

PETITIONER:
BUDHA

Vs.

RESPONDENT:
AMILAL

DATE OF JUDGMENT 21/12/1990

BENCH:
AGRAWAL, S.C. (J)
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AGRAWAL, S.C. (J)
KULDIP SINGH (J)

CITATION:
1991 AIR 663 1990 SCR Supl. (3) 656
1991 SCC Supl. (2) 41 JT 1990 (4) 804
1990 SCALE (2) 1306

ACT:

Rajasthan Zamindari and Biswedari Abolition Act, 1959-
Section 29(1)--'Khudkasht'--Whether Zamindar/Biswedari be-
comes Malik--Lands vests in government.

HEADNOTE:

One piece of Agricultural land bearing khasra No. 711/531 was mortgaged by way of usufructuary mortgage by one Kallu Ram in favour of Sheo Ram, the father of the respondent, and another piece of agricultural land, bearing Kh. No. 390, was mortgaged by the appellant and Kallu Ram together in the same manner in favour of Sheo Ram. Kallu Ram and the appellant were biswedars in respect of those lands. Kallu Ram died and the appellant claimed that on the death of Kallu Ram property devolved on him. The appellant filed a suit for redemption of aforesaid mortgages against Sheo Ram before the Munsif Magistrate, Kishangarh Bas. The defendant contested the suit and pleaded that on the abolition of Biswedari, consequent on the coming into force of the Rajasthan Zamindari and Biswedari Abolition Act, 1959, the rights, title and interest in the lands in question stood transferred and vested in the State of Rajasthan and the appellant did not have the right to redeem the mortgage. It was also pleaded that on the date of the creation of the mortgage, the appellant and Kallu Ram were not in possession of the lands and the defendant was in possession of the lands as kashtkar since before the mortgages. An objection to the jurisdiction of the civil court to entertain the suit was also raised. The trial magistrate dismissed the suit holding that in view of section 5(2)(b) of the Act, the lands in question stood transferred to the State and have got vested in the State and the appellant did not have any right to file the suit in respect of the same. The appellant filed an appeal against the said order which was allowed by the Additional Civil Judge. The Additional Civil Judge, held that the name of the appellant appeared as holder of Khudkasht in the annual register and that he had thus acquired khatedari rights in respect of the lands in question and as such he could maintain the suit for redemption of the mortgages. The matter was thus remanded for trial. The defendant filed a second appeal in the High Court. The High Court

allowed the appeal and restored the judg-

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ment and decree of the Munsiff dismissing the suit of the appellant. The High Court held that the appellant did not raise the plea with regard to the lands in question being his Khudkasht lands in the pleadings and any evidence in support of the same could not be thus looked into. It further took the view that the appellant himself had pleaded that since the execution of the mortgage deeds, the possession of the lands remained with the defendant and that clearly showed that the appellant was not in possession of the lands after the execution of the mortgage deeds and therefore the right of the appellant in the lands in dispute stood abolished after the coming into force of the Act. Hence this appeal by the appellant.

Dismissing the appeal, this Court

HELD: Literally speaking the word 'khudkasht' means personal cultivation. The definition of this expression contained in Section 5(23) of the Rajasthan Tenancy Act, which is in two parts, indicates that it has been used in the same sense in the Act. In the main part Khudkasht has been defined to mean land cultivated personally by an estate holder. This is further clarified by clause (25) of Section 5 of the Rajasthan Tenancy Act which defines the expression 'land cultivated personally' to mean land cultivated on one's own account (i) by one's own labour, or (ii) by the labour of any member of one's family, or (iii) under the personal supervision of oneself or any member of one's family by hired labour or by servants on wages payable in cash or in kind but not by way of a share in crops. [664C-D]

The expression 'Khudkasht' as defined in Section 5(23) of the Rajasthan Tenancy Act, would, not include land in possession of and cultivated by a tenant or mortgagee. [664G]

In the instant case, the appellant has come forward with a specific case in the plaint that the defendant is in possession of the lands in dispute as a mortgagee from the date of the two mortgagees. In other words the appellant was not in possession/occupation of the said lands on the date of vesting of the estate of the appellant under the Act. The appellant cannot, therefore, claim Khatedari rights in respect of the lands in dispute. [667B-C]

Gurucharan Singh v. Kamla Singh and Others, [1976] 1 SCR 739; Ramesh Bejoy Sharma and Ors. v. Pashupati Rai and Ors. [1980] 1 SCR 6; P. Lakshmi Reddy v. L. Lakshmi Reddy, [1957] SCR 195 at

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202; Bhubaneshwar Prasad Narain Singh and Ors. v. Sidheshwar Mukherjee and Ors., [1971] 3 SCR 639; Kailash Rai v. Jai Jai Ram, [1973] 3 SCR 411, referred to.

Gummalapura Taggina Matada Kotturuswami v. Setra Veerava and Others, [1959] Supp. 1 SCR 968; Harihar Prasad Singh and Another v. Must. of Munshi Nath Prasad and Others, [1959] SCR 1, not applicable.

JUDGMENT: