

CASE NO.:
Appeal (civil) 4391 of 1990

PETITIONER:
GORDHAN DAS

Vs.

RESPONDENT:
PIRKHAN & ORS.

DATE OF JUDGMENT: 27/11/2001

BENCH:
Syed Shah Mohammed Quadri & S.N. Phukan

JUDGMENT:

Phukan, J.

In this appeal, by special leave, the appellant has impugned the judgment of the Madhya Pradesh High Court, Jabalpur Bench in Second Appeal No.219 of 1975.

Allarakh was the brother of Naharkhan, who was a Maurusi tenant (occupancy tenant) of the erstwhile Zamindar. The Madhya Pradesh Zamindari Abolition Act, 1951 (for short the Zamindari Abolition Act) came into force on 2nd of October, 1951. Under the Zamindari Abolition Act, the intermediary was expropriated so that the tiller of the soil became tenant directly under the State. Naharkhan was given status of Bhoomiswami under the Madhya Pradesh Land Revenue Code, 1959. It was alleged that Naharkhan inducted Gulkhan as a tenant before coming into force of the Zamindari Abolition Act and therefore he became a Pacca tenant and continued possession by cultivating suit land. Gulkhan filed an application under Section 38 of the Zamindari Abolition Act before the revenue court for being declared as a Pacca tenant. It was averred that Naharkhan filed an Iqbal Dava (consenting written statement) in the above proceeding before the revenue court making admission of the fact of tenancy of Gulkhan. This application was dismissed for default. Naharkhan died on 14th November, 1954 and in his place the name of Allarakh was mutated in the revenue record. Subsequently, apprehending obstruction from Allarakh, Gulkhan filed another application under Section 38 of the Zamindari Abolition Act for being declared as a Pacca tenant, which was resisted by Allarakh. In the written statement of Allarakh, it was admitted that Gulkhan was in possession of the suit land for preceding four years but pleaded that he did not acquire any tenancy rights. The application filed by Gulkhan was allowed and he was declared as a Pacca tenant and accordingly direction was given to record his name in the revenue record. The appeal and the revision filed by Allarakh were dismissed. Thereafter Allarakh filed a civil suit in the court of Civil Judge, Class II, Mandsaur for declaration that orders passed by the revenue courts against him were inoperative and his name be recorded in revenue record as land owner and permanent cultivator. Prayer was also made for recovery of possession. In this suit Gulkhan was impleaded as defendant No.1 and as the land was sold to other persons they were also impleaded as defendants Nos. 2 to 4. It was pleaded by Allarakh that defendant No.1 being the son of the sister of deceased

Naharkhan was living jointly with him and used to manage the cultivation of Naharkhan as a family member and, therefore, he did not acquire Pacca tenancy right over the suit land. The Trial Court decreed the suit, which was reversed by the First Appellate Court and affirmed by the High Court by the impugned judgment and hence this appeal.

The only question that needs our consideration is whether Gulkhan, whose possession over the suit land for about four years prior to the commencement of the filing of suit, was not disputed by the plaintiff, has acquired right of Pacca tenant over the suit land.

Under Section 3 of the Zamindari Abolition Act from the date of coming into force i.e. on October 2, 1951 all property rights in a village etc. shall pass to and vest in the State Government free from all encumbrances. Sub-section (1) of Section 38 provides that subject to provisions of the said 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. Sub-section (2) of the said section provides for the procedure of depositing the amount by such a tenant for acquiring the status of Pacca tenant, with which we are not concerned.

The Trial Court on the basis of the evidence of the plaintiff and his written statement filed in the revenue proceeding initiated by Gulkhan under Section 38 of the Zamindari Act held that the plaintiff admitted possession of the respondent Gulkhan over the disputed land since April 9, 1951. In other words Gulkhan was in possession of the suit land before the date coming into force of the Zamindari Abolition Act. The Trial Court also relied on admission of late Naharkhan in his Iqbal Dava filed in the first petition under Section 38 of the Zamindari Abolition Act by Gulkhan that he was a sub-tenant. Accordingly, Trial Court decided the suit against the plaintiff Allarakh. The First Appellate Court was of the view that if defendant Gulkhan was a sub-tenant of the deceased Naharkhan, he ought to have proved this fact by producing patta and revenue receipts. Further, the court held that Iqbal Dava filed by late Naharkhan was not proved properly. The court also drew adverse inference, as Gulkhan did not appear as a witness. We may state here that the appellate court ignored the fact that Gulkhan died prior to the recording of evidence by the Trial Court and this fact has been duly recorded by the trial court in the judgment. The High Court examined the question of Pacca tenancy only with reference to Iqbal Dava filed by Naharkhan and also held that this document was not proved by examining the Tehsildar before whom the said Iqbal Dava was filed.

We have heard Mr. Sushil K. Jain, learned counsel for the appellant and Mrs. S. Bagga, learned counsel for the respondents.

Learned counsel for the appellant has submitted that the first Appellate and the High Court ignored the fact that the Trial Court on analyzing the evidence adduced by the plaintiff came to a clear finding that Gulkhan was in the possession of the suit land in the capacity of a tenant during the lifetime of Naharkhan prior to the coming into force of the Zamindari Abolition Act and on the basis of the said finding the Court held that Gulkhan became the Pacca tenant after coming into force of the Zamindari Abolition Act. Learned counsel has further contended that the fact that the Trial Court while coming to the above finding took into consideration the oral evidence adduced by the appellant in addition to Iqbal Dava was completely overlooked by both the first Appellate court and the High Court. We find considerable force in the contention of the learned counsel. On perusal of the judgment of the Trial Court, we find that the Trial Court considered the evidence of plaintiff Allarakh and also PW-2 and PW-4. On the basis of the evidence of the plaintiff and PW-2, a clear

finding was recorded that Gulkhan was in possession of the suit land prior to the coming into force of the Zamindari Abolition Act. This finding was supported by the written statement filed by the Allarakh before the Revenue Court. The Trial Court also noted that from the evidence of the PW-4, it was proved that Gulkhan was cultivating the land 4 to 5 years prior to the Zamindari Abolition Act. Both the first Appellate Court and the High Court completely ignored the oral evidence and also the fact that Gulkhan was cultivating the suit land long before coming into force of the Zamindari Abolition Act. Both the courts dismissed the pleas of Gulkhan mainly on the ground that Iqbal Dava was not proved.

There was neither any evidence nor any averment made by the plaintiff Allarakh that he was in possession of land any time by cultivating it. On the other hand it was clearly established that Gulkhan was in possession of the land by cultivating it 4 to 5 years prior to the coming into force of the Zamindari Abolition Act and by virtue of Section 38 of the Zamindari Abolition Act acquired the status of Pacca tenant as he was a tenant under Naharkhan before coming into force of the Zamindari Abolition Act. The Revenue Authorities also allowed the petition filed by Gulkhan under Section 38 on contest and on appreciation of evidence adduced by the parties.

We, therefore, find merit in the present case and accordingly, we set aside the judgment of the first appellate court and the impugned judgment of the High Court. The judgment of the Trial Court is restored. The appeal is allowed. Parties to bear their own cost.

..J.
[Syed Shah Mohammed Quadri]

..J.
[S.N. Phukan]

November 27, 2001