Supreme Court of India
Chandra Mohan And Ors. vs Saubhag Singh And Ors. on 15 October, 1974
Equivalent citations: AIR 1975 SC 280, (1975) 4 SCC 43, 1974 (6) UJ 646 SC
Author: Gupta
Bench: A Alagiriswami, A Gupta, K Mathew
JUDGMENT Gupta, J.

1. In this appeal by certificate granted under Article 133(1)(a) of the Constitution, the appellants question the correctness of an order of the High Court of Madhya Pradesh at Jabalpur made on a petition under Articles 226 and 227 of the Constitution directing the Board of Revenue, Gwalior, to dismiss a suit under Section 325 of the Gwalior State Quanoon Mal filed by the appellants. The proceedings leading to this appeal started sometime in 1944 and it is unfortunate that it has not been possible as yet to bring down the curtain on the dispute.

2. Briefly the material facts are as follows. The dispute between the parties relates to 220 bighas 16 biswas of agricultural land in village Dhuder, Tehsil Mungaoli, District Guna in Madhya Pradesh. In 1944 and 1945 appellant Hariram and the predecessors in interest of the other appellants as zamindars instituted suits against the respondents under Section 283 of Quanoon Mal for Samvat 2001 and 2002 respectively alleging that the respondents were gair mourusi, meaning non-mourusi, tenants of the aforesaid land and that they had failed to execute a Kabuliyat as required by the section. Section 283, translated into English reads :

Section 283 Every gair dakhildar tenant should Duty to give obtain a lease from the malguzar patta Kabuliyat before cultivating the land, and and suit in the malguzar should obtain a lease. case of refusal. If any malguzar of tenant refuse to grant lease or to give kabuliyat the tenant or malguzar can file a suit before the Tehsildar on plain paper in summary jurisdiction and he (Tehsildar) shall after summary enquiry shall order grant of lease or giving of kabuliyat.

The suit in respect of Samvat 2001 was decreed by the Tehsildar on December 21, 1944 holding that the respondents were mourusi tenants. The suit in respect of Samvat 200 2 was disposed of similarly on July 1, 1946.

3. The appellants then served notice of ejectment on the respondents on April 15, 1946 in the manner laid down in Section 317 of Quanoon Mal terminating tenancy from Samvat 2003 Section 317 provides inter alia that on due service of the notice of ejectment the cultivator shall be deemed to have been dispossessed from the 15th day of May or after harvesting of the crops standing on the field when the notice was served. On January 2, 1947 the appellants filed a suit for restoration of possession against the respondents under Section 326 Quanoon Mil alleging that on July 14, 1946 the respondents had forcibly obstructed them from cultivating the land from which the respondents stood dispossessed from May 15, 1946 Section 326 provides inter alia that cases of unlawful disturbance of possession in respect of agricultural land would be decided summarily. On October 24, 1949 the Tehsildar made an order in the suit directing the plaintiffs to have the status of the tenants adjudged by a separate suit and stayed the suit for possession meanwhile Against this order, the appellants went up in revision before the Revenue Commissioner, Gwalior Division, who by his

order dated August 28, 1950 remanded the matter to the Tehsildar holding that it was for the Tehsildar himself to determine the status of the tenants in the suit for possession. The suit was decreed ex-parte on November 28, 1950 inter alia of the findings that the respondents were gair mourusi tenants and they had trespassed on the land as alleged in the plaint.

4. A few months thereafter the respondents applied for setting aside the ex-parte ejectment decree. Then followed a series of proceedings before the Tehsildar and all the hierarchy of authorities, the Sub-Divisional Officer, the Commissioner, Gwalior Division, and the Board of Revenue, Madhya Pradesh, in the course of which the ex-parte decree came to be set aside and affirmed in turn several times Ultimately the Board of Revenue by its order dated September 21, 1066 held that the decree was passed without notice to the respondents and remanded the case to the Tehsildar for disposal after giving the respondents an opportunity to prove that they were mourusi tenants. The appellants filed a petition under Articles 226 and 227 of the Constitution in the High Court of Madhya Pradesh questioning the correctness of the order passed by the Board of Revenue. The appellants contended that in view of the orders passed by the Tehsildar on July 13, 1945 and July 1, 1946 the issue as to the character of the respondents' tenancy was barred by the principles of res-judicata. The High Court on June 26, 1968 quashed the order of Revenue but instead of restoring the ex-parte decree as the appellants had asked for, directed the Board to dismiss the suit under Section 326 of Quanoon Mal. Thus, though the appellants moved the High Court for relief against the decision of the Board of Revenue, the order that the High Court passed was more adverse to them.

5. In making the impugned order the High Court relied on the decision of this Court in Lalla Yashwant Singh v. Rao Jagdish Singh (1) which holds that Section 326 of Quanoon Mal is very similar to Section 9 of the Specific Relief Act, 1877. The High Court appears to have proceeded on the view that, as questions of title cannot be decided under Section 9 of the Specific Relief Act, the status of the respondents as tenants could not also be determined under Section 326 of Qnanoon Mal. The High Court further held that a landlord seeking restoration of possession under Section 326 must prove that he was in possession within six months preceding the making of of an application under Section 326, that it was not the appellants' case that they were dispossessed from the land in dispute by the respondents, and that they were only seeking to recover possession from their tenants on termination of the tenancy. On these grounds the High Court came to the conclusion that the case could not be tried under the summary jurisdiction conferred by Section 325 and directed the Tahsildar to dismiss the suit.

6. The provisions of Section 326, translated into English, are as follows :

Section 326. (1) Cases in respect of the return Suits regarding of possession which has been disturbed illegal possession unlawfully (Beja Taur par) and or for prevention of obstruction obstruction. about agricultural lands; threshing grounds (khaliyan), med, forest, grass-pastures, gardens, trees, wells, irrigation and tanks between Malguzar and cultivators, or between cultivators will be entertained in the summary jurisdiction of the Pargana Revenue Court or in the Tappa courts within six (6) months and in case of proof of trespass or obstruction, possession and damages will be awarded against the defendant and if the court thinks fit it may also take bonds, quantum whereof will be decided in view of the nature of the trespass or obstruction. (2)...

(3) suits beyond this duration will be entertained as per Section 325 of the Quanoon Mal in the regular jurisdiction.

7. It was of course held in Lallu Yeshwant Singh v. Rao Jagdish Singh (supra), that the structure of Section 326 of Quanoonmal is similar to Section 9 of the Specific Relief Act and question of title is irrelevant in a suit under Section 9, but what the High Court appears to have overlooked is that Yashwant singh's case this Court was considering Section 326 of Quanoonmal in the context of Section 163 of Quanoon Ryotwari which provides inter alia, that Section 326 will apply so far as it is applicable to suits for trespass and obstruction between Khatedars & between Khatedars & other persons; the effect of a notice of ejectment under Section 317 of Quanoonmal on a suit under Section 326 did not arise for consideration in that case. In the instant case, on the service of the notice under Section 317 upon them the respondents must be deemed to have been dispossessed from the land in terms of that section. The service of the notice or its validity has not been questioned before us; we also find no reason why in the circumstances of this case the deeming provision in Section 317 should not be given its full effect. On the question of dispossession the appellants in their plaint also alleged that they went to cultivate the land after the respondents' tenancy therein had been terminated but were resisted by the respondents who forcibly cultivated the land themselves. In these circumstances the High Court was apparently not right in thinking that it was not the appellants' case that they had been dispossessed by the respondents Therefore, if the respondents were gair mourusi tenants as alleged by the appellants, the suit should have been decreed unless it tailed on some other ground that the learned Counsel for the respondents sought to raise before us to which we shall presently refer.

8 The question whether the respondents were gair mourusi tenants remains to be answered. The Board of Revenue whose decision the High Court set aside by the impugned order had remanded the case to the Tehsildar for disposal after giving an opportunity to the respondents to prove their claim that they were maurusi tenants. Before the High Court it was contended on behalf of the appellants that the issue was barred by the principles of res judicata, the Tehsildar having held by his orders dated July 13, 1945 and July 1, 1946 that the respondents were gair mourusi tenants. But the High Court does not appear to have adverted to this contention. In our opinion the High Court was in error in failing to consider the scope and effect of the said two orders passed by the Tehsildar.

9. The learned Counsel for the respondents sought to raise a point that after the passing of Madhya Bharat Jamindari Abolition Act, Samvat 2003, the suit for possession instituted by the appellants as landlords was no longer maintainable Though the Judgment of the High Court contain no reference to this point, it appears to have been specifically raised in the return filed by the respondents in answer to the writ petition.

10. In our opinion the Judgment of the High Court cannot be sustained as it fails to consider some of the important and relevant aspects of the case referred to above. Accordingly we allow the appeal, set aside the Judgment and order appealed from and remit the case to the High Court. The respondents will be entitled to contend before the High Court that the suit is not maintainable in view of the provisions of the Madhya Bharat Zamindari Abolition Act, Samwat 2003. If the High Court finds that the suit is not maintainable, it will dismiss the suit. If, however, the High Court is of

opinion that the suit is maintainable, it will proceed to decide whether the issue as to the character of the respondents' tenancy is barred by the principles of res judicata in view of the orders passed on July 13, 1945 and July 1, 1946 in the proceedings under Section 283 of Quanoon Mal; if the High Court finds that by the aforesaid orders the respondents were held to be gair mourusi tenants and the issue is barred by res judicata, the suit must be decreed. If the High Court comes to the conclusion that the suit is maintainable and the aforesaid issue is not barred by res-judicata it will remand the case to the Tehsildar directing him to determine the said issue and to dispose of the suit in accordance with law.

11. In the circumstances of the case we direct the parties to bear their own costs upto this Court.