Nathusingh Vs. Sukhram and ors.

Nathusingh Vs. Sukhram and ors.

SooperKanoon Citation : sooperkanoon.com/499801

Court : Madhya Pradesh

Decided On : Mar-21-1969

Reported in : AIR1970MP283

Judge : H.R. Krishnan and ;G.L. Oza, JJ.

Acts : Easements Act, 1882 - Sections 15

Appeal No. : Second Appeal No. 226 of 1964

Appellant : Nathusingh

Respondent : Sukhram and ors.

Judgement :

Krishnan, J.

1. In this reference the question to be answered by us is this: Whether in the event of the owner of a bhumiswami agricultural holding claiming a right of easement on a contiguous holding which is also held in bhumiswami rights, the easement materializes on peaceful, uniterrupted and continuous usage for 20 years as provided in the main body of Section 15 of the Indian Easements Act, or whether on the ground that the land 'belongs' to government, it should be for a period of 60 years under the old Limitation Act and 30 years under the present one, as provided in the last clause of the same section?

2. There are two other questions which arise in the same second appeal; first, one of fact, whether actually the claimant to the easement has proved such usage for a period of over 30 years; the second, one of law, whether, in view of the amendment of the Indian Limitation Act, even on the theory that this land 'belongs' to the government, the period would be only 30 and not 60 years. This would depend upon the applicability or otherwise of the 'savings' in Section 31(b). We do not feel called upon to say anything about these two questions which are entirely within the competence of the Single Bench to which the case shall be returned with an answer to the first question already set out.

3. The facts necessary for our purposes are simple and are practically common grounds except for the duration mentioned in connection with the question of fact. The parties to the suit hold contiguous holdings namely, plot No. 101 in the village Nogawa, Tahsil Depalpur of area 0.40 acres owned by the plaintiff. Adjacent to it are two fields Nos. 104 & 105, the first belonging to defendants 1 to 3 and the second to defendant No. 4. By 'belonging to' or 'owned by' with reference to these three plots is meant that all these persons have a bhumiswami right on the respective plots owned by them. The plaintiff's case is that he has got a right of easement for passage over the plots 104 and 105 to his own plot 101. He has claimed to have exercised it for a long time and wants this right to be declared. In addition he wants the defendants to be restrained by a permanent injunction from interfering with his (plaintiff's) exercise of the right of easement over the respective plot numbers. The lower appellate Court has found as a fact that the plaintiff had been exercising his right of passage over the fields of the defendants peacefully and without interruption for a continuous period between 30 and 35 years. The trial Court itself has dismissed the suit giving reasons which are slightly different from those given by the lower appellate Court; but it is sufficient for our purpose to concentrate our attention on the appellate decision. Holding that the last clause of Section 15 of the Indian Easements Act was applicable to this case and that the Indian Limitation Act as it stood at the time of the filing of the suit was applicable, the lower Court held that in the absence of 60 years' continuous and uninterrupted use the easement could not be declared. In this it was guided by the ruling of another Single Bench of this High Court reported in Rawaji v. Keshav, 1962 Jab LJ 1039 = (AIR 1963 Madh Pra. 202).

4. The solution of this problem centres round the phrase 'belongs to government'. Courts have said that this 'belonging' should be contemporaneous with the suit. Of that of course there is no difficulty. The real difficulty is of the degree of the 'belonging', because it is a very common happening that property which belongs ultimately to the Government, also belongs in a more or less limited measure to other persons. If we lay emphasis upon a very remote ultimate belonging to government practically every piece of land would be in the ownership of government at least in our country where according to the ancient theory all land belongs to Government. On the other hand, if we restrict the meaning of the word 'belonging' every derivative or limited owner would become the owner for the purposes of allowing an easement to grow by grant or by prescription. The line has therefore to be drawn somewhere. An idea of the degree of belonging to the Government or to a limited owner holding under government can be developed for the purposes of the application of Section 15 as the case may be, the general rule of 20 years, or the special rule of the period of limitation against Government as indicated in the last clause.

5. There is a certain quantity of case law and as the circumstances of each case are distinctive they do not have any cast-iron principle rigorously applicable; but all the same, a general conception of where to draw the line between 'belonging to government' and 'belonging to somebody else' can be gathered. The two cases on which the learned Single Bench relied in 1962 Jab LJ 1039 = (AIR 1963 Madh Pra 202) (supra) are -- Municipal Board, Pilibhit v. Khalil-ul-Rabman, AIR 1929 All 382 and Chinnaswami Goundan v. Balasundara Mudaliar. AIR 1934 Mad 575. In the Allahabad case the land clearly belonged to government but being situated in a municipal area in the U. P. it was under the control of the Municipality under the U. P. Municipality Act in the manner common all over our country. Even the Municipal Board could not create the easement because-

'a Bye-law, passed by the Board and sanctioned by the Government, signifying the intention to let out the spaces at the sides of roads to hawkers, does not create Board's ownership to those sides but merely extends its power of user, the ownership being already created by Section 116, Municipalities Act of 1916, or a similar provision in the previous Act.' It was a clear case of the land belonging to

government in a very real sense, with the Municipal Board exercising control for certain limited purposes. In the Madras case the land belonged to the government but was in the actual occupancy of the trustees or the sewaks of a temple. The rights, if any, of the temple were very precarious and the most the Court could hold was that the temple was not a trespasser. On that view of course the land belonged to the government in a very real sense and not merely in a sense of a very remote ultimate ownership. Naturally, therefore, the 60 year rule contained in the last clause of Section 15 of the Easements Act was applied.

6. At the other extreme we have the position in Nagarentha Mudaliar v. Sami Pillai AIR 1936 Mad 682. In that case both the properties, that is, the dominant as well as the servient belonged to raiyatwari tenants. Certainly they held under government and in theory the land ultimately belonged to government. Unlike the zamindari land there is absolutely no doubt in the ultimate governmental ownership of the raiyatwari lands. All the same the raiyatwari tenants were also owners in a very real sense, and the theory of the land belonging to government while true in principle was of very remote practical application. Accordingly, the High Court held-

'Even though raiyatwari land Is held by several tenants under the Government, one tenant can acquire title by prescription or lost grant against another, for the estate of raiyatwari proprietor is an estate in the soil and possession is with him though the property may be said to be in the Government. The estate of a raiyatwari proprietor is also heritable and alienable. He has a sufficient estate to support a grant of an easement. He would be a 'capable grantor' as understood in English law for the application of the doctrine of lost grant.'

It may be noted even here that the position of the bhumiswami under the Madhya Pradesh Land Revenue Code is in no way different from the raiyatwari tenants in Madras and similar raiyatwari settlement areas. In both areas the land does ultimately belong to government and what the occupier pays can, in principle, be described as rent and not revenue. Still without going into any academic discussion on the abstruse concepts of government ownership and of the raiyats' ownership, it can be asserted in regard to bhumiswami what the Madras High

Court has said about the raiyatwari tenant.

7. The pakka tenant under the Madhya Bharat Land Revenue and Tenancy Act had very real rights; but they do not come up to the level of the raiyatwari tenants or of the bhumiswamis after 1959. One particular incident of the tenure is significant. Under the Madhya Bharat Tenancy Act the pakka tenant while entitled to a certain degree of permanency could not sell his holding without the permission of government conveyed by the Suba. That has now disappeared and a bhumiswami can sell his holding to whomsoever he likes subject to certain limitations of ceiling on the side of the purchaser without taking government sanction. In other words, while the application of the 60 years rule to a servient tenement which is a pakka tenancy under the Madhya Bharat law can be justified on the view that the ownership of government is still very real, the same cannot be said of the bhumiswami tenancy where the Government's ownership is very remote and tenuous.

8. In this connection the remarks made by the Division Bench of this Court in Ramlali v. Bhagunti, 1968 Jab LJ 706 = (AIR 1968 Madh Pra 247) are of some interest:

'A Bhumiswami or Bhumidhari pays land revenue and not rent. Chapter XII of the Code also contains provisions for the transfer of Bhumiswami or Bhumidhari rights, partition of Bhumiswami and Bhumidhari holdings when there are more than one tenure-holders, etc. It is worthy of note that tenancy rights are dealt with separately by the Code in Chapter XIV thereof. That Chapter also contains Sections 168 and 172 which deal with the devolution of rights of an ordinary tenant and an occupancy tenant. Those rights also pass on the death of a tenant in accordance with personal law. All these provisions read together show that Bhumiswamis and Bhumidharis who hold land directly from the State and pay land revenue to the State like owners of land are not tenants; they have permanent rights in the land which are not taken away by the Government except in certain cases.'

The language would indicate that the Court has rejected totally the doctrine of Government ownership even as an ultimate possibility and has veered round to

the theory of occupier's ownership. The doctrine of the occupier's ownership of a very extensive kind with the ultimate governmental ownership in the remote background would have led precisely to the same results; yet the language used by the Court shows how much it had been impressed with the extent and the reality of the ownership of the bhumiswami. To maintain in such a situation that the land still 'belongs' to the government in the sense in which the words 'belongs to' have been used in the last clause of Section 15 of the Easements Act, is to ignore the real implication of bhumiswami tenancy.

9. We would, therefore, hold that under the present law which gives very extensive rights to the bhumiswami and reduces to a remote theoretical possibility the 'belonging to government' it would not be correct to apply the last clause of Section 15 to easements over bhumiswami lands. The general rule should be applied. We would answer the reference accordingly.

10. In view of this it is unnecessary for us to examine whether there is any conflict between Sections 8 and 11 on the one hand and the last clause of Section 15 of the Easements Act on the other. We can easily reconcile all these sections by holding that while Section 11 gives certain powers to a limited owner of land other than government owned land, these powers are denied to the limited owner when the ultimate owner is government. But it is unnecessary for our purposes to develop any further on this.

11. As already indicated we are leaving the other questions in this case to be answered by the referring Single Bench.