

Supreme Court of India

Sugan Chand vs Dy. Director Of Consolidation ... on 2 December, 1994

Equivalent citations: 1995 SCC (2) 127, 1995 SCALE (1)34

Author: K Ramaswamy

Bench: Ramaswamy, K.

PETITIONER:

SUGAN CHAND

Vs.

RESPONDENT:

DY. DIRECTOR OF CONSOLIDATION DEHRADUN/SAHARANPUR, U.

DATE OF JUDGMENT 02/12/1994

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

VENKATACHALA N. (J)

CITATION:

1995 SCC (2) 127 1995 SCALE (1)34

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. Substitution allowed.

2. Leave granted.

3. Heard the learned counsel for the parties. The inter se claim is for Plots Nos. 23, 67 and 78 in Village Halwana Ahatmal. In the suit filed by the appellant in the Court of SDO, Saharanpur, Suit No. 1 of 1971-72 under Section 229-B of U.P. Zamindari Abolition Act (Act 1 of 1951), the trial court recorded the finding in favour of the appellant thus:

"Issues 1, 2, 3 and 4 are interconnected and may be taken up simultaneously. Issue 5 relates to Smt Nichho. Her heirship is not very relevant to these proceedings as claim of defendant Sugan Chand is that he has acquired rights on the land in suit by operation of law, even if his + From the Judgment

and Order dated 16-3-1994 of the Allahabad High Court in C. Misc. W.P. No. 2372 of 1994 possession was adverse. I find that Plots Nos. 67 and 78 of the land in suit are entered as Sirdari of defendant Sugan Chand alone since before the abolition of zamindari, names of plaintiffs or their ancestors do not find place on these plots. The possession of plaintiffs is also not entered anywhere on these numbers. Defendant Sugan Chand therefore was rightly entered as sole sirdar over these plots and the plaintiffs have no concern over it."

4. In Appeal No. 274 of 1972, the Additional Commissioner held thus: "I am therefore of opinion that Sugan has been rightly held to be sole sirdar of these plots, by the learned lower court. As regards the remaining plots namely Plots Nos. 16/2, 70, 71, 15, 76 are concerned these plots are recorded in the name of Jabal Singh, Harendra, Smt Nichho as bhumidhars. In the Khatauni of 1362-F by order of the SDO dated 20-11-1954 the name of Sugan Chand together with Jabal Singh and Harendra has been ordered to be recorded as co-tenure-holder, samildar entries exists in subsequent khasras and khataunies. The main contention of the learned counsel of the appellant is that these entries are wrong as Sugan was not the heir of Smt Nichho, as his father Atar Singh had predeceased Smt Nichho and therefore, Sugan could not be the cotenure-holder in the land in dispute. It is not seriously disputed that Sugan could not inherit from Smt Nichho as his father Atar Singh had predeceased Smt Nichho. By order of SDO dated 20-11-1954 his name along with Jabal Singh was recorded as co-tenure-holder. It appears that no objection was filed by Jabal Singh at that time and therefore Sugan continued to be in possession of the land in suit as the co-tenure-holder. The defendant has filed CHF 9-Kh for this will (Paper No. 34-A) wherein he has been recorded as co-tenure-holder over the other land of Smt Nichho.

It is, therefore, evident that Sugan has continued in possession over the land in suit in his own rights in the knowledge of the plaintiff/appellant. The present suit appears to have been filed by the plaintiffs when they came to know that according to law Sugan could not be heir of Smt Nichho as held in *Ram Nath v. Smt Raj Kumar*¹."

5. While second appeal filed by the respondent was pending, notification under Section 5 of the U.P Consolidation Act was published. As a consequence the second appeal stood abated. In the proceedings initiated before the Consolidation Authority, initially the Consolidation Officer found the findings of the appellant's possession against him, but on appeal, the appellate authority reversed and held against the respondent and in favour of the appellant. In the revision filed by the respondent, the Commissioner without adverting to the findings recorded by the civil court held that the appellant has not proved his possession. Consequently allowed the revision in the impugned order dated 7-1-1994 which was affirmed in the writ 1 1970 RD 2 petition filed by the appellant in WP No. 2372 of 1994 dated 16-3-1994. Thus this appeal by special leave.

6. The controversy as to the effect of the issue of notification under Section 5 and Section S3 (sic) thereof and the findings recorded in the earlier suit was considered by this Court in *Ram Prasad v. Assistant Director of Consolidation*². In paragraph 8 it was held that 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 produced, are entitled to rely

upon the findings recorded by the civil courts in support of its conclusions.

7. In view of the law laid down by this Court and in the absence of any consideration of the effect of the findings recorded by the civil courts, the order of the Commissioner is ex facie illegal. It is accordingly set aside. The Commissioner is directed to go into the evidence vis-a-vis the evidence and the findings recorded in the civil suit and the appeals and to record his own findings and decide the matter according to law.

8. The appeal is accordingly allowed. No costs.