

CASE NO.:
Appeal (civil) 1579 of 2001

PETITIONER:
Bindha Prasad & Ors

RESPONDENT:
Bhan Datt (dead) By Lrs

DATE OF JUDGMENT: 10/12/2007

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 1579 OF 2001

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment of a learned Single judge of the Allahabad High Court dismissing the Second appeal filed by the appellant under Section 100 of the Code of Civil Procedure, 1908 (in short the 'CPC'). The Second appeal was by the defendant in a suit filed for cancellation of a sale deed executed by one Raghoram in respect of Sirdari plots. The suit was decreed, the defendant's first appeal was dismissed. The cross-objections of the plaintiff were also dismissed by judgment and decree dated 5.1.1979. The second appeal was directed against the judgment and decree dated 20.7.1978 and the judgment and decree dated 5.1.1979.

2. Raghoram who was a patient of cancer, died in September, 1979. The disputed plots were Sirdari plots and 20 times rent was deposited to convert the Sirdari rights into Bhumidhari rights. The deposit was made on 2.8.1976 and on the same day the sale deed was executed.

3. According to the High Court the point to be considered was whether by the deposit of 20 times rent, Raghoram became Bhumidhar so as to execute the sale deed. The High Court held that till the death of Raghoram sometimes in September, 1976, neither any judicial order was passed for issuance of Sanad nor certificate of Sanad was issued in favour of Raghoram. It was accepted that grant of Sanad of Bhumidhari rights relates back to the date of deposit of 20 times rent. But in the present case since the tenant died before any judicial order for issuance of Sanad could be passed or before the Sanad could be issued, therefore, the grant of Bhumidhari Sanad cannot relate back to the date of deposit and would not entitle the tenant to execute the sale deed in respect of the disputed Sirdari plots on the date of deposit of 20 times rent. Accordingly second appeal was dismissed.

4. Learned counsel for the appellants submitted that the view of the courts below and that of the High Court is clearly contrary to the law. Since on grant of Sanad, Bhumidhari rights relates back to the date of deposit of 20 times rent the mere fact that the tenant died before any order was passed in that regard, the effect would be wiped out is not supportable in law.

5. Learned counsel for the respondent on the other hand supported the order.

6. The question involved in the present case pertains to the interpretation of Sections 134 and 137 of the U.P. Zamindari Abolition and Lands Reforms Act, 1950 (in short the 'Act').

7. Sections 134 and 137 of the Act read as follows:

"134(1) If a sirdar belonging to the class mentioned in clause (a) of Section 131 pays or offers to pay to the credit of the State Government an amount equal to ten times the land revenue payable or deemed to be payable on the date of application for the land of which he is the sirdar, he shall, upon an application duly made in that behalf to an Assistant Collector, be entitled, with effect from the date on which the amount has been deposited, to a declaration that he has acquired the rights mentioned in Section 137 in respect of such land...."

Section 137 insofar as it is relevant then stood as follows:

"137(1) If the application has been duly made and the Assistant Collector is satisfied that the applicant is entitled to the declaration mentioned in Section 134, he shall grant a certificate to that effect.

(2) Upon the grant of the certificate under sub-section (1) the sirdar shall from the date thereof\027

(a) become and be deemed to be a Bhumidhar of the holding or the share in respect of which the certificate has been granted, and

(b) * * *"

8. On the application being made and the stipulated times of land revenue being paid, the sirdari becomes entitled "with effect from the date on which the amount had been deposited" to a declaration that he has acquired rights mentioned in Section 137 of the Act. The Section clearly specifies the date with effect from which the rights would stand acquired i.e. the date on which the amount contemplated by Section 134 is deposited. This clearly obviates the uncertainty of the point of time when the title is transferred by fixing the date as being the date on which the amount is deposited. It would be immaterial as to when the declaration under Section 137 is made because that declaration must necessarily take effect from the date when the amount is deposited. Prior to the amendment of sub section (2) of Section 137 of the Act the position was that it is only the grant of certificate under sub section (1) of Section 137 that the Sirdar from the date thereof became or is to be deemed to be a Bhumidhar of the holding or the share in respect of which the certificate has been granted. The amendment of sub section (2) of Section 137 by Amendment Act 21 of 1962 with effect from 13.12.1962 brought Section 137 (2) in line with Section 134. The two provisions read together clearly provide that as and when the certificate under Section 137 is granted, it must relate back and be effective from the date on which the amount referred to in sub section (1) of Section 134 was deposited. In this context the observation of this Court in para 9 of Deo Nandan and Anr. v. Ram Saran and Ors. [2000 (3) SC 440] is worth being quoted. So far relevant, it was observed as follows:

"In our opinion, the said decisions run

counter to the plain language and meaning of Sections 134 and 137 as they stood at the relevant point of time. When a certificate is issued under Section 137 it in fact recognises the position as on the date when the application was made and the payment contemplated under Section 134(1) was deposited. The certificate, in other words, will have a retrospective effect and would relate back to the date of the application. There was nothing to prevent the revenue authorities from allowing the application filed under Section 134(1) on the day when it was presented. The underlying intention of the legislature, therefore, clearly is that as and when the said application is accepted and order is passed under Section 137 it must relate back to the date when the application was filed. Such a situation is not unknown to law. Mr. Prem Prasad Juneja, learned Counsel for the appellants, as an analogy, has drawn our attention to Order 22 Rule 6, C.P.C. which provides that if any of the parties to a suit dies after the hearing has been completed and before the judgment is pronounced, the suit would not abate. The doctrine of relation back has been incorporated in Sections 134 and 137 of the U.P. Zamindari Abolition and Land Reforms Act."

9. In view of what has been stated above the appeal is allowed and the judgment of the High Court affirming the decisions of the trial court and the first appellate court is set aside. Cost made easy.