

**(1991) 12 MP CK 0008**

**Madhya Pradesh High Court (Gwalior Bench)**

**Case No:** S.A. No. 47 of 1979

Kishanlal and Others

APPELLANT

Vs

Gayaram and Others

RESPONDENT

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**Date of Decision:** Dec. 2, 1991

**Acts Referred:**

- Madhya Bharat Zamindari Abolition Act, 1951 - Section 4(2)

**Citation:** (1994) 39 MPLJ 365 : (1994) MPLJ 365

**Hon'ble Judges:** R.C. Lahoti, J

**Bench:** Single Bench

**Advocate:** R.D. Jain, for the Appellant; Arun Mishra, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

R.C. Lahoti, J.

The plaintiff/appellants have come up in appeal aggrieved by the judgment and decree of the lower appellate court dismissing their suit for declaration of title in reversal of the decree of the trial court which had decreed the suit.

The plaintiff/appellants and the defendant/respondents, all the four are real brothers, being the sons of late Raghunath Prasad. The suit holding is situated in village Waman-Wazna, Tehsil Sabalgarh which, prior to the abolition of proprietary rights on 2-10-1951, formed part of Zamindari of late Raghunath Prasad. Raghunth Prasad expired on or about 10-7-1949, in any case before the abolition pf Zamindaris.

The case of the plaintiffs was that Gayaram, defendant/respondent No. 1, had separated from his father during his life time and on the date of abolition of Zamindaris, the suit land was exclusively in possession of the plaintiffs and hence the rights in the land survived to them alone, to the exclusion of defendant No. 1 Gayaram, defendant No. 1, denied the case of the plaintiffs and submitted that the

suit land was jointly owned and possessed by the four heirs of late Raghunath Prasad and hence there was no question of the plaintiff/appellants being conferred with Pakka tenancy rights on the abolition of Zamindaris. Lalaram, defendant/respondent No. 2 admitted in toto the plaint averments.

The trial Court held that there was a partition much before the abolition of Zamindaris, after which partition the two plaintiffs alone had remained in possession of the suit land and hence the rights would be saved to them alone. The lower appellate court has reversed the findings of the trial court holding that there was no partition as such and hence whatever rights would survive after abolition of Zamindaris, they would survive to all the four brothers jointly.

At the hearing the learned counsel for the parties have confined their submissions to the following two questions of law :-

(i) Whether in view of the admissions made" by Gayaram, defendant/respondent, himself in his statement before the court, the land should have been held partitioned; the suit land having fallen to the share of the plaintiffs ?

(ii) Whether in view of the provisions contained in Section 4(2) read with Section 2(c) of M. B. Zamindari Abolition Act, 1951, the rights in the land would survive to the plaintiffs alone ?

Question No. (i) :-

Gayaram, defendant No. 1, in his statement very specifically denied any partition having taken place and he having separated himself prior to the abolition of Zamindaris. All that he has stated is that he had started residing separately when the village was deserted by the villagers (the exact time whereof is not known). He further stated that the parties had commenced separate cultivation, 5 to 6 years after the death of their father, which period would definitely fall much after 2-10-1951. The contention of the learned counsel for the plaintiff/appellants is, therefore, misconceived that the defendant Gayaram had admitted partition and separate possession prior to the abolition of Zamindaris.

The trial court while holding in favour of the plaintiff/appellants had placed much reliance on the statement of Lalaram, defendant No. 2, overlooking the fact that he had admitted the case of the plaintiffs, was examined as a witness for the plaintiffs and his statement could not bind Gayaram, the contesting defendant.

Question No. (ii) :-

It is forcefully submitted by the learned counsel for the plaintiff/appellants that if the two plaintiff/appellants were alone in exclusive and actual possession of the suit land on the date of the abolition of Zamindaris i.e. 2-10-1951, then the land would be saved from vesting to them alone and not to the defendant/respondents, who though co-owners, were not in actual possession of the land. Although it has already

been held that factual aspect of the contention has not been found proved by the lower appellate court and rightly so, still the worth of the contention in law would be examined.

Section 4(1) of the M. B. Zamindari Act, 1951 (hereinafter referred to as "the Act"), having provided for the consequences of vesting, on the coming into force of the Act, sub-section (2) thereof carved out an exception in favour of the Ex-Zamindar in the following terms :-

"(2) Notwithstanding anything contained in sub-section (1), the proprietor shall continue to remain in possession of his Khudkasht land, so recorded in the annual village papers before the date of vesting."

The term "Khud-kasht" is defined in Section 2(c) in the following terms :-

" "Khud-kasht" means land cultivated by the Zamindar himself or through employees or hired labourers and includes sir land;"

It is contended by the learned counsel for the appellants that in order to save the land from vesting and to amount to Khud-kasht, the following ingredients must be proved :

- (i) that the claimant is an Ex-Zamindar of the village;
- (ii) that the land was recorded as Khud-kasht land in the annual village papers soon before the date of vesting i.e. 2-10-1951;
- (iii) that the land was cultivated by the, Zamindar himself or through employees or hired labourers or was a Sir land.

The learned counsel is right. However, he further submits that when there are more than one Zamindars and the land is being cultivated by one of them, he alone would have the rights survived while the rights would be lost to all other co-Zamindars who were not cultivating that land. In other words, the learned counsel submits that the land should be in actual cultivating possession of that Zamindar who claims to have become a Pakka- tenant on the abolition of Zamindars.

No authority governing the factual position like the one arising in the case has been placed before the Court. The learned counsel for the defendant/respondent No. 1 has relied on two decisions, referred to hereinafter, from which assistance can be derived in finding out the solution.

A Full Bench of this Court in Deorao Jadhav v. Ramchandra and Ors. 1982 MPLJ 414 : 1982 JLJ 375, taking into consideration several earlier decisions of the Apex Court and this Court, has held that in Section 4(2) of M. B. Zamindari Abolition Act, 1951, the expression "possession" includes constructive possession and cultivation by trespasser is deemed to be personal cultivation of the proprietor or tenant.

In *Meharban Singh v. Bhagwan Singh and Ors.* 1980 LJ 293, their Lordships of the Apex Court were posed with a problem where the Zamindari land was mortgaged to a mortgagee and the mortgagee had inducted tenants during the mortgage. That was the position on the date of vesting. Their Lordships have held that the rights of the proprietor were not affected and the mortgagor would be deemed to be in actual possession.

It follows from the abovesaid two authorities that for determining the meaning and concept of the term "possession" as occurring in Section 4(2) of the Act, the doctrine of constructive possession is not excluded from its applicability. The Ex-Zamindar would be deemed to be in possession of Khud-kasht land if so recorded in annual village papers even if the land be in actual possession of some one else provided that in the eye of law the actual possession of such some one else would be deemed to be the possession of the proprietor.

15A. It is too well settled to be reiterated that possession of one of the co-owners is deemed to be the possession of all. If any authority is needed for the proposition, it is to be found in [P. Lakshmi Reddy Vs. L. Lakshmi Reddy](#), Their Lordships have held :

"The possession of one co-heir is considered, in law, as possession of all the co-heirs. When one co-heir is found to be in possession of the properties it is presumed to be on the basis of joint title."

Assuming that even if the plaintiffs were in possession of the suit land, their possession would be deemed to be on behalf of all co-owners. Lower appellate Court has found on appreciation of the evidence that there was no partition between the parties and the plea that Gayaram, defendant No. 1, had separated from the family was not substantiated. Assuming that the plaintiffs were cultivating the land in view of any mutual arrangement having been arrived at between the four brothers that would not mean that the joint holding had been partitioned. The plaintiffs would be deemed to be holding the land on behalf of all the brothers and their possession would be deemed to be the possession of all the four brothers for the purpose of Section 4(2) of the Act.

For the foregoing reasons, the appeal is held to be without any merit. It is dismissed. The judgment and decree of the lower appellate court are confirmed. In view of purely legal controversy arising for decision in the appeal, the parties are directed to bear their own costs as incurred. Counsel fee as per schedule, if precertified.