz Ullah on behalf of Punjab Farmers entered into an agreement with the Court of Wards for taking on lease the suit properties on a rental of Rs. 1, 550 per annum. But before a lease could be executed by the Court of wards, the properties were released to Raja Harish Chandra. Thereafter in 1947 Kashinath, agent of Raja Harish Chandra executed a registered Patta in favour of the original lessees, Punjab Farmers represented by its Managing Director, Aziz Ullah. The appellants obtained a Patta from Punjab Farmers on September 6, 1950. The appellants pleaded that Raja Harish Chandra had authorised Kashinath in writing to grant the lease in question in favour of the Punjab Farmers but no such writing was produced into Court. It was proved that Mukhtarnama executed in favour of Kashinath specifically provided that he cannot grant any property on lease except with the consent in writing from Raja Harish Chandra or his manager. The Additional Commissioner has come to the conclusion that Raja Harish Chandra had not consented to the lease in favour of Punjab Farmers. Therefore quite clearly the lease in question was invalid one. But it was urged before the learned single Judge that the Board of Revenue failed to take into consideration the plea of the appellants that Raja Harish Chandra had subsequently ratified the lease given in favour of the Punjab Farmers. The learned single Judge was persuaded to accept this plea and he opined that that contention raises a question of law which deserves to be considered by the Board of Revenue. But as pointed out by the Letters Patent Bench, the question of ratification does not appear to have been urged by the appellants before the Board of Revenue. Hence the learned single Judge should not have taken into consideration a contention that had not been taken before the Board of Revenue and therefore the Appellate Bench was right in

reversing his decision on that point.

5. Now coming to the question of limitation, as seen earlier, the additional commissioner came to the conclusion that the appellants came into possession of the suit properties only in 1950. If that finding is correct then there is no dispute that the suit is within time. The appellants challenged the correctness of that finding before the learned single Judge on the ground that a portion of the evidence relied on by the Additional Commissioner in support of that finding was inadmissible in law. The learned single Judge was inclined to think that that contention raises a question of law and therefore it would be proper for the Board to consider that contention. As pointed out by the Appellate Bench, the contention that additional Commissioner had relied on any inadmissible evidence in support of his conclusion that the appellants took possession of the suit properties only in October 1950 does not appear to have been urged before the Board of Revenue. Therefore the learned single Judge erred in entertaining that plea. If that plea is rejected, as it should be, then there is no dispute that there is ample evidence to support the conclusion of the learned Additional commissioner that the appellants took possession of the suit properties only in 1950. An attempt was made to argue before this Court that the for the appellants had in fact argued before the Board of Revenue that the evidence in support of the finding of the Additional Commissioner as regards possession is inadmissible but the Board had ignored that argument. We are unable to accept this contention. The Counsel who argued the case of the appellants before the Board of Revenue has not filed any affidavit either before the High Court or before this Court stating that the Board had ignored his argument as regards the admissibility of certain evidence.

6. The learned single Judge who heard the writ petition did not come to a positive conclusion that the order of the Board of Revenue was vitiated by any error of law apparent on the face of the record. The only conclusion that he arrived at was that on the material on record it was possible to urge certain questions of law and therefore it would be proper for the Board of Revenue to examine those questions. This is an untenable approach. Unless a High Court is of the opinion that the order assailed suffers from errors of law apparent on the face of the record it has no jurisdiction to quash that order by having recourse to its certiorari jurisdiction on the ground of error of law. The mere possibility of raising a question of law in a case is no ground for interfering with an order impugned.

7. A few other plausible questions of law which commended themselves to the learned single Judge but found irrelevant by the Appellant Bench were not sought to be canvassed before us evidently in view of their inherent untenability.

8. The appeal is accordingly with costs. Civil Miscellaneous Petition No. 3231 of 1970 was not pressed. It is dismissed.