

Deo Narain Singh and anr. Vs. Aditya Prasad and ors.

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Court : Allahabad

Decided On : Feb-03-1971

Reported in : AIR1971All415

Judge : K.N. Srivastava, J.

Acts : Tenancy Law; Uttar Pradesh Agricultural Tenants (Acquisition of Privileges) Act, 1949 - Sections 3

Appeal No. : Second Appeal Nos. 2049 and 3053 of 1962

Appellant : Deo Narain Singh and anr.

Respondent : Aditya Prasad and ors.

Advocate for Def. : H.P. Dube and ;Pt. P.K. Misra, Advs.

Advocate for Pet/Ap. : G.P. Bhargava, Adv.

Disposition : Appeals dismissed

Judgement :

K.N. Srivastava, J.

1. These are two appeals which have been disposed of by the lower appellate court by one and the same judgment as the same questions of law and fact arise for determination in both of them. For the same reason, both the appeals are being

disposed of by me by one and the same judgment.

2. The facts giving rise to these appeals are as follows:--

3. Admittedly, the husband of Smt. Jhuria was the tenant of the disputed plots. She inherited the tenancy of her husband. She is alleged to have admitted Someshwar as a cotenant by making an application under Section 3 of the U. P. Agricultural Tenants (Acquisition of Privileges) Act. In this application, she alleged that Someshwar who was her nephew was cotenant with her from before 23-6-1950 and as his name was not entered over the plots, his name be entered and the deposit under Section 3-B of the U. P. Agricultural Tenants (Acquisition of Privileges) Act be accepted. The application was allowed and the name of Someshwar was entered as cotenant with Smt. Jhuria.

4. Smt. Jhuria died on 26th August 1951. After her death, Someshwar filed a suit under Section 59 of the U. P. Tenancy Act against the Zamindars for a declaration that he was the sole tenant of the plots in dispute after the death of Smt. Jhuria. By a compromise, the Zamindars admitted Someshwar as tenant on 8/9th November, 1951. Thereafter, Someshwar sold these plots to the plaintiffs-respondents.

5. Proceedings under Section 145, Criminal Procedure Code were started on the application of Someshwar. These proceedings were dropped as the learned Magistrate came to the conclusion that there was no apprehension of breach of peace. The property in dispute had been attached in the proceedings under Section 145, Criminal P. C. and Mata Autar who was made a defendant in the suit was appointed a Supurdar of the same. According to the plaintiffs-respondents, during the pendency of the suit, the defendants-appellants took forcible possession of the disputed plots from Mata Autar and, therefore, a relief for possession was claimed by the plaintiffs. The learned trial court and the learned lower appellate court believed the contention of the plaintiffs and held that the defendants were not in possession over the disputed plots at least till the date of the suit and decreed the suit. The appeal was also dismissed on the same finding of fact.

6. It was argued by the learned counsel for the appellants that Sections 3-B and 3-C of the U. P. Agricultural Tenants (Acquisition of Privileges) Act did not apply to the facts of the case because Someshwar was not a tenant as defined under Section 3 of the same Act. In support of this contention, the learned counsel for the appellants relied on a decision of this court in *Radio Ram v. Smt. Rao Rani*, 1967 All WR (HC) 822. In this case, it was held by a Division Bench of this court that Shiv Charan was not in possession as co-tenant and, therefore, he was not entitled to make an application under Section 3 of the U. P. Agricultural Tenants (Acquisition of Privileges) Act. The facts of this case are not similar to the facts of the present case. In the reported case, Smt. Rao Rani was the widow of the last tenant. Shiv Charan helped her in cultivation and made an application for grant of a Joint Sanad in his name and in the name of Smt. Rao Rani. Subsequently, Smt. Rao Rani filed a suit that she had not consented to allow Shiv Charan to become a cotenant with her and on these facts, it was, therefore, held that Shiv Charan was not a co-tenant and he had been helping Smt. Rao Rani in cultivation and, as such, he was not entitled to the Sanad under the U. P. Agricultural Tenants (Acquisition of Privileges) Act.

7. In the present case, the application for acquisition of the Sanad was made jointly by Smt. Jhuria and Someshwar on 23-6-1950. The order was passed on this application on, the same date and the copy of the order is on the record. This order was also signed by Smt. Jhuria in token of the fact that the order on the application had been passed and it had been allowed. In the instant case, Smt. Jhuria, therefore, agreed to allow Someshwar to be entered as a cotenant with her. Not only this, in the application, she mentioned that Someshwar was a cotenant with her from before the date of this application.

8. This admission by Smt. Jhuria is borne out by certain other papers which are on the file. Ex. 7 is the Khasra of 1355 F. in which Smt. Jhuria is shown as the chief tenant and in the remark column, the name of Someshwar is written as 'Mar-fat Someshwar Bhateeja'. Similar entries are to be found in the Khasra of 1356 and 1357 F.

9. The learned counsel for the appellant contended that the Marfat entry did not confer any right of cotenancy on Someshwar. In support of this contention, the learned counsel for the appellants relied on a decision of this court in Jagdish Prasad v. Board of Revenue, 1956 All LJ 317. In this case, it was observed as below:

'A 'Marfatdar' is defined in para 83 of the Land Records Manual as a person put by a tenant in cultivating possession of the holding on his behalf. Sometimes, a Marfatdar is treated as a pure agent, Pati Ram v. Hira Lal, sometimes he is treated as a licensee (1939 RD 533, and 1953 RD 273). If he is purely an agent he cannot be considered to be an occupant because he is merely a custodian on behalf of the tenant. He cultivates the land as a servant or agent of the tenant at the expense of the tenant and for the benefit of the tenant. The fruits of cultivation go to the tenant. He may or may not charge for his services. He cannot be said to be in occupation of the land.'

10. In this reported case, the question arose as to whether the Marfatdar entry in 1356 F. conferred the right of Adhivasi on the person concerned. It was rightly held that the Marfatdar who was only an agent of the tenant had no right in the land and the Marfatdar entry only showed that he was managing the property on behalf of the tenant who was entitled to the usufruct. In the instant case, the matter is different from Jagdish Prasad's case, 1956 All LJ 317. In the present case, reliance is not mainly placed on the Marfatdar entries but on the admission of Smt. Jhuria that Someshwar was a cotenant with her. The Marfatdar entry in the Khasra referred to above had only been filed to show that the admission which Smt. Jhuria made in her application dated 23-6-1950 was not without substance. Although the name of Someshwar was entered as a Marfatdar, yet Smt. Jhuria, who was the tenant, clearly admitted that his position was not that which was held in Jagdish Prasad's case but was that of a co-tenant with her. This document had only been filed to prove the circumstance and the correctness of the admission which Smt. Jhuria made. In this view of the matter, the case of Jagdish Prasad does not apply to the present case because the cotenancy is not claimed on the Marfatdar entry.

11. Now the next question which arises for determination is as to whether Smt. Jhuria could admit Someshwar as a cotenant with her. ' There is no dispute about the proposition of law that cotenancy could be acquired by acquiescence and estoppel. There are large number of decisions in which this proposition has been upheld. Reference may be made to 1964 RD 324, Dudh Nath Koli v. Smt. Dhamrajja, 1968 All LJ 126, Kalawati v. Consolidation Officer, 1967 RD 396, Bhagan Ram v. State of Uttar Pradesh, 1970 AH LJ 1019, Mewa Ram v. Shankar. Smt. Jhuria by her application dated 23-6-1950 admitted that Someshwar was cotenant of the tenancy plots with her. At the time when this application was made, the U. P. Tenancy Act was in force. Under Section 33 of the U. P. Tenancy Act, a person could be admitted as a cotenant provided that he was a cotenant from the commencement of the tenancy and provided he was recognised as such in writing by the landlord. It is true that besides the above provision, a cotenant could also be admitted by acquiescence and estoppel. In the instant case, Smt. Jhuria admitted Someshwar as a cotenant and this admission would operate as acquiescence and estoppel. Therefore, Smt. Jhuria rightly admitted Someshwar as a cotenant.

12. The question which, therefore, arises is as to what was the position of Someshwar regarding these plots even if Smt. Jhuria admitted him as a cotenant. Admittedly, Smt. Jhuria was holding this tenancy as the widow of Mata Badal. It is admitted by the parties that Mata Badal left no heir. Therefore, the only persons who could sue for ejectment of Mata Badal after Smt. Jhuria's death were the Zamindars. If a widow admitted another person as a cotenant, the right of the heirs and the Zamindars after the widow's death would remain ineffective. As there was no heirs of the male tenant, therefore, the only persons who could challenge it were the Zamindars and they could get her ejected from the land, but in proceedings under Section 59 of the U. P. Tenancy Act, the Zamindars filed a compromise and agreed that a declaration be issued that Someshwar was a tenant of the disputed plots. The Zamindars, therefore, admitted Someshwar as tenant after the death of Smt. Jhuria.

13. It was contended that the admission of the Zamindars that Someshwar was the tenant only goes to show that Someshwar became a hereditary tenant of these

plots from the date of the admission i.e., 8/9th November, 1951. I do not agree with this contention. No fresh contract of tenancy was made by this declaratory suit in favour of Someshwar. Someshwar sought by this declaration that he was the tenant of the plots and a declaration be made to that effect. The suit was compromised and by the compromise decree, a declaration was given to Someshwar. Someshwar had become the cotenant of the disputed plots with Smt. Jhuria and was liable to be ejected by the Zamindars. The Zamindar admitted his position as a tenant and therefore after Smt. Jhuria's death, Someshwar became the sole tenant of the disputed plots. The cotenancy could come to an end after the death of Smt. Jhuria. This view of mine is supported by a decision in Mst. Jhuria v. Kali Din, 1947 RD 123. As said above, the cotenancy of Someshwar did not come to an end but the Zamindar who could file a suit for ejectment admitted him and allowed him to remain as a tenant of the disputed plots.

14. In view of the above finding, Someshwar was a cotenant with Smt. Jhuria on the date the application dated 23-6-1950 was made under the provisions of U. P. Agricultural Tenants (Acquisition of Privileges) Act. The ruling reported in Rago Ram's case, 1967 All WR (HC) 822 does not apply to the facts of this case because Someshwar was not a stranger and was cotenant with Smt. Jhuria from before the date on which this application was made.

15. Someshwar transferred the plots in dispute to the plaintiffs liable (sic) the passing of the Zamindari Abolition and Land Reforms Act. Under Section 7 of the U. P. Agricultural Tenants' (Acquisition of Privileges) Act, Someshwar could bequeath, transfer by way of sale, make a mortgage or gift his interest in the holding or his share therein. Therefore, the transfer by Someshwar to the plaintiffs was perfectly valid and legal.

16. The learned counsel for the appellants contended that they were in possession over the disputed plots from before the sale and as such the plaintiffs were not entitled to the reliefs claimed. The appellate court recorded a finding of fact that the defendants-appellants were not in possession over the disputed plots at least till the date of the suit. This finding is based on the evidence on the record and is concluded by finding of fact. The above argument of the learned counsel for

the appellants has, therefore, no force in it.

17. Someshwar filed a suit for cancellation of the sale deed on the basis of fraud. This suit was dismissed. Someshwar raised the same plea in this suit as well. His plea now that the sale deed was fraudulent is barred by res judicata and he cannot raise the same plea now. I agree with the finding of the lower appellate court on this point as well.

18. In the result, both the appeals fail. They are hereby dismissed with costs. The stay order is vacated.

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