PETITIONER:
HIRA LAL AND ANOTHER

Vs.

RESPONDENT:
GAJJAN AND OTHERS

DATE OF JUDGMENT30/01/1990

BENCH:
FATHIMA BEEVI, M. (J)
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FATHIMA BEEVI, M. (J)
SAIKIA, K.N. (J)

CITATION:
1990 AIR 723 1990 SCR (1) 164
1990 SCC (3) 285 JT 1990 (1) 95
1990 SCALE (1)82

ACT:
U.P. Zamindari Abolition and Land Reforms Act, 1950: Section 20(b)(i)--Adhivasi rights--Khasra entry---Acceptance of--No enquiries into possession--Assumption as to correctness--Rebuttal--Burden of proof.
Code of Civil Procedure 1908: Section 100--Circumstances under which High Court could reappreciate evidence and come to its own independent conclusion.

HEADNOTE:
The plaintiff-respondent claimed that before the U.P. Zamindari Abolition and Land Reforms Act, 1950 came into force, his father was a sub-tenant under defendants 3 to 25 and after his father's death, the other 3 sons separated from the plaintiff and consequently he has become the sole-tenant. According to him, his father was recorded occupant of Khasra 1356 Fasli (1.7.1948 to 30.6.1949) and was in cultivatory possession in Khasra 1359 Fasli (1.7.1951 to 30.6.1952) as a result of which he had acquired adhivasi rights and sirdari rights, and the rights of defendants 3 to 25 extinguished under section 240-A of the said Act. He alleged that in 1968, defendants I and 2 obtained fictitious sale deed from defendants Nos. 3 to 25 in respect of the said land and started interfering with his possession. He, therefore, filed a suit for permanent injunction. The suit was contested by some of the defendants who pleaded that neither the plaintiff nor his father was in possession of the said land at any point of time and there was no question of sub-tenancy or acquiring of adhivasi/sirdari rights. The trial court dismissed the suit. The appeal preferred by the plaintiff-respondent was dismissed by the first appellant court.
The trial court as also the first appellate court held that the respondent was not entitled to become an adhivasi under section 20(b)(i) of the Act since his father died in 1951 before the date of vesting i.e. 1.7.1952. Both the courts also held that his father was not in cultivatory possession of Khasra 1359 Fasli and, therefore, he could not get adhivasi rights under section 3 of the U.P. Land Reforms (Supple-
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mentary) Act, 1952. It was also held that there was no contract or sub-tenancy in the name of his father.

The plaintiff-respondent preferred an appeal before the High Court which allowed the appeal and granted a decree reversing the decision of the courts below.

Aggrieved, the appellants have flied the present appeal contending inter alia that since there were concurrent findings of facts by the trial court and the first appellate court, and in the absence of any substantial question of law, the High Court had no jurisdiction under section 100 C.P.C. to disturb the concurrent findings of facts.

Dismissing the appeal, this Court,

HELD: 1. Section 100(1)(c) of the Code of Civil Procedure refers to a substantial error or defect in the procedure. The error or defect In the procedure to which the clause refers is not an error or defect in the appreciation of evidence adduced by the parties on the merits. Even if the appreciation of evidence made is patently erroneous and the finding of fact recorded inconsequence is grossly erroneous, that cannot be said to introduce a substantial error or defect in the procedure. If in dealing with a question of fact the lower appellate court has placed the onus on wrong party and its finding of fact is the result substantially of this wrong approach that may be regarded as a defect in procedure. When the first appellate court discarded the evidence as inadmissible and the High Court is satisfied that the evidence was admissible that may introduce an error or defect in procedure. So also in a case where the court below ignored the weight of evidence and allowed the judgment to be influenced by inconsequent matters, the High Court would be justified in reappreciating the evidence and coming to its own independent decision. [168H; 169A-C]

Madan Lal v. Gopi, AIR 1980 SC 1754 relied on.

V. Ramachandra Ayyar & Anr. v. Ramalingam Chettiar & Anr., AIR 1963 SC-302 referred to.

2. Section 20(b)(1) of the Act eliminates enquiries into possession in accepting the record in the Khasra. In the instant case the Khasra entry for 1356 Fasli showed that the appellant's father was the subtenant. It is not for the appellant to prove that this entry Is incorrect. It was for the defendants to show that the entry had been introduced

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surreptitiously out of ill-will of hostility. In the absence of such proof, the genuineness has to be presumed and the entry accepted as evidence of the sub-tenancy in favour of the appellant's father. The Khasra entry of 1371 Fasli and 1372 show the appellant's name as person in possession. It is clear indication that possession of the sub-tenant continued with the appellant. The rent receipts of the year 1929 and subsequent years are not required to be proved by the appellant as pointed out by the learned Judge. These furnish evidence of possession as sub-tenant. The lower appellate court was not justified in ignoring these documents. The High Court was, therefore, well within its power in appreciating the evidence and arriving at its own conclusion. [170B, E-G]

Amba Prasad v. Abdul Noor Khan & Ors., [1964] 7 SCR 800 and Nath Singh & Ors. v. The Board of Revenue & Ors., [1968] 3 SCR 498 relied on.

3. Though the revenue courts had exclusive jurisdiction, the civil court had jurisdiction to try the suit for injunction when the question of title arose only incidentally. [171B]

4. The High Court was right in holding that the appeal did not abate on account of non-filing of substitution

application after the death of certain defendants. [170H]
The State of Punjab v. Nathu Ram, [1962] 2 SCR 636 relied on.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3154 of 1982.

From the Judgment and Order dated 28.9.1981 of the Allahabad High Court in S.A. No. 1874 of 1970.

Satish Chandra, S.N. Singh, T.N. Singh, H.L. Srivastava and Sudama Ojha for the Appellants.
U.R. Lalit and R.D. Upadhyaya for the Respondents.
The Judgment of the Court was delivered by

FATHIMA BEEVI, J. This appeal is directed against the judgment dated 28-9-1981 of the High Court of Allahabad in Second Appeal No. 1874 of 1970.

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The plaintiff-respondent filed the suit alleging inter alia that before enforcement of the U.P. Zamindari Abolition and Land Reforms Act, 1950, hereinafter referred to as "Zamindari Abolition Act", defendants Nos. 3 to 25 were the tenants-in-chief of the plots in suit and his father Munni Lal was their sub-tenant; that Munni Lal died in 1951 leaving behind four sons including the plaintiff-respondent; that remaining three brothers of the plaintiff had separated and consequently the plaintiff became sole-tenant; that Munni Lal was recorded occupant in Khasra 1356 Fasli and in cultivatory possession in Khasra 1359 Fasli and consequentially he acquired adhivasi rights and then sirdari rights, the rights of defendants 3 to 25 extinguished under section 240-A of the Zamindari Abolition Act; that in 1968, however, defendants Nos. 1 and 2 obtained fictitious sale deed from defendants Nos. 3 to 25 in respect of the plots in suit. They had started interfering with the plaintiff's possession and, hence, the plaintiff-respondent filed the suit for permanent injunction.

Defendants Nos. 1 to 3, 5 to 7, 13 and 14 contested the suit. They denied the plaintiff's claim and disputed that the plaintiff's father, Munni Lal, was the sub-tenant or that he acquired adhivasi rights or sirdari rights. It was further pleaded that the plaintiff or his father was never in possession of the plots in suit. The suit for permanent injunction was dismissed.

Against the judgment of the trial court, the plaintiff-respondent preferred Appeal No. 321 of 1969 which was dismissed by the first appellate court. The Second Appeal No. 1874 of 1970, filed before the High Court of Allahabad against the judgment of the first appellate court, was allowed on 28-9-1981.

The respondent based his title on three grounds, namely, (i) that his father Munni Lal was recorded occupant in Khasra 1356 Fasli (be ginning from 1.7.1948 and ending with 30.6.1949) and became adhivas under section 20(b)(i) of the Zamindari Abolition Act; (2) that his father Munni Lal was in cultivatory possession of the disputed land it Khasra 1359 Fasli (beginning from 1.7.1951 and ending with 30.6.1952 and consequently he became adhivasi under section 3 of the U.P. Land Reforms (Supplementary) Act, (U.P. Act No. 31 of 1952);and (3) that his father Munni Lal was sub-tenant over the disputed land and, there fore, he became an adhivasi and consequently the sirdar under the provisions of the zamindari Abolition Act.

The trial court and the first appellate court recorded

finding of
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facts to the effect that the plaintiff's father Munni Lal was not in cultivatory possession of 1359 Fasli and therefore he could not get adhivasi right under section 3 of the U.P. Land Reforms (Supplementary) Act, 1952. Both the courts further observed that the plaintiff's father was not a recorded occupant within the meaning of section 20(b)(i) of the Zamindari Abolition Act, as the entry of his name in column 6 of the Khasra 1356 Fasli was suspicious, not being supported by Khatauni entry. It was further held that as his father died in 1951 before the date of vesting i.e. 1.7.1952 (when the zamindari was abolished in U.P. under the provisions of Zamindari Abolition Act), the plaintiff is not entitled to the benefit of becoming adhivasi under section 20(b)(i) of the Zamindari Abolition Act.

The trial court and the first appellate court also found that no contract or sub-tenancy between Munni Lal and the proforma defendants was proved. The High Court held the view that the approach made by the courts below was wrong. The question that arose for decision in the suit was whether the appellant's father was a sub-tenant? The learned Single Judge noticed that if Munni Lal was a sub-tenant, his heir being the adhivasi and the appellant must, therefore, succeed. The evidence relating to the sub-tenancy and consequent possession was therefore, considered in detail and the learned Judge concluded that Munni Lal was in cultivatory possession of the land in 1356 Fasli as a sub-tenant. His rights as sub-tenant devolved on the appellant who continued in possession as such and became adhivasi and rights of defendants 3 to 14 were extinguished under the Zamindari Abolition Act and defendants could not interfere with appellants possession. In this view the appellant was granted a decree reversing the decision of the lower courts.

The main contention advanced on behalf of the appellants before us is that the decision having been rendered by the trial court and the first appellate court on the basis of the finding of fact regarding the right claimed and the possession alleged, in the absence of any substantial question of law, there was no jurisdiction of the High Court under section 100 C.P.C. to disturb the finding of a concurrent nature and upset the decision. The High Court, while exercising its power under section 100 C.P.C., has no jurisdiction to interfere with the finding of fact recorded by the first appellate court. Reliance was placed on V. Rarnachandra Ayyar & Anr. v. Ramalingam Chettiar & Anr., AIR 1963 SC-302. Section 100(1)(c) refers to a substantial error or defect in the procedure. The error or defect in the procedure to which the clause refers is not an error or defect in the appreciation of
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evidence adduced by the parties on the merits. Even if the appreciation of evidence made is patently erroneous and the finding of fact recorded in consequence is grossly erroneous, that cannot be said to introduce a substantial error or defect in the procedure. If in dealing with a question of fact the lower appellate court has placed the onus on wrong party and its finding of fact is the result substantially of this wrong approach that may be regarded as a defect in procedure. When the first appellate court discarded the evidence as inadmissible and the High Court is satisfied that the evidence was admissible that may introduce an error or defect in procedure. So also in a case where the court below ignored the weight of evidence and allowed the judgment to be influenced by inconsequential matters, the High

Court would be justified in reappreciating the evidence and coming to its own independent decision as held in Madan Lal v. Gopi, AIR 1980 SC 1754.

The substantial issue in the present suit was whether the respondent was in possession of the disputed land. The respondent claimed possession under his father as sub-tenant and thereafter as sirdar. In support of his claim respondent relied on the entries in the revenue records and the receipts for payment of rent. The effect of these documents had been wholly ignored by the lower courts on the assumption that these were fabricated. The U.P. Zamindari Abolition Act came into force on July 1, 1952. Section 20(b)(i) of the Act provided that every person, recorded as occupant of a land in the Khasra or Khatauni of 1356 Fasli prepared under sections 28 and 33 of the U.P. Land Revenue Act 190 1, be called the adhivasi of the land. This Court in Amba Prasad v. Abdul Noor Khan & Ors., [1964] 7 SCR 800 examined the scheme of the section and held that the title to possession as adhivasi depends on the entry in the Khasra of 1356 Fasli. The section eliminates enquiries into possession in accepting the record in the Khasra.

The Court observed at page 808:

"The word 'occupant' is not defined in the Act. Since khasra records possession and enjoyment the word 'occupant' must mean a person holding the land in possession or actual enjoyment. The khasra, however, ma mention the proprietor, the tenant, the sub-tenant and other person in actual possession, as the case may be. by occupant is meant the person in actual possession it clear that between a proprietor and a tenant the tenant and between a tenant and the sub-tenant the latter and

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between him and a person recorded in the remarks column as "Dawedar qabiz" the dawedar qabiz are the occupants.' '

In Nath Singh & Ors. v. The Board of Revenue & Ors., [1968] 3 SCR 498 in answering the contention that the correctness of the entry in the record of Khasra of 1356 Fasli could be gone into and where the respondents are recorded only as sub-tenant and not as occupant, they could not get the benefit of section 20(b)(i) of the Act, this Court held as under:

"The record of rights for the year 1356F. had not been corrected afterwards. We have to go by the entry in the record of rights and no enquiry need be made as to when the respondents became sub-tenants after the decision in favour of the landlord, Ram Dhani Singh. The last decision of this Court also shows that as between the tenant and the sub-tenant the entry in the record of rights in favour of the sub-tenant makes him the occupant entitled to the adhivasi rights under section 20 of the Act."

In this case the Khasra entry for 1356 Fasli Ex-4 showed that the respondent's father Munni Lal was sub-tenant. As rightly stated by the High Court, it is not for the plaintiff to prove that this entry is correct. It was for the defendants to show that the entry had been introduced surreptitiously out of ill-will or hostility. In the absence of such proof, the genuineness has to be presumed and the entry accepted as evidence of the sub-tenancy in favour of the respondent's father. The Khasra entry of 1371 Fasli and 1372 show the respondent's name as person in possession. It is clear indication that possession of the subtenant continued with the respondent. The rent receipts of the year 1929 and subsequent years are not required to be proved by the respondent as pointed out by the learned Judge. These furnish evidence of possession as sub-tenant. We agree that the

lower appellate court was not justified in ignoring these documents. The High Court was, therefore, well within its powers in appreciating the evidence and arriving at its own conclusion.

The contention that the second appeal abated on account of non-filing of substitution application after the death of defendants Nos. 6, 10 and 11 had been reiterated before us. These defendants were only proforma parties and the High Court was right in holding hat appeal did not abate. We may refer to The State of Punjab v.
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Nathu Ram, [1962] 2 SCR 636 where it is held "that ordinarily the considerations which weigh with the Court in deciding upon this question are whether the appeal between the appellants and the respondents other than the deceased can be said to be properly constituted or can be said to have all the necessary parties for the decision of the controversy before the Court." The Civil Court had jurisdiction to try the suit for injunction when the question of title arose only incidentally. The objection to jurisdiction of the Civil Court to try the suit on the ground that revenue court had exclusive jurisdiction is not sustainable the suit being one for permanent injunction and the question of title arises only incidentally.

We find no merit in the appeal which is accordingly dismissed. No order as to costs.

G.N. Appeal dismissed.
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