

Supreme Court of India

Ram Prasad (Dead) By Lrs. And ... vs Assistant Director Of ... on 30 March, 1994

Equivalent citations: AIR 1994 SC 2733, JT 1994 (3) SC 519, 1994 (2) SCALE 771, 1994 Supp (2) SCC 228, 1994 3 SCR 231

Bench: K Ramaswamy, N Venkatachala

JUDGMENT

1. The appellants are the legal representatives of Ram Prasad and successors to one Umrao Singh, brother of Bahadur Singh. Bahadur Singh and Umrao Singh were the sons of one Ganga Ram, residents of village Salarpur, Pargana Mooth, Tehsil Hapur, Dist. Meerut, U.P. The dispute relates to Khata No. 66 of that village. Bahadur Singh died intestate leaving behind his widow, Smt. Jivani, Bahadur Singh was in possession of the Khata No. 66 as a tenant under Chetan Prakash and Jiwan Lal, brothers, land holders at that relevant time. It is the appellants case that Smt. Jivani had life estate in the agricultural lands in Khata No. 66. On her demise, being lineal descendants of Bahadur Singh, the appellants are entitled to succeed to his estate as owners of the land therein. The proceedings ultimately ended against them.

2. While Jivani was in possession and enjoyment of the lands, it would appear that the respondent, Jwala Singh made an application on July 9, 1951 along with an affidavit filed in the proceedings under Section 59 of U.P. Tenancy Act 1939 for short, Tenancy Act and an ex-parte decree was obtained "that the parties had come to terms. The suit was therefore, decreed in terms of the compromise in favour of Sirdhari". Accordingly, the respondent is said to have continued in possession of the said lands as a co-tenant. Challenging the validity of the said decree, Ram Prasad, it appears, had filed O.S. No. 624 of 1952 in the Court of Munsif, Haveli at Meerut which was decreed on August 28, 1964 declaring that the decree obtained under Section 59 was collusive and fraudulent. The same was confirmed in Civil Appeal No. 760 of 1964 dated 1.4.1965. While the second appeal was pending, notification under Section 5 of the U.P. Consolidation of Holdings Act, 1953 for short 'Consolidation Act' was published. Consequently, the proceedings stood abated. In the consolidation proceedings the authorities found that the decree obtained by the respondent was a collusive and fraudulent decree and, therefore, it does not bind the appellants. Thus all the consolidation proceedings, the Original, Appellate and the Revisional, ended in favour of the appellants. Calling in question the said proceedings the respondent filed C.M.W.P. No. 3876/73 in the High Court and by judgment dated September 9, 1990, the learned Single Judge allowed the writ petition and held that the consolidation orders were not legal and the respondent was entitled to be declared as a co-tenant with Jivani and was entitled to the half share therein. Thus this appeal by special leave.

3. Shri G.L. Sanghi, the learned Senior Counsel for the appellants contended that the decree made under Section 59 of the Tenancy Act was a fraudulent and collusive decree. The High Court, without advertng to that fact, relying upon the decree dated July 9, 1951, made under Section 59, concluded that the respondent is entitled to be declared as a co-tenant. That finding, therefore, is clearly vitiated by manifest error of law. Shri Satish Chandra, learned Senior counsel for the respondents contended that Section 7(1)(c) of the U.P. Agricultural Tenants Acquisition of Privileges Act, 1949 for short the Privileges Act which came into force with retrospective effect confers on Jivani, ownership

of the cultivating tenant with right to alienate by transfer, etc. of her interest in the land. On and w.e.f. August 11, 1949, she became an absolute owner and was, therefore, competent to create co-tenancy in favour of Jwala Singh. Therefore, the decree is valid in law. It is further contended that after July 1, 1952 the date of vesting under the U.P. Zamindari Abolition and Land Reforms Act, 1951, Act 1 of 1952 for short the Abolition Act, she became an absolute owner. She died, admittedly, after the Hindu Succession Act, 1956 for short the Succession Act had come into force. Therefore, the right of co-tenancy created in favour of the respondent is legal and valid, though these contentions were not raised in the High Court, the conclusion reached by the High Court could be sustained on that premise. Therefore, it needs no interference by this Court.

4. The crucial question is whether Jwala Singh had acquired right as a co-tenant with Jivani, the widow of Bahadur Singh, the last male holder of the tenancy rights under the Tenancy Act. Bahadur Singh admittedly was a cultivating tenant and Jivani succeeded to his estate. Section 32 of Tenancy Act declares that the interest of a permanent tenure-holder is heritable and transferable. Section 33 regulates the right of an occupancy tenant. Sub-section (2) of Section 33 provides that the tenant can create sub-lease or sale of interest under the provision of Section 252 or release or transfer of interest in favour of a co-tenant. But proviso to Sub-section (2) creates an embargo thus :

Provided that no person shall be deemed to be a co-tenant, notwithstanding that he may have shared in the cultivation of the holding, unless he was a co-tenant from the commencement of the tenancy, or has become such by succession or has been specifically recognised as such in writing by the landholder.

5. The above proviso, as could be seen therefrom, clearly manifests the legislative intendment that no person shall be deemed to be a co-tenant unless co-tenancy is specifically recognised by the competent authority, on the basis of a writing by the land holder, he is a co-tenant from the inception of tenancy or he has become as such by succession. Admittedly there is no such writing and record, except alleged appearance, as stated earlier in the proceedings under Section 59, by the land holder per himself and his minor brother as a guardian, the legality of which will be considered at a later stage. Suffice it to state that there is nothing in writing creating co-tenancy in favour of the respondent by the land-holder. Section 35 gives right of succession to the tenancy rights held by a tenant and a widow who is one of the heirs of the tenant entitled to succeed to the estate of the deceased tenant. Section 36 clearly indicates that she remains to be a life estate holder, unless either she surrenders or abandons the land or otherwise as laid down in Section 35, that too in favour of the heirs of the last male tenant. Section 37 also gives an indication that if a female tenant other than a tenant mentioned in Section 34 or Section 36 dies, her interest in the holding shall devolve in accordance with the order of succession given thereunder, namely, in Clause (a) on the male lineal descendants in the male line of descent. Thus it would be clear that Jivani would remain as a cultivating tenant of the land during her life time without deriving any absolute right, title or interest.

6. The question then is whether Smt. Jivani could have created cotenancy in favour of the third parties without consent of the reversioners, in the proceedings under Section 59 of the Act. Section 59 of the Tenancy Act says that any person claiming to be a tenant or a joint tenant may sue the land

holder for a declaration that he is a tenant or for a declaration that he has a share in such joint tenancy. In other words, the pre-existing co-tenancy rights recognised under Section 33(2) proviso is a condition precedent for obtaining a declaration under Section 59. In such a suit filed under the Section claiming to hold joint tenancy rights, through the holder of the tenancy rights, whether as a tenant or co-tenant, was it necessary to make the reversions party respondents or defendants. It was as necessary as otherwise the decree in the suit does not bind them. It is, therefore, clear that if a person inducted into possession, by a tenant having a limited interest or estate, wished to file a suit for declaration of his right as a joint tenant under Section 59, it is but necessary that the reversioner should be made a party-respondent to the suit. As Smt. Jivani was only a limited owner, with only right to enjoyment for life, any encumbrance created by her burdening the estate without impleading the appellants does not bind them as reversioners.

7. The question then is whether the suit of the appellants was not maintainable, as contended by Shri Satish Chandra. No doubt Section 242 prohibits the jurisdiction of the civil courts only in respect of the rights given and claims arising under the Tenancy Act. But the relief claimed in the suit was one for a declaration that the decree granted under Section 59 was vitiated by fraud and collusion. Admittedly, such a relief, when cannot be given by revenue courts, the suit undoubtedly becomes maintainable under Section 9 of CPC. In the suit, the findings recorded by the Civil Courts are that the respondent was not resident of Salarpur. He was already having his wife and he was not cultivating the lands alongwith Smt. Jivani. It was also found that the plea of joint cultivation was not raised in the joint written statement of him and Smt. Jivani filed in the first instance. It was only averred in the additional written statement after her demise. The original plea was of sharing the crop between him and Smt. Jivani which, by operation of proviso to Section 33(2), does not create a right to joint tenancy. Accordingly the declaration given in the civil suit for the reasons stated by the trial that the decree obtained in the suit under Section 59 was a collusive decree is perfectly legal. That was confirmed by an elaborate reasoning in the judgment rendered by the 3rd Addl. Dist. Judge on April 1, 1965. Pending the second appeal notification under Section 5 of the Consolidation Act came to be published. The consequence thereof was considered by this Court in *Ram Adhar Singh v. Ramroop Singh and Ors.* . This Court held that once a notification under Section 5 was published, the jurisdiction of the civil court was ousted and it stands transferred to the authorities constituted under the Consolidation Act to adjudicate upon the dispute. The suit stands abated. Thus it is conclusive that the authorities under the Consolidation Act have been invested with the exclusive jurisdiction to decide the dispute. As seen the authorities have gone into the question and held that the decree under Section 59 of Tenancy Act was collusive and fraudulent one and does not bind the appellants.

8. Undoubtedly no fresh evidence was adduced in the proceedings before Consolidation Officer except the judgments and decrees of the Civil Court and the appellate court. The authorities under the Act held that though the civil suit stood abated, the evidence considered by the civil court and the findings recorded therein would be available for consideration and can be relied upon. We find that the view taken by the authorities is well justified. Though the suit stood abated, yet the evidence recorded in the suit or appeal and the findings recorded by civil courts do not get wiped out; are entitled to be considered and that, therefore, it being the relevant evidence the authorities under the Consolidation Act, unless contrary evidence is established, could go into the evidence and were

entitled to rely upon the findings recorded by the civil courts in support of its conclusions. Undoubtedly the tribunals below had gone into the question and held that the decree obtained by the respondent was collusive and fraudulent decree and that, therefore, it does not bind the appellants.

9. It is next to be seen as to what rights Smt. Jivani had acquired after the Abolition Act had come into force. Admittedly, the Abolition Act had come into force on January 26, 1951 and notification under Section 4 of the Abolition Act was published on July 1, 1952. From that date what is the effect of the rights created in her favour under that Act could be seen. This is no longer res-integra. This Court in *Ramji Dixit and Anr. v. Bhargunath and Ors.* [1966] 2 SCR 767 exhaustively considered this question of a female heir of a deceased tenant and held at p. 772 that the female tenant who inherited as a limited holder of last male holder acquires the right under the Abolition Act as an absolute owner and that, therefore, she has all the rights including the right of abandonment, surrender or transfer. In that view, it is not necessary for us to once again read into the effect of various provisions of Tenancy Act and Abolition Act for fresh consideration, suffice it to hold that Smt. Jivani had acquired, on and from July 1, 1952, absolute right, title and interest in the holding in Khata No. 66 as a full owner. The question still remains as to what is the right the respondent acquired before she becomes an owner under the Abolition Act. Though Sri Satish Chandra, relying upon the Privileges Act, contented that she became an absolute owner on and from August 11, 1949, we are unable to agree with the contention. It is seen that the objects and reasons of Privileges Act disclose that the Act is a temporary measure, as held by this Court in *Ramji Dixit's case*. The Act intended to give protection to the cultivating tenant from being evicted between the date of which the Abolition Act was introduced in the Legislative Assembly in 1949 till the Abolition Act came into force. The Act gave rights and provided the procedure to work them out and to see that such tenants or sub-tenants are not ejected by the land holder by obtaining the decrees or execution thereof. Therefore, they can get a declaration to that effect under Section 6 of the Privileges Act by filing an application under Section 5 before the Asstt. Collector and after an order was made thereon to deposit 10 times the revenue as a pre-condition. Therefore, though the respondents and Smt. Jivani filed an application under Section 5, the right created therein was only for a limited right "not to be ejected". Stream can not rise higher than the source and the limited privilege to remain in possession pending making of Act 1 of 1952, does not get enlarged into an absolute right as owner to alienate or encumber the estate. The contention that she got under Section 7(c) thereof the right to alienate by transfer inter vivos like sale, mortgage or gift is not tenable for the reason that admittedly no such instrument was executed, nor such a plea was set up by the respondent in any proceedings including in the writ petition. It is only a claim of co-tenancy with Smt. Jivani. It is seen that by virtue of the declaration given under Section 6 of the Privileges Act only Smt. Jivani got a right not to be ejected from the lands by the land holder. That does not cloth the respondent with any right other than life estate, to enjoy tenancy rights as an heir of her husband, Bahadur Singh till July 1, 1952. The unsuccessful proceedings taken thereunder by the appellants are of no consequence as Asstt. Collector had no jurisdiction to go into the inter se disputes. It is seen that admittedly Smt. Jivani did not ratify the joint tenancy with the respondent either on or after July 1, 1952 i.e. after she became absolute owner under the Abolition Act or the Succession Act on or after June 17, 1956. Therefore, what remains on record is only a declaration obtained under Section 59.

10. As seen the Tribunals under the Consolidation Act concurrently found, as a fact that the decree under Section 59 was a collusive and fraudulent decree. The High Court proceeded on two premises to allow the writ petition. Firstly, it held that the right under Section 59 became final, secondly, Jivani as an absolute owner had right to alienate that right and that, therefore, Jwala Singh is entitled to be a joint tenant. Either premise is wholly unsustainable. As found earlier, she was only a limited owner and the declaration by the consolidation authorities is that the decree under Section 59 was a collusive decree. It is already held that such a declaration given, by operation of Sub-section (2) of Section 33, does not bind the reversioners, namely, the appellants. It is seen that no ratification of the joint tenancy rights of Jwala Singh was made by Smt. Jivani as absolute owner on or after July 1, 1952. The respondent, therefore, does not acquire any right as a joint tenant in the Khata No. 66. The findings of the High Court that she being the owner, has right of alienation are absolutely unsustainable. The appeal is accordingly allowed. The writ petition stands dismissed and resultantly the orders of the tribunals under the Consolidation Act stand affirmed. In the circumstances, parties are directed to bear their own costs.