

Smt. Pephi Devi Vs. Legal Representatives of Sumer Singh and ors.

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Court : Rajasthan

Decided On : Aug-22-1990

Reported in : 1990WLN(UC)336

Judge : Milap Chandra, J.

Appeal No. : S.B. Civil Writ Petition No. 3256 of 1990

Appellant : Smt. Pephi Devi

Respondent : Legal Representatives of Sumer Singh and ors.

Disposition : Petition dismissed

Judgement :

Milap Chandra, J.

(a) that writ petition may kindly be allowed with costs;

(b) that rights title and interest of the petitioner so accrued vide Annexure 1 & 2 & 3 and she be Khatedar the said rights should be protected.

(c) that an appropriate writ, order or direction be passed to restrain the respondents from disturbing peaceful possession of the petitioner over the land comprising of Khasra 284 Rakba 231/2 biswas situated in village Bapore, Tehsil & Distt. Nagaur as the petitioner has got Dhani in the field.

(d) that other relief/reliefs with this Hon'ble court may deem just and proper be also passed in favour of the petitioner which is in possession of the land in question so that Justice could be muted out to her otherwise she would be debarred from her valuable rights.

(e) that other relief/reliefs with this Hon'ble Court may deem just and proper may kindly be granted.

2. The petitioner has averred in her writ petition in short, as follows. Her husband late Pema Ram Nayak (Harijan) purchased the abovementioned land from Sumer Singh Rajput (father of the respondents Ganga Singh and Hanuman Singh) through sale-deed dated August 22, 1958. Its true copy is Annexure 1. Patta was issued in his name on 1-5-65 whose photostat copy is Annexure 2. Jambandi of the Sambat Years 2033 to 2040 was also recorded in his name. A true copy of it is Annexure 3. Its mutation was effected in his favour on 30-10-77 and true copy of the mutation order is Annexure 4. Sumer Singh filed a suit for declaration of his khatedari rights in respect of the said land against her husband Pema Ram in the Court of the Assistant Collector, Nagaur. By exploitation, putting undue pressure and taking undue advantage of his illiteracy, the thumb impressions of her husband were got affixed on the written statement and judgment and decree were obtained on its basis in his favour on 5-12-76. Their photostat copies are Annexure 5. She had gone to various places to earn her livelihood. After 15 years she returned to her village and on 3-7-90, she went to the said field for cultivating it but the respondents No. 1 and 2 offered great resistance. On 5-7-90, she has filed a complaint Under Section 3, Scheduled Caste and Scheduled Tribes. (Prevention of Atrocities) Act, 1989 (Central Act No. 33 of 1989 (hereinafter to be called as 'the Act') before the Special Judge (District & Sessions Judge), Merta, whose copy is Annexure 6, against the respondents No. 1 and 2.

3. It was contended by the learned Counsel for the petitioner that in view of the provisions of Section 42, Rajasthan Tenancy Act, 1955, the sale, deed Annexure 5 is null and void, the petitioner being the sole heir and legal representative of her husband Pema Ram who was Khatedar of the said land became its Khatedar after his death, she is entitled to cultivate it and the resistance offered by the

respondents is punishable Under Section 3(4) of the Act. He further contended that the judgment and decree Annexure 5 obtained by Sumer Singh are also void for the same reasons. He relied upon Bhiki v. Ghure, 1983 RRD 703 (Revenue Board).

4. There is no substance in the writ petition. Admittedly, the dispute relates to an agricultural land bearing Khasra Bo. 284 measuring 23 bighas and 13 biswas situated in the village Bapoure, tehsil and District Nagaur. The petitioner has an alternative remedy for getting the desired declaration; A suit Under Section 88, Rajasthan Tenancy Act can well be filed. She is also not entitled to get the above quoted relief (C) regarding injunction. There is no question of the grant of the injunction sought when admittedly she is not in possession of the disputed field. In her complaint dated July 5, 1990 (Annexure 6), she has prayed that the accused persons including respondents No. 1 and 2 be punished and the possession of the disputed field be got delivered to her from them. In para 7 of the writ petition, she has clearly stated that he left her village for other places to earn her livelihood and has returned after 15 years. She does not say that during this period of 15 years, some other person was in possession and cultivation of the disputed field on behalf of her husband or on her behalf, Admittedly, the said judgment and decree were obtained by Sumer Singh, father of the respondents No. 1 and 2, on December 20, 1976. If she would have been in possession of the disputed field. She would not have prayed for the possession in her complaint Annexure 6. She has a remedy Under Section 175 (4-A), Rajasthan Tenancy Act for obtaining the possession of the said field. The period of limitation for moving an application under this section is 30 years from the date of transfer vide Entry No. 66 of the Third Schedule of the Rajasthan Tenancy Act, For the same reason, no other relief vide Clause (d) can be granted.

5. To prevent the abuse of process of the Court it is necessary and expedient in the ends of justice to observe that no offence is made out Under Section 3 of the Act on the allegations made in the said complaint (Annexure 6). It is clearly stated in it that the complainant Phephi Devi (petitioner) had been out of the village for 15 years to earn her livelihood. She returned to the village about 15-20 days before and on 3-7-90 she went to the disputed field to cultivate it. As already observed

above, she has also prayed that the possession of the disputed field be got delivered to her. Obviously, It means that she was not in possession and cultivation of the disputed field on the date when the Act came into force. As per the averments made in the writ petition and the complaint Annexure 6, respondents No. 1 and 2 and their father sumer Singh came in possession of the disputed field in the year 1976. Section 3 of the Act has made only those acts punishable which were or are committed, after coming into force of the Act. A person cannot be convicted for an act which was not an offence under the law which was in force when that act was committed. Article 20(1) of the Constitution of India prohibits the creation of a new offence with retrospective effect. In facts, it controls the power of the legislature to enact such retrospective legislation so far as the punishment for crimes is concerned. It runs as under:

20 (1)-No person shall be convicted of an offence except or violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

6. Consequently, the writ petition is summarily dismissed. The complaint Anneuxre 6 is quashed.

7. Let a copy of this order be sent to the learned District & Sessions Judge, Merta, for information and necessary action.

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