Mirza Hashim Husain and Others Vs Mani Bhadra Das and Others

Court: Allahabad High Court

Date of Decision: Nov. 9, 1982

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 1 Rule 8
Criminal Procedure Code, 1973 (CrPC) â€" Section 145, 145(1)
Uttar Pradesh Tenancy Act, 1939 â€" Section 180, 242, 3(1), 4, 5
Uttar Pradesh Urban Areas Zamindari Abolition and Land Reforms Act, 1956 â€" Section 82, 84, 89

Hon'ble Judges: B.D. Agarwal, J

Bench: Single Bench

Advocate: S.N. Sahai, for the Appellant; S.R. Misra, for the Respondent

Final Decision: Partly Allowed

Judgement

B.D. Agarwal, J.
This is a Defendants'' appeal.

2. The dispute relates to plot No. 4029/1 covering an area of 2.21 acres situate in Kaptan Ganj, district Deoria within the town area limits.

According to the case of the Plaintiff, he is a co-zamindar in relation to the area where the disputed plot is situate. The demarcation of the

agricultural area has not been made thus far under the U.P. Urban Areas Z.A. and L.R. Act. About 6 years preceding the suit instituted on May

29, 1968, the Plaintiff and his father allegedly brought this land under cultivation and thus it is held by the Plaintiff as his Khudkasht. The father of

the Plaintiff died two years prior to the suit. Proceeding was initiated u/s 145(1) Code of Criminal Procedure at the instance of the Defendant No.

1. On April 26, 1968 it was held by the criminal Court that possession was that of the Defendant No. 1 and others. Hence the suit instituted under

Order I Rule 8, CPC claiming the relief for perpetual injunction and possession in the alternative coupled with the declaration to the effect that the

order made in proceeding u/s 145 Code of Criminal Procedure is invalid. In defence it has been asserted by Defendant No. 1 that he is the sole

proprietor of the disputed land. According to him, the land has not been cultivated by the Plaintiff or his father at any stage and it is wrong to say

that it is held by the Plaintiff as his Khudkasht. It is further pointed that the land is in the form of Pukhri or a pond and the Defendant 1 and others

have been sowing Singhara therein. They also rear fish in the pond and certain washermen wash clothes therein. The water from the pond is also

made use of for purposes of irrigation in the neighboring area. The plea of jurisdiction relating to the civil Court was also raised.

3. The trial Court held on March 22, 1971 in relation to the preliminary issue concerning the jurisdiction that the main relief claimed is that of

perpetual injunction and hence the suit lies in the civil Court. In relation to other issues it was found by the trial Court in its judgment dated October

29, 1972, that the land had not been tilled by the Plaintiff or his father and that instead the Defendant No. 1 and others had been making use of the

land as Pukhri for purposes of growing Singhara and pisciculture etc. Local inspection was also made by the trial Court wherein it was observed

that this was a Pukhri and not a cultivated area. Reliance on this local inspection was also placed in addition to the other evidence. In appeal the

lower appellate Court affirmed the finding of the trial Court with respect to the character and use of the disputed land. Despite this, the lower

appellate Court granted the decree in favour of the Plaintiff for perpetual injunction restraining the Defendants from interfering in the exercise of the

rights of the Plaintiff Appellant over the land in dispute as a co-sharer. It has been observed in this connection that the interest of the Plaintiff had

not extinguished by adverse possession. Aggrieved against the decree, the Defendants preferred this appeal.

4. The learned Counsel for the Defendants-Appellants submitted in the first place that the suit giving rise to this appeal did not lie in the civil Court.

Reference was made by him for this purpose to Section 63 of the U.P. Tenancy Act, 1939. The argument raised is that the jurisdiction of the civil

Court is excluded by Section 63 read with Section 242 and the IV Schedule to the U.P. Tenancy Act 1939. According to Section 63 when the

land claimed by a tenant as his holding or as being under his cultivation is also claimed by the landholder as being held by him as his sir or

Khudkasht either the landholder or the tenant may sue for a declaration of his status. It will be observed, therefore, that this provision relates to

dispute as between a landholder on the one hand and a person claiming to be the tenant on the other in respect of the question whether the land is

not sir or Khudkasht the jurisdiction of the civil Court would not be excluded unless the case is shown to fall within the purview of Section 63

relied for the Appellants. In the instant case the Plaintiff claims to be a co-proprietor and the exclusive Khudkasht-holder of plot No. 4029/1. This

is apparent from the averment contained in paragraph 6 of the plaint. The Defendant No. 1 contesting the suit maintained on the contrary that he is

the exclusive proprietor vide paragraph 4 of the written statement. He also asserted that the land is not under cultivation but that it is a pukhri and

used for purposes of pisciculture, irrigation, growing Singhara and washing clothes etc. There is no claim by the Defendant No. 1 as to his being a

tenant in respect of this land. Nor is any such claim raised by any of the Appellants and the Plaintiff still does not allege in the plaint that the

Defendants have laid claim as to their being tenants of this land. It follows clearly, in my view, that this is not a case relating to a dispute between a

''landholder and a tenant within the meaning of Section 63 and in consequence the jurisdiction of the civil Court cannot be claimed to be excluded

under that provision read with Section 242 and the IV Schedule.

5. For the Respondent No. 1 Plaintiff it was also submitted that the U.P. Tenancy Act 1939 be taken to be repealed in relation to this area and

hence Inapplicable on that ground. Section 84 of the U.P. Urban Areas Z A and LR Act says that with effect from the date of vesting, the U.P.

Tenancy Act, 1939 shall stand repealed in its application to the urban areas. The repeal is thus with effect from the date of vesting. According to

Section 3(1) the State Government directs by notification that agricultural area be demarcated. Publication of preliminary proposal is made u/s 4

and the objections received, if any, have to be considered. This is followed by final demarcation in accordance with Section 5. Correction of

clerical or arithmetical mistakes in the demarcation proceedings is provided u/s 6. Section 8 which is material, provides that after the agricultural

area has been demarcated u/s 5, the State Government may, at any time by notification in the Gazette declare that as from a date to be specified all

such areas situate in the urban area shall vest in the State, and as from the beginning of the date so specified all such agricultural areas shall stand

transferred to and vest in the State. It is undisputed in the instant case before me that no such demarcation of agricultural area has taken place. In

consequence there is no vesting so far within the meaning of Section 8. So long as the vesting within the meaning of Section 8 does not take place,

the date of repeal of the U.P. Tenancy Act 1939 in respect of the particular area cannot be said to be reached. The Respondents'' learned Counsel

invited my attention to an observation of R.M. Sahai, J. in the State of Uttar Pradesh v. Jagdish Saran Singh 1982 (8) 572 at page 580. The

learned Judge observes that u/s 89 of the U.P. Urban Areas ZA and LR Act, the U.P. Tenancy Act, 1939 stood repealed with effect from the

date of vesting. It was further said that the demarcation of agricultural area is one thing but vesting is another. Although the latter takes place

because of former, but once it takes place Tenancy Act stands abolished. It may be noted, however, that in that case as pointed at page 575 it

was admitted on both sides that the demarcation of the land- agricultural and the non-agricultural area-had taken place in the town of Hamirpur

and according to this demarcation the disputed plots lay in non-agricultural area. This admission on both sides is referred also at page 580 saying

that admittedly the vesting of the right and interest of intermediaries in the urban area of Hamirpur has taken place and the notification abolishing

zamindari was issued in the year 1951. In the instant case on the other hand it is admitted at the Bar that there has been no demarcation made of

the agricultural area thus far. I find, therefore, that the vesting has not yet taken place within the meaning of Section 8 of the U.P. Tenancy Act,

1939 which remains in force. This does not avail the Defendant-Appellants still because, as I said above, the dispute does not fall within the

purview of Sections 63/242. Sub-section (1-A) of Section 331 of U.P. Act I of 1951 to which the Appellants'' learned Counsel referred, is

besides the point for the obvious reason that that provision has not been extended for purposes of the U.P. Urban Areas ZA and LR Act. As will

appear from Section 82 of the U.P. Urban Areas ZA and LR Act the provisions of Section 331, 331(1-A) and 333 of U.P. Act I of 1951 have

been extended, but significantly there is no extension made in respect of Section 331(1-A)which is a distinct provision from those mentioned

above.

6. The learned Counsel for the Appellants stands, however, on sound footing in respect of his other contention before this Court, namely, that the

Plaintiff Respondent could not be granted the relief awarded by the lower appellate Court. It needs hardly be recalled that the Plaintiffs'' case is

that he is a co-intermediary and the exclusive khudkhast-holder of the disputed plot. Paragraphs 5 and 6 of the plaint are relevant in this

connection. It was pleaded that along with his father the Plaintiff brought this land under cultivation about six years prior to the suit filed on May 29,

1968. The Defendant No. 1 asserted on the contrary that he is the sole intermediary and the land is Pukhri used as such. This is contained in

paragraph 4 of the written statement. The finding recorded by the trial Court was that the disputed land was not under the cultivation of the Plaintiff

and that it has been used for purposes of growing Singhara and pisciculture. The extract of khewat for the period of 1373 F-76 (Ex.1) also bears

out that the Plaintiff was a co-proprietor besides the Defendant No. 1 and others. The learned Additional District Judge agreed with the finding of

the trial Court in this respect. It has been pointed:

The above discussion of evidence indicates that the land in dispute was never cultivated. It retained its character as Pukhri upto the date of suit. In

order to acquire khudkasht right to the exclusion of other co-sharers, it must be shown that the co-sharer was in exclusive clutlvatory possession

over the land and acquired the said right u/s 180 of U.P. Tenancy Act, 1939. The above discussion goes to show that there is no evidence to the

above effect. Thus the learned Munsif has rightly held that the Appellant has not acquired any khudkasht rights to the exclusion of his other co-

sharers.

7. The relief granted by the lower appellate Court is to the effect that the Respondents were restrained perpetually from interfering in the exercise

of rights of the Plaintiff over the land in dispute as a co-sharer. The relief thus granted is clearly inconsistent with the finding recorded. The relief

allowed has the effect of inducting the Plaintiff into actual possession over the disputed plot besides the Defendant No. 1, whereas the finding is

that the land is not the khudkasht of the Plaintiff and that instead it has the character of Pukhri and is used for pisciculture, irrigation, growing

Singhara and the like. The Plaintiff could not be granted injunction against the Defendant No. 1 or others concerned with respect to the actual

possession over the said plot which is not found to be held by the Plaintiff as his exclusive khudkasht. The only relief which could be granted to the

Plaintiff in the circumstances is that of declaration to the effect that he is a co-intermediary in respect of this plot besides the Defendant No. 1

(deceased) and others. As observed by their Lordships of the Supreme Court in the case of Kidar Lall Seal and Another Vs. Hari Lall Seal, it is

always open to a Court to give a Plaintiff such general or other relief as It deems just.

8. The appeal consequently succeeds in part and is allowed accordingly. The suit shall stand decreed for declaration that the Plaintiff-Respondent

is a co-intermediary in respect of plot No. 4029/1. For the rest the suit shall stand dismissed. Costs on parties throughout.