

Qabool Singh Vs. Board of Revenue and ors.

Qabool Singh Vs. Board of Revenue and ors.

SooperKanoon Citation : sooperkanoon.com/453085

Court : Allahabad

Decided On : May-04-1972

Reported in : AIR1973All158

Judge : H.N. Seth, J.

Acts : [Registration Act, 1908](#) - Sections 17; [Specific Relief Act, 1963](#) - Sections 42

Appeal No. : Civil Misc. Writ Petn. No. 931 of 1970

Appellant : Qabool Singh

Respondent : Board of Revenue and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : N.C. Rajvanshi, Adv.

Disposition : Petition allowed

Judgement :

ORDER

H.N. Seth, J.

1. Qabool Singh defendant No. 3, in a suit under Section 229-B of the U. P. Z. A. & L. K. Act, has filed this petition praying that the orders passed by the Board of Revenue. Additional Commissioner Meerut, Assistant Collector Meerut dated 24th

January, 1970, 26th November. 1968. 10th May, 1968 and 30th September, 1971
be quashed.

In order to appreciate the controversy raised in this petition it would be convenient
to state a short pedigree, which is admitted by the parties concerned.

HARDEV SINGH

|

|||

Ram Prasad Pirthi Qabul Singh

| =Vidyawati (widow) Defdt. No. 8

|

||||

Surya Prakash Chander Pal Vijai Kumar |

(Defdt No. 4) (Defdt.5) (Defdt. 6) |

|||

Siksha Bimla Kranti

| Piff. 2 Plff.3

Subhash

Plff. No. 1

Plaintiffs Subhash, Bimla and Kranti brought a suit under Section 229-B of the U.
P. Z. A. & L. R. Act, claiming co-bhumidhari rights in respect of khata No. 197 and

cosirdari rights in Khata No. 355. It was claimed that the two plots were the holdings of Prithi Singh who died before the enforcement of the U. P. Z. A. & L. R. Act. On his death, his widow Smt. Vidyawati inherited these plots and became bhumidhar of Khata No. 197 and sirdar of Khata No. 355. During the consolidation operations, three different chaks were prepared. One Chak was allotted to Smt. Vidyawati. Qalbool Singh, the petitioner got another Chak whereas defendants Nos. 4 to 6 were allotted the third chak. Smt. Vidyawati died about six years back, leaving behind three daughters namely, Smt. Bimla, Smt. Kranti & Smt. Shiksha (mother of plaintiff No. 1). After the death of Smt. Vidyawati a litigation, in connection with the mutation of names in her place, took place between the three plaintiffs and defendants Nos. 3 to 6 in which the parties compromised and entered into a family settlement. Information about this was given to the consolidation authorities, by moving an application dated April 22, 1960. The Consolidation Authorities, thereupon, made orders in accordance with the family settlement. According to that settlement plaintiff's share came to 5 Bighas 2 Biswas and 10 Biswansis in area. Necessary entries in accordance with the family settlement were made in the revenue papers but due to oversight the family settlement was not given effect to in C. H. Form Nos. 41 and 45. However, the plaintiffs claimed that they had been in possession over the plots as per family settlement which is binding on the parties. After the death of Smt. Shiksha, mother of plaintiff No. 1, proceedings for mutation of names in her place were again taken. Defendants 3 to 6 contested the same and plaintiff's name was not brought on the record. Accordingly the present suit was filed claiming a declaration about plaintiffs bhumidhari and sirdari rights.

2. The suit was contested by Qabool Singh, defendant No. 3. But defendant No. 4 filed a written statement admitting the plaintiff's case. Qabool Singh claimed that on the death of Smt Vidyawati he alone succeeded to her interest under Section 172 of the U. P. Z. A. & L. R. Act and that he had been in exclusive possession over the plot in dispute. The plaintiffs in collusion with defendants Nos. 4 to 6 tried to get the name of Smt. Vidyawati recorded in revenue papers. He denied that any family settlement ever took place between the parties. If there was any such settlement he was not bound by it.

3. The trial Court decreed the suit holding that there was a family settlement between the parties as alleged by the plaintiffs. Defendant No. 3 was party to it and the settlement which had been acted upon was binding upon him. Qabool Singh went up in appeal. Additional Commissioner Meerut dismissed the appeal and confirmed the decree passed by the trial Court. Qabool Singh then filed a second appeal before the Board of Revenue and challenged the findings recorded by the two Courts below that there had been a compromise and that the family settlement had been acted upon by the parties. It was contended that Qabool Singh did not thumb mark the compromise and in any case the compromise could not be looked into as the same had not been registered. It was further alleged on behalf of Qabool Singh that the mutation Court had found him to be in possession over the plots in dispute and in any case, he matured his title to the land by adverse possession. He further claimed that the plaintiffs were out of possession and their suit for declaration of rights under Section 229-B of the U. P. Z. A. & L. R. Act was barred on the principles contained in Section 42 of the Specific Relief Act.

4. The Board of Revenue came to conclusion that on the death of Smt. Yidyawati succession to her interest was governed by Section 172 of the U. P. Z. A. & L. R. Act as claimed by defendants. Although there is some confusion in the order of the Board of Revenue, the position has been made clear as per order dated 24th November, 1970 passed on the review application. It, however, held that both the Courts below concurrently found that the plaintiffs were in possession over their share. In view of the family arrangement and as such they were entitled to retain that possession and to claim a declaration under Section 229-B of the U. P. Z. A. & L. R. Act.

5. So far as the question, whether there was a family arrangement between the parties, is concerned. I find that the finding is based upon an appreciation of evidence produced in the case. The trial Court and the Additional Commissioner accepted the evidence and held that there was in fact a family arrangement which had been acted upon. This finding was binding upon the Board of Revenue and it did not err in acting on the basis of that finding. Learned counsel for the petitioner urged that the revenue Court erred in relying upon the document incorporating family settlement as the same had not been registered. It has been pointed out by

the Additional Commissioner that the family arrangement set up by the plaintiffs was an oral family settlement which did not require any registration. The compromise filed by the parties before the Court merely stated the fact that a family settlement had already been arrived at between the parties earlier. It was not a document which by itself created an interest in immovable property. In the circumstances, no question of its registration arose. In my opinion the view that as the compromise was merely a memorandum of facts already settled between the parties, it did not require registration is correct. Even if the plaintiffs did not acquire any title to the property in dispute by way of succession, they could still acquire the same by virtue of family settlement.

6. Learned counsel for the petitioner then urged that even if it be taken that the plaintiffs acquired some right by virtue of the family arrangement, they being out of possession of the plots, lost it and the defendants acquired the same by adverse possession. The observation made by Board of Revenue that the two Courts below had concurrently held that the plaintiffs were in possession of their share in view of the family arrangement is apparently erroneous. I have looked into the order passed by the learned Additional Commissioner dated 10th of May 1968. Although the Additional Commissioner has found that there was a family arrangement and the same was not vitiated by fraud, he has not recorded any finding about the person who has been in pos-session over the plots in dispute. The observation made by the Board of Revenue that the Courts below have concurrently found that the plaintiffs have been in possession over the plots in dispute, therefore, is wrong on the face of it and petitioner's review application for getting this apparent error corrected was wrongly rejected.

7. Next question that arises for consideration is about the effect of the omission on the part of the Additional Commissioner and the Board of Revenue to go into the question as to which of the two parties has been in possession over the plots In dispute and for how long.

8. Learned counsel for the petitioner argues that in case the plaintiffs were out of possession over the plots in dispute, a suit for pure and sample declaration of title under Section 229-B of the U. P. Z. A. & L. R. Act, will not be maintainable.

Learned counsel for the plaintiffs-respondents brought to my notice a decision of this Court in the case of *Ramji Lal v. Alim Uddin*. (1963 ED 239), in which it has been held that provisions of Section 42 of the Specific Relief Act have no application to a suit filed under Section 229-B of the U. P. Z. A. & L. E. Act, and that a suit for mere declaration of rights under this section, is maintainable. He contends that so long as the plaintiffs succeed in establishing their title on the basis of the family settlement, the relief for declaration cannot be refused on the ground that they have not been in possession over the plots in dispute. In the circumstances, the fact that the Additional Commissioner and the Board did not record a finding as to which of the two parties has been in possession over the plots in dispute, is immaterial. Following this decision I hold that in case it is held that plaintiffs were not in possession of plots in dispute their suit was not liable to fail merely on the ground that while claiming the declaration of their title under Section 229-B of the U. P. Z. A. & L. R. Act, they did not claim possession over the plots in dispute.

9. Learned counsel for the petitioner, however, urged that a finding about possession was necessary in order to determine the claim made by the defendant that title of the plaintiffs if any, came to an end as the defendant has been in adverse possession over the plot. In case the plaintiffs lost title the suit under Section 229-B of the Zamindari Abolition and Land Reforms Act was liable to fail in any case, not on the ground that the plaintiffs have failed to sue for possession but on the ground that they have no right left in the property. The revenue Courts therefore, could not decide the suit without going into this question.

10. Learned counsel for the plaintiffs-respondents, however, urged that this suit was filed within a period of six years from the date of alleged family settlement and therefore, on the date of the suit no question of plaintiffs losing right by adverse possession could arise. In such suits the courts are concerned merely with the situation as it prevails on the date of the suit. Any subsequent change in situation cannot deprive the plaintiffs of a right to claim a declaration of their rights which were not lost on the date of the suit. If after filing the suit the situation changes and the plaintiffs lose their rights, which come to be vested in the defendant, the defendant will have to initiate other proceedings for enforcing that right. It was,

therefore not at all necessary for the revenue Courts to go into the question as to which of the two parties has been in actual possession over the plots in dispute and whether the defendant acquired any rights by being in adverse possession over them. Even if the revenue courts have not gone into the question of adverse possession, their judgment declaring the plaintiff's rights under Section 229-B of the U. P. Z. A. & L. R. Act, on the basis of family settlement would stand.

11. I am unable to accept this submission. In order to obtain a decree for declaration of right, the plaintiff has to have a subsisting right not only on the date of the suit but also on the date when the decree is passed. It is true that Section 229-B of the U. P. Z. A. & L. R. Act like Section 42 of the Specific Relief Act, does not provide that a decree for declaration will not be granted if the plaintiff who is out of possession omits to claim possession, but it does not mean that even if he has lost his right after filing the suit, he can still claim a declaration in its respect. In the circumstances, the suit could not be effectively disposed of without going into the question as to which of the two parties has been in possession over the plots in dispute and whether the defendant perfected his right by adverse possession.

12. In this connection learned counsel for the respondent relied upon a decision of the Nagpur High Court in the case of Abid Ali Khan v. The Secretary of State, (AIR 1951 Nag 327). In this case the estate of A a Jageer Dar, was in possession of Court of Wards and B, claiming to be rightful holder of the Jagir sued for declaration that he and not A was entitled to hold the estate and that the Management by Court of Wards was for and on his (B's) behalf. During the pendency of the suit, the Court of Wards relinquished its possession. A question that, therefore arose for consideration was whether the suit for mere declaration without asking for possession was not hit by the proviso to Section 42 of the Specific Relief Act. It was held that what proviso to Section 42 of the Specific Relief Act contemplates is the position obtaining on the date of the suit and not subsequently. In this view of the matter the suit was not hit by Section 42 of the Specific Relief Act. In my opinion this case has no application to the facts of the present case. Section 42 of the Specific Relief Act Provides that a decree for declaration simpliciter should not be granted in a case where the plaintiffs being in a position to claim a further relief omits to claim it. According to Nagpur High

Court, the question whether the suit for mere declaration is barred by the provisions of Section 42 of the Specific Relief Act or not will depend on the fact whether on the date of the suit it was open to the plaintiff to claim a relief other than a relief for declaration which he omitted to claim. A relief, right to which, accrued after filing the suit, is not a relief which ought to have been claimed at the time of filing of a suit for declaration as contemplated by Section 42 of the Specific Relief Act. This case is no authority for the proposition that the Court will grant a declaration of right even though subsequent to the filing of the suit the plaintiff has lost it.

13. A view similar to that taken by the Nagpur High Court has been taken by the Bombay High Court in the case of Meghaji Mohanji v. Anant Pandurang, (AIR 1948 Bom 396) and by a Division Bench of this Court in Mahant Indra Narain Das v. Ganga Ram Das. : AIR1955 All683 . For the reasons mentioned above the plaintiff-respondent cannot derive any advantage from what has been decided in these two cases.

14. In this view of the matter, I am of opinion, that it was necessary for the revenue courts to have gone into the question whether the contesting defendant had been in possession over the plots in dispute and whether he matured his title to them by adverse possession as claimed by him. The case could not have been decided without going into and recording a finding on this disputed question of fact. As stated above the observations made by the Board of Revenue that there is concurrent finding of fact to the effect that the plaintiffs have been in possession over the plots in dispute is on the face of it erroneous.

In the circumstances the petition succeeds. The order passed by the Board of Revenue dated 26th November, 1968 is quashed. The Board of Revenue will now proceed to dispose of the second appeal in accordance with law. In the circumstances of the case I direct the parties to bear their own costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com