Supreme Court of India
Himatrao vs Jaikishandas And Ors on 4 March, 1966

PETITIONER:
HIMATRAO

Vs.

RESPONDENT:
JAIKISHANDAS AND ORS.

DATE OF JUDGMENT:
04/03/1966

BENCH:

ACT:
The Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (1 of 1951), ss. 3 and 4-Vesting of proprietary interest in land in State-Right to claim partition of 'home-farm' land whether affected by such vesting.

HEADNOTE:
The appellant's suit for partition of his share of 'home-farm' land in the Berar area of Madhya Pradesh was partly decreed by the trial court. Both sides filed appeals and the first appellate court also decided in favour of the appellant. The High Court however dismissed the suit as infructuous on the ground that by virtue of the Madhya Pradesh Abolition of Proprietary Rights (Estate, Mahals Alienated Lands) Act. 1950 the land stood vested in the State. The appellant came to this Court.
HELD : (i) It is no doubt true that so far as the proprietary interest in the village is concerned the whole of it has now been acquired by the State and vests in it. The acquisition of such interest by the &ate would not, however, put an and to the various rights of ex-properties in their capacity as owners of property. Thus every co-sharer could despite the acquisition, of his proprietary right obtain a declaration from a civil court as to the fact and extent of his share in the preexisting proprietary rights of that village so that he could lay claim to a proportionate extent of 'home-farm' land in the village. [819 A-C]
(ii) A distinction has to be drawn between a suit brought by a proprietor in his character as proprietor for possession of property which the law then in force authorised him to claim by a suit for the benefit of the entire body of proprietors and a suit based upon trespass upon his individual rights obtained by him irrespective of- Ms

character as such proprietor. If this distinction had been borne in mind by the High Court it would not have dismissed the present suit as wholly infructuous for a number of reliefs had been sought by the plaintiff-appellant with respect to property which not vested in the State. [819 G]
(iii) The village in question being still undivided every bit of land which was in the cultivating possession of any of the co-shares in the village would be deemed to be in the possession of the entire body of co-sharers. The same would apply to land in the possession of lessees or ordinary tenants. The right to enforce claims to a partition of this land was in no way affected by any of the provisions of the Act. [819 D]
Chhote Khan v. Mohammad Obedullakhan, I.L.R. [1953] Nag. 702 (F.B.), distinguished.
Rahmatullah Khan v. Mahabirsingh, I.L.R. [1955] Nag. 983 referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1034 and 1035 of 1963.

Appeals from the judgment and decrees dated July 17, 1956 of the former Nagpur High Court in Appeals Nos. 574 and 575 and 608 of 1946 respectively.

S. T. Desai, G. L. Sanghi and A. C. Ratnaparkhi, for the appellants (in C. A. No. 1034 of 1963).

W. S. Barlingay, G. L. Sanghi and A. G. Ratnaparkhi, for the appellant (in C. A. No. 1035 of 1963).

S. G. Patwardhan and M. R. K. Pillai, for respondent No. 4. The Judgment of the Court was delivered by Mudholkar, J. Both these appeals arise out of a suit instituted by Himatrao, appellant in C. A. 1034 of 1963 for declaration that he is owner of 1 anna 5 pies share in the village Mozara, District Yeotmal and for partition and separate possession of the property that would fall to the aforesaid share. Certain other reliefs were also prayed for by him; but it is not necessary to refer to them for the purpose of deciding these appeals. To this suit he joined other co-sharers in the village as well as alienees from some of the co-sharers. This suit was instituted by him on December 7, 1939 and was partially decreed on July 31, 1944 by the court of Sub-Judge, second class, Darwha. He preferred an appeal from the decree of the trial court. So also Pusaram one of the defendants to the partition suit preferred an appeal from the decree of the trial court and some other defendants preferred a cross-objection against that decree. The appeal of Himatrao was allowed while that of Pusaram was dismissed. The cross-objections of Jugal- kishore and Jaykumar succeeded while that of Laxman Vinayak who is the appellant's brother in C. A. 1035 of 1963 was dismissed, Pusaram preferred two appeals before the High Court from the judgment of the lower appellate court, Second Appeal No. 574 of 1946 and Second Appeal No. 576 of 1946. Laxman Vinayak preferred Second Appeal No. 608 of 1946. All these appeals were heard together and disposed of by a common judgment. It was urged before the High Court on behalf of Pusaram that the suit for partition had

become infructuous because of the provision of the Madhya Pradesh Abolition of Proprietary Rights (Estates Mahals, Alienated Lands) Act, 1950 (No. 1 of 1951) and, there. fore, as held in Chhote Khan v. Mohammad Obedullakhan(1) the suit should be dismissed. This contention was upheld by the High Court and an order to this effect was made in all the appeals. The Madhya Pradesh Abolition of Proprietary Rights (Estates Mahals, Alienated Lands) Act, 1950 (hereafter referred to as the Act for brevity) was enacted, as the long title thereof shows, to provide for the acquisition of the rights of proprietors in estates..

(1) I.L, R. [1953] Nag. 702 (F.B).

mahals, alienated villages and alienated lands in Madhya Pradesh and to make provision for other matters connected therewith. It was not intended to take away each and every kind of right possessed by a person in immovable property situate in such villages. The vesting section is s. 3. Sub- section (1) thereof makes it clear that the rights which were acquired by the State were proprietary rights save as otherwise provided in the Act, but not any other kind of right possessed by an owner of property. The consequences of vesting are dealt with by s. 4 of the Act, sub-s. (2) of which reads thus :

"Notwithstanding anything contained in sub-

> section (1), the proprietor shall continue to retain the possession of his homestead, home- farm land, and in the Central Provinces also of land brought under cultivation by him after the agricultural year 1948-49 but before the date of vesting."

It is not disputed on behalf of the respondents and indeed it cannot be disputed, that home-farm land is not affected by the provisions of the Act. In other words, such land was not acquired by the State but was left with the owners thereof. The definition of home-farm is given in s. 2

(g) of the Act. Clauses (i) and (ii) of this provision give the definition of home-farm in relation to the Central Provinces.But with that definition we are not concerned. The village Mozara was not situate in that part of the former Madhya Pradesh which was within the area of the still earlier Central Provinces of the British times. It is situate in the part of the former Madhya Pradesh which was and still is known as Berar. Clause (3) of that definition gives the definition of home-farm in relation to Berar. According to this definition all land included in holdings which is "(i) under the personal cultivation of the superior holder including land allowed to lie fallow in accordance with the usual agricultural practice; (ii) held by a lessee from the superior holder;.and (iii) held by a tenant from the superior holder other than a specified tenant." The village Mozara was one of the villages in which Izara rights were granted under the Waste Land Rules of 1865. The grantees of the rights were known as Izardars or proprietors of the village and they were called superior holders. There were various classes of tenants in the Izara villages such as ante alienation tenants, permanent tenants, tenants of antiquity and ordinary tenants. In addition, there were also lessees from the superior holders. The aforesaid definition excludes from the home-farm land all land held by ante-alienation tenants, permanent tenants and tenants of antiquity. The result of this is that land under the personal cultivation of the superior holder as well as land held by a lessee or ordinary

tenant from him became his home-farm land. Quite often, as is the case here, the proprietary right in the village was held by a large number of persons and those persons were thus co-sharers in the village. Some of these villages were partitioned with the result that lands including lands in possession of tenants were separately allocated to the share of each co-sharer. In many cases, however, there was no partition, but various co-sharers by some sort of agreement used to retain possession of some lands in the villages, some of which they used to cultivate personally and grant leases over some of them or create tenancy rights over some of them. An arrangement of the latter kind was only tentative and subject to the result of a perfect partition in strict accordance with the share of each co-sharer in the village. It is the plaintiff's allegation that his case fell in the second category. According to him, out of the original 16 annas interest in the Izara village an interest of 6 annas had already been separated from an interest of 10 annas and that in this 10 annas share he had an interest of 1 anna 5 pies. No doubt, his father was actually in possession of 7 specified fields which had been sold in execution of a decree and later came in the possession of Pusaram. But this did not represent the full 1 anna 5 pies share to which his father was entitled or to which he is entitled. He admits that these 7 fields were sold in execution of the decree obtained by one Girdharilal against Basantrao, his father, in civil suit No. 43 of 1925. According to him, however, it is only these fields that were sold in execution and not his share in the Izara itself. However, the sale certificates and receipts for possession mention not only these 7 fields but also Basantrao's one anna 3 pies' share in the village. His contention which was accepted by the trial court as well as by the lower appellate court was that the mention of 1 anna 3 pies' share in the warrant of attachment and receipt was the result of a fraud practised on the court by interested persons. According to the trial court Himatrao's share is 1 anna 3 pies while according to the lower appellate court it was 1 anna 5 pies. In the light of these findings a decree for partition and separate possession of 1 anna 5 pies' share in the village, that is, of land falling to the share of 1 anna 5 pies was granted by the lower appellate court to Himatrao. It may be mentioned that Himatrao had said in his plaint that the 7 fields which were sold in execution and which later came into possession of Pusaram should be allocated to Hamatrao's 1 anna 5 pies' share. The main contention of Pusaram in the second appeal before the High Court appears to have been that as a result of the previous execution sale he had become the owner not only of 7 fields but of Himatrao's share in the village. Apart from the fact that the finding on each of the points of- the two lower courts being one of fact was binding on the High Court, the High Court has erred in the view which it took of the provisions of the Act and of the decision in Chhote Khan's case(1)' What we have, therefore, to consider is whether the High Court was right in throwing out the suit as infructuous. It is no doubt (1) I.L.R. [1953] Nag. 702 (F.B.) true that so far as the proprietary interest in the village is concerned the whole of it has now been acquired by the State and vests in it. But under the provisions of the Act compensation is payable to the ex-proprietors by virtue of the provisions of the Act. This proprietary interest is analogous to what is known as the interest of the intermediary in similar Acts enacted in many other States of India. The acquisition of such an interest by the State would not put an end to the various rights of ex-proprietors in their capacity as owners of property. Thus, every co- sharer could, despite the acquisition of his proprietary right obtain a declaration from a civil court as to the fact and extent of his share in the pre-existing proprietary rights of that village so that he could lay claim to a proportionate amount of compensation and to a proportionate extent of home-farm land in that village. The High Court seems to think that inasmuch as Himatrao was admittedly not in cultivating possession of any part of the land in the village he could not lay any claim to a partition of the

home-farm land. We have already given the definition of home-farm. It would be clear from it that the village being still undivided every bit of land which was in cultivating possession of any of the co-sharers in the village would be deemed to be in possession of the entire body of co-sharers. The same would apply to land in possession of lessees or ordinary tenants. The right to enforce a claim to a partition of this land is in no way affected by any of the provisions of the Act or by the interpretation placed on the provisions of the Act in Chhote Khan's case(1). Suffice it to say that Chhote Khan's case(1) was concerned with the right of an ex-lumbardar to continue after the coming into force of the Act, a suit for possession of abadi land which had vested in the State. In the present suit a number of reliefs which Himatrao claimed are with respect to property which has not vested in the State. A somewhat similar argument was sought to be advanced before the Nagpur High Court on the basis of the decision in Chhote Khan's case(1) in Rahmatullah Khan v. Mahabirsingh(2). While rejecting the argument the majority of the Judges who decided the case pointed out that a distinction has to be made between a suit brought by a proprietor in his character as proprietor for possession of property which the law then in force authorised him to claim by a suit for the benefit of the entire body of proprietors and a suit based upon trespass upon his individual rights obtained by him irrespective of his character as such proprietor. If this distinction had been borne in mind by the High Court it would not have dismissed the suit as wholly infructuous. An argument was sought to be advanced on behalf of the res- pondents by Mr. Patwardhan that the suit was also barred by the principle of res judicata. However, learned counsel realising (1) I.LR. [1953] Nag. 702 (F.B).

(2) I.L.R. [1953] Nag. 983.

that there was no substance in that contention gave it up. We, therefore, need say nothing more on the point. For the reasons which we have given, it is clear that the matter must go back to the High Court for deciding the appeals before it on their merits. Dr. Barlingay, who appears for Laxman Vinayak, has said that he adopts the arguments addressed before us on behalf of Himatrao by Mr. S. T. Desai and has nothing to add. He said that he would be content with the order that the appeals be heard and decided on merits by the High Court.

In the result, therefore, we allow the appeals, set aside the decrees passed by the High Court and remit the entire suit to the High Court for decision on merits. The respondents should pay the costs in this Court and the High Court and the costs of the trial court and to be incurred hereinafter will be as in a partition suit. Appeals allowed.