

Supreme Court of India

Azhar Hasan And Ors. vs Distt. Judge, Saharanpur And Ors. on 22 January, 1998

Equivalent citations: AIR 1998 SC 2960, JT 1998 (4) SC 313, (1998) IIMLJ 126 SC, (1998) 3 SCC 246

Bench: M Punchhi, K Thomas, M Srinivasan

JUDGMENT

1. The minimal facts giving rise to this appeal are that the plaintiff-appellants were the owners of the disputed land which was in the tenancy of some persons. Those persons, apparently for some consideration, inducted two others and themselves abandoned the land. In the crucial year, those transferees were shown to be in possession of that land in the revenue records on the axis of which the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950 became operative, divesting title of the appellants. Those persons sold the land to some strangers on the basis that they had acquired Bhumidhari rights. The instant suit was filed by the plaintiff-appellants claiming that the revenue records were wrong and that on the abandonment of tenancy of tenants, possession ought not to have been recorded in favour of those persons and, as a corollary, the sale deed executed in favour of the last-mentioned persons was illegal and based on fraud. The courts below have taken the view that who should have been recorded in possession of the land in dispute, was a matter for the Revenue authorities to determine, and thus the civil court had no jurisdiction in the matter. The plaint accordingly was ordered to be returned to the plaintiffs to be filed before an appropriate Revenue Court. The appeal of the plaintiffs in the first appellate court was dismissed. Instead of filing a second appeal, they moved the High Court by way of a writ petition which, too, was dismissed.

2. On reading the plaint and on understanding the controversy, we get to the view that whether those persons who succeeded the recorded tenants, were rightly recorded as tenants or not, was a question determinable by the Revenue authorities. Besides that, the sale deed which has been questioned on the basis of fraud, was not executed by the plaintiffs but by others, and they were not parties thereto so as to allege the incidence of fraud. In these circumstances, we are of the view that the plaint was rightly returned to the plaintiffs. They are even now at liberty to approach the Revenue authorities and claim deduction of time spent in these proceedings, in computing limitation for the purpose of the suit. In this view of the matter, the appeal fails and is hereby dismissed. No costs.