
Gopal Singh Vs Bablu and Others

W.P. No. 1286 (M/S) of 2004

Court: Uttarakhand High Court

Date of Decision: July 27, 2015

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 152, 209, 229-B

Citation: (2015) 129 RD 32

Hon'ble Judges: Alok Singh, J.

Bench: Single Bench

Advocate: J.C. Belwal, for the Appellant; Dinesh Chauhan, for the Respondent

Final Decision: Allowed

Judgement

Alok Singh, J.

Present petition is filed assailing the judgment and decree dated 24.8.2002 passed by First Appellate Court-Additional

Commissioner, Kumaon Division as well as judgment and decree dated 12.7.2004 passed by Chief Revenue Commissioner, Uttarakhand,

Dehradun whereby suit filed by respondent No. 1, herein, for possession was decreed by First Appellate Court and second appeal arising

therefrom was dismissed upholding the judgment and decree passed by the First Appellate Court. Undisputed, brief facts of the present case are

that father of respondent No. 1 namely Kanhai Singh was bhoomidhar with transferable rights in possession of 2.552 hectares land of village -

Dhanpuri, Tehsil - Haldwani, District Nainital; respondent No. 1, herein, through his guardian and natural mother Prema Devi has filed Revenue

Suit No. 22/21 of 1993-94 under section 229-B of the U.P.Z.A. & L.R. Act against his own father Kanhai Singh impleading State Government as

well (sic) Gram Sabha as party - defendants in the Court of Assistant Collector, 1st Class/SDO, Haldwani for declaration to declare the

plaintiff/respondent No. 1, herein, as co-bhoomidhar along with his father to the extent of half share in the entire property measuring 2.552

hectares; it was stated in the plaint of the suit for declaration that property, in question, is co-parcenary joint Hindu family property, therefore,

plaintiff/respondent No. 1, herein, has half share therein along with his father since birth; suit was decreed vide judgment and decree dated

29.6.1994 declaring the plaintiff/respondent No. 1 as co-bhoomidhar along with his father Kanhai Singh in the property, in question; Kanhai Singh,

father of respondent No. 1, has sold the property vide different sale deeds in favour of Bhagwan Ballabh, Hari Dutt, Om Prakash and in favour of

petitioner, herein; petitioner, herein, has purchased total 0.657 hectares land from father of respondent No. 1, herein, vide two sale deeds;

respondent No. 1, herein, thereafter, filed suit for possession under section 209 of the U.P.Z.A. & L.R. Act against the petitioner, herein; suit so

filed by plaintiff/respondent No. 1 was dismissed vide judgment and order dated 12.12.2001; plaintiff/respondent No. 1, herein, preferred First

Appeal in the Court of Divisional Commissioner being ZA Appeal No. 47/50 of 2001-02, first appeal so filed by the plaintiff/respondent No. 1,

herein, was allowed vide judgment and order dated 24.8.2002; feeling aggrieved, defendant-petitioner, herein, has preferred Second Appeal being

ZA Appeal No. 67/2002-03, which was dismissed by the Additional Chief Revenue Commissioner, Uttarakhand vide judgment and order dated

12.7.2004; feeling aggrieved, petitioner has preferred present writ petition.

2. I have heard Mr. J.C. Belwal, Advocate for the petitioner, Mr. Gajendra Tripathi, Brief Holder for the State of Uttarakhand/respondents No. 2

to 4 and Mr. Dinesh Chauhan, Advocate for respondent No. 1 and have carefully perused the record.

3. Mr. J.C. Belwal, learned Counsel for the defendant/petitioner, herein, has vehemently argued that judgment and decree dated 29.6.1994,

passed by Assistant Collector, 1st Class, Haldwani, declaring the plaintiff/respondent No. 1 as co-bhoomidhar along with his father, having equal

share along with his father in the property in question, was without jurisdiction, therefore, is nullity and liable to be ignored. He further contends that

notion of Hindu law is not applicable in the case of bhoomidhari property. He further contends that if decree dated 29.6.1994 passed by Assistant

Collector is held to be without jurisdiction and nullity and is ignored, suit of the plaintiff/respondent No. 1, herein, is liable to be dismissed.

4. On the other hand, Mr. Dinesh Chauhan, Advocate for the plaintiff/respondent No. 1, has vehemently argued that decree dated 29.6.1994 has

not been challenged anywhere, therefore, same cannot be held without jurisdiction, consequently, plaintiff/respondent No. 1 herein, has half share

in the property along with his father, therefore, sale deeds executed by his father beyond the half share is nullity, consequently, decree passed by

First Appellate Court decreeing the suit for possession is perfectly valid and does not require any interference.

5. Let me now examine - As to whether judgment and decree dated 29.6.1994 is valid and has effect of res judicata or is nullity being without

jurisdiction, therefore, is liable to be ignored.

6. The Division Bench of Allahabad High Court in the case of Mahendra Singh Vs. Attar Singh and Others, , having placed reliance on the earlier

Full Bench judgment of Allahabad High Court in the case of Ramji Dixit and Another Vs. Bhrigunath and Others, , has held that bhoomidhari rights

are special rights created by U.P.Z.A. & L.R. Act (U.P. Act No. 1 of 1951), thus, these rights are solely governed by the provisions of U.P.Z.A.

& L.R. Act, therefore, notions of Hindu Law and Mohammedan Law, which would be applicable to other property not governed by any special

law cannot be imported into the rights created by this Act.

7. Learned Counsel appearing for the parties do not dispute the settled proposition of law that if land was Sir Khud Kasht Land of Zamindar prior

to the Abolition of Zamindari and was ancestral property, then if son is born before Abolition of Zamindari that son Would be having share being

coparcener in the Sir Khud Kasht Land, however, if land was not Sir Khud Kasht Land and tenure holder has acquired bhoomidhari rights under

the provisions of the U.P.Z.A. & L.R. Act, then his son shall have no right over the bhoomidhari property.

8. Undisputedly, plaintiff/respondent No. 1, herein, was born after the Abolition of Zamindari and special rights were created in favour of his father

namely Kanhai Singh i.e. bhoomidhari rights, therefore, in view of the judgment of Allahabad High Court in the case of Mahendra Singh (supra)

plaintiff/respondent No. 1, herein, had absolutely no co-parcenary rights over the property, in question. This aspect was neither raised nor

considered by the Assistant Collector, 1st Class, Haldwani while decreeing the suit vide judgment and decree dated 29.6.1994. No Court has

jurisdiction to create any right in bhoomidhari property against law, therefore, judgment and decree dated 29.6.1994 is without jurisdiction,

therefore, is non est in the eyes of law.

9. Hon"ble Apex Court in the case of Shakuntala Devi v. Kamla and others 2005 (59) ALR 499 (SC) : 2005 (29) AIC 13, has held as under:

The principle of res judicata is a procedural provision. A jurisdictional question if wrongly decided would not attract the principle of res judicata.

When an order is passed without jurisdiction, the same becomes a nullity. When an order is a nullity, it cannot be supported by invoking the

procedural principles like, estoppel, waiver or res judicata.

It would, therefore, be not correct to contend that the decision of the learned Single Judge attained finality and, thus, the principle of res judicata

shall be attracted in the instant case.

From the above principles laid down by this Court, it is clear that if the earlier judgment which is sought to be made the basis of res judicata is

delivered by a Court without jurisdiction or is contrary to the existing law at the time the issue comes up for reconsideration such earlier judgment

cannot be held to be res judicata in the subsequent case unless, of course, protected by any special enactment.

10. In view of the dictum of Hon"ble Apex Court in the case of Shakuntala (supra), judgment and decree dated 29.6.1994 declaring the

plaintiff/respondent No. 1 as co-bhoomidhar along with his father is nullity, without jurisdiction and cannot act as res judicata. Since

plaintiff/respondent No. 1 is not co-bhoomidhar along with his father, therefore, his father Kanhai Singh was competent to transfer his entire

property in view of section 152 of the U.P.Z.A. & L.R. Act. Consequently, sale deeds made by him cannot be held to be beyond the share of

plaintiff/respondent No. 1. In the result/writ petition succeeds and is hereby allowed. Impugned judgments and orders passed by both the Courts

below are set aside and suit filed by plaintiff/respondent No. 1 is hereby dismissed. No order as to costs.