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Court : Madhya Pradesh

Decided On : Jan-15-1992

Reported in : AIR1993MP12; 1992(0)MPLJ598

Judge : R.C. Lahoti, J.

Acts : Madhya Pradesh Zamindari Abolition Act, 1951 - Sections 38

Appeal No. : S.A. No. 4 of 1980

Appellant : Ujagar Singh and ors.

Respondent : Jomdar Singh (Dead) by Lrs.

Disposition : Appeal allowed

Judgement :

R.C. Lahoti, J.

1. The defendant/appellants have come up in appeal aggrieved by the judgment and decree of the Power Appellate Court decreeing the suit filed by the plaintiff/respondents in supersession of the judgment and decree of the trial Court which had dismissed the suit.

2. The suit property consists of land S. No. 1110 area 4 bighas 2 biswas. Late Gajraj Singh had three sons namely Jomdar Singh and Shriram Singh, and late

Khayal Singh whose legal representatives are the defendants. The parties were holding the lands as Pukta Maurusi tenants on the date of vesting under the ex-proprietor. In the revenue papers, the parties were so recorded. Khasra for Samvat year 1999 (Ex.P/4) and Khasra for Samvat year 2007 (Ex.P/3) records Ujagar Singh, Mathuri Singh, Jagram Singh to the extent of 1/3rd, and Jomdar Singh and Shriram Singh to the extent of 2/3rd, jointly as tenants. However, in the remarks column, the two plaintiffs are recorded in possession of the land.

3. The case of the plaintiffs was that only they two having been in possession of the land on the date of vesting, i.e., 2-10-1951 (Samvat year 2007), the rights of Pukka Krishak would accrue to them alone under Section 38 of M. B. Zamindari Abolition Act, 1951 inasmuch as the rights accrue to the tenant in possession only. They also alleged that the three defendants being out of possession, did not acquire any rights in the land on the abolition of the proprietary rights. This contention has found favour with the Lower Appellate Court.

4. The question arising for decision in the appeal centres around the interpretation of Section 38 of Zamindari Abolition Act. The relevant part of Section 38 reads as under:--

'38. Conferral of pacca tenancy right on tenants and sub-tenants.-

(1) Subject to the provisions of this section every tenant of a proprietor shall be deemed to be a pacca tenant of the land comprised in his holding from the date of vesting.

Explanation (I) The pacca tenancy rights under this section shall accrue or be acquired in respect of such land only as may be in the actual possession of the tenant, sub-tenant or tenant of sub-tenant.

5. What is the meaning of the term 'actual possession' as used in the Explanation? The point is no more res integra in view of the Full Bench decision of this Court (Deorao Jadhav v. Ramchandra, 1982 J.L.J. 376). Earlier the view taken by a single Bench of this Court in Karnail Singh v. Anandilal (1967 RN 20) was that the words 'actual possession' were so clear that there was no room for argument that it

meant not only actual possession but also constructive possession or even right to possess; Constructive possession through sub-tenants or tenants of sub-tenants was necessarily excluded from the term 'actual possession'. The Full Bench in Deorao v. Ramchandra (supra) on a review of the case law available on the point, overruled Karnail Singh's case (supra) and also taking aid from Section 41 of the Act held that the expression possession includes constructive possession. So is the view taken by this Court in a recent decision in Kishanlal v. Gayaram (Second Appeal No. 47/79, decided on 2-12-1991). It has been held applying the law laid down by the Apex Court in P. Lakshmi Reddy v. L. Lakshmi Reddy, AIR 1957 SC 314, that possession of one co-sharer would be the possession of all.

6. It is not necessary to examine the contention of the learned counsel for the appellants that the finding of the Lower Appellate Court holding the plaintiff/respondents alone to be in possession of the land was perverse inasmuch as assuming that they were in possession, their possession on the date of vesting would be deemed to be for and on behalf of all the co-tenants. It cannot be said that merely because the two plaintiff/ respondents namely Jomdar Singh and Shriram Singh were in possession on the date of vesting, the rights of Pukka tenant would accrue to them alone, to the exclusion of the defendant/ appellants.

7. The finding to the contrary of the Lower Appellate Court being one based on a judgment of this Court which stands now overruled, is unsustainable in law.

8. For the foregoing reasons the appeal is allowed. Judgment and decree of the Lower Appellate Court is set aside and that of the trial Court dated 26-4-1967 dismissing the suit filed by the plaintiff/respondents is restored. No order as to the costs. Counsel's fee as for schedule, if pre-certified.