

İ»¿CASE NO.:
Appeal (civil) 5392 of 1990

PETITIONER:
KASTURCHAND AND ANR.

RESPONDENT:
HARBILASH AND ORS.

DATE OF JUDGMENT: 14/09/2000

BENCH:
SYED SHAH MOHAMMED QUADRI & S.N. PHUKAN

JUDGMENT:
JUDGMENT

2000 Supp(3) SCR 293

The following Order of the Court was delivered :

This appeal is directed against the judgment and order of the High Court of Madhya Pradesh, Jabalpur Bench at Gwalior in Second Appeal No. 385 of 1973 dated March 13, 1987. The resolution of the controversy in this appeal depends upon the true interpretation of Section 4(2) of Madhya Bharat Zamindari Abolition Act, Samvat 2008 (Act 13 of 1951), referred to in this judgment as the Abolition Act.

The appellants are proprietors of the land in dispute within the meaning of Section 2(a) of the Abolition Act. The lands in dispute are Survey Nos. 2742, 3080 and 3105 of village Mehgaon, District Bhind (erstwhile Gwalior State) (for short the Suit Land). The appellants filed the Suit out of which the present appeal arises, for recovery of possession of the suit land against the original defendant (son of Gayadeen) on the allegation that in Samvat 2008 Gayadeen dispossessed them and therefore they are entitled to recover possession after ejectment of the respondents. They say that in Samvat year 2005 one Balku was cultivating the Suit land. After that he abandoned it and the appellants cultivated the suit land (khud-kasht) during the Samvat years 2006, 2007 and 2008 and the same is so recorded in the annual village papers (Khasra). They alleged that in the Khasra of Samvat year 2008 their name was struck off and name of one Gayadeen was got written with the connivance of the Patwari. They claimed to have become permanent tenant and from October 10, 1959, Bhootniswami.

The claim of the appellants was contested by the respondents by pleading that Balku had never abandoned the suit land. In Samvat year 2006 he gave the possession of the land to Gayadeen who remained in possession till his death and thereafter the defendant was cultivating the land. The respondents claimed to be the heirs of the sub-tenant of Balku, a gair maurusi Kashtkar. On the date of vesting of the Abolition Act he was in possession and, therefore, he was entitled to all the rights under the Abolition Act. The appellants' right, if any, was to continue in possession, if they were in possession on that date but as they were out of possession, they cannot seek recovery of possession from them.

On these pleading the parties went on trial. The learned Trial Judge dismissed the Suit of the appellants. The appeal filed before the learned District Judge was also dismissed. The appellants prosecuted the case in the Second Appeal before the High Court which was also dismissed by the impugned order. That is how the appellants are in appeal before us. During the pendency of the appeal the second respondent died and the application for substitution of his legal representatives is ordered.

Mr. Shiv Dayal the learned senior counsel for the appellants, submitted that the all the Courts below proceeded on an erroneous construction of

subsection (2) of Section 4 and dismissed the Suit. According to the learned counsel, what is relevant for purposes of acquiring the right to continue to be in possession under Section 4(2) is the entries made in the Khasra for the period earlier to the date of vesting but not the actual possession on the date of vesting. Even so the learned counsel submits that for the Samvat year 2008 the appellants were in possession which was recorded in the Khasra which was subsequently corrected and the name of Gayadeen, the predecessor in interest of the respondents, was entered. As the appellants were in possession of the suit land and the same is recorded in Khasra of the earlier years 2006, 2007, they acquired the right under Section 4(2) to continue in possession and this aspect has been missed by the Courts below. Mr. Mehrotra, the learned senior counsel appearing for the respondents, submits that mere entry in the record is not material. What is important is, submits the learned counsel, the possession as on the date of vesting and as the Courts below found concurrently that on that date the appellants were not in possession, so they are not entitled to any relief from this Court.

Now the point for determination is, what is the true interpretation of Section 4(2) of the Abolition Act, which reads as follows:

"Section 4(2); "Notwithstanding anything contained in sub-section (1), the proprietor shall continue to remain in possession of his khud-kasht land, so recorded in the annual village papers before the date of vesting."

Section 4(1) says, inter alia, that on publication of the notification under Section 3 in respect of an area in the Gazette, notwithstanding anything contained in any contract; grant or document or in any other law for the time being in force, the consequences mentioned in Clauses (a) to (f) thereof would follow. This is subject to the other provisions of the Abolition Act.

A perusal of sub-section (2) makes it clear that it vests a right in the proprietor to continue to remain in possession of his khud-kasht land, so recorded in the appeal, village papers before the date of vesting. This conferment of the right to remain in possession of the Khud-kasht land is notwithstanding the vesting of the land in sub-section (1) of Section 4, A proprietor claiming the right to continue to remain in possession of the khud-kasht land, has to show that he was in possession of the land as a khud-kasht cultivator and that fact is recorded in the Khasra- the annual village papers-before the date of vesting. The date of vesting, as noted above is October 2, 1951 which falls in Samvat year 2008. Obviously for purposes of sub-section (2) the entries in the Khasra of the Samvat year 2007 would be relevant. The legislative policy behind this Section appears to be that when the rights are being conferred on cultivators of land on the principle of land for the tiller a proprietor should not be deprived of the same if he is also in personal cultivation of the land and that he should be conferred the same benefits as are available to other tillers of the soil under the Act Because the date of vesting falls in the middle of Samvat year 2008, the legislature deemed it fit to place reliance on the records of the annual village papers before the date of vesting. Thus, it follows that for purpose of Section 4(2) of the Abolition Act what is relevant and material is the entries in the Khasra maintained by the Revenue department for the period earlier to the date of vesting.

There is no dispute in this case that for the Samvat years 2006 and 2007 (Exhibits P2 and P3) the names of the appellants are recorded as khud-kasht possessors. Though according to the respondents Gayadeen was in possession of the suit land in those years yet admittedly his name was not recorded in Khasra of Samvat years 2006 and 2007 which is a significant fact to belie the case of the respondents. If that be so, the appellants are entitled to continue in possession of the suit land under Section 4(2) of the Abolition Act. However, if they are dispossessed thereafter as they claim, their rights extends to recover the possession from the persons in unauthorised occupation thereof so that they can continue in possession of the suit

land. Section 4(2), in our view, does not put an embargo on the right of the person whose possession of the Suit land is recorded in the Khasra of the years earlier to the date of vesting to recover possession of the land from a trespasser, if he was subsequently dispossessed from the land.

The learned counsel for the respondents Mr. Mehrotra relied on a judgment of this Court in Ramkhillawandhar and Ors, v, Gajodharprasad (dead) by Lrs. & Others, [1985] 2 SCC 58 to contend that as the plaintiffs were not in possession of the land in dispute on the date of vesting, they cannot succeed in a Suit for recovery of possession. That case arose under Madhya Pradesh Abolition of Proprietary Rights (Estates Mahals, Alienated Lands) Act, 1950 (for short the M.P. Act). Section 4(2) of the M.P. Act reads as follows;

Sec. 4(2): "Notwithstanding anything contained in sub-section (1). the proprietor shall continue to retain the possession of his homestead, home-farmland, and in the Central Provinces also of land brought under cultivation by him after the agricultural year 1948-49 but before the date of vesting."

It is true that the expression, the proprietor shall continue to retain the possession in Section 4(2) of the M.P. Act and the expression 'the proprietor shall continue to remain in 'possession' in Section 4(2) of the Abolition Act convey the same meanings but the requirement of these provisions to continue in such possession are different. The provisions of Section 4(2) of the two Acts are not in haec verba; whereas under the M.P. Act bringing the land under cultivation after the agriculture year 1948-49 but before the date of vesting is a prerequisite, under the Abolition Act, the criteria are:

(1) Khud-kasht of the land (2) entry of the khud-kasht of land in the annual village papers before the date of vesting. Therefore under the Abolition Act the fact of khud-kasht of the land, has to be ascertained from the entries recorded in the annual village papers before the date of vesting. That this is the import of Section 4(2) of the Abolition Act, derives support from the following observations of this Court in Mehrabsingh v. Nareshsing, [1970] 3 SCR 18 which also arose under the Abolition Act.

"The proprietor, however, notwithstanding other consequences of the vesting in a State, is entitled .to continue to remain in possession of his khud-kasht land which is so recorded in the annual village papers before the date of vesting,"

(emphasis supplied)

The same view is reiterated in a later decision between the same parties Meharban Singh v. Bhagwant Singh, AIR (1980) SC 696, thus:

It would follow that if, in a given case, it was shown that a proprietor had khud-kasht land which was so recorded in the annual village papers before the date of vesting of the lands in the State,

he was entitled to continue to remain in possession of those lands....."

(emphasis supplied)

A full bench of the Madhya Pradesh High Court in Deorao Jadhav v. Ramchandra & Others, (1982) M.P.L.J. 414 at Page 425 relying on the aforementioned observation of this Court in Meharban Singh v. Bhagwant Singh, AIR (1980) SC 696 (supra) concluded as follows:

"The determining factor is khas possession under section 6, whereas under Section 4(2) the determining factor is record, i.e. khud-kasht land so recorded in the annual village papers before the date of vesting although

the definition of khud-kasht in Section 2(c) of the M.B. Act is similar to the definition of khas possession in Section 2(k) of the Bihar Act."

This being the position, the Courts below as well as the High Court have misdirected themselves in not placing reliance on the entries in the khasras of Samvat years 2006 and 2007, (Exhibits P2 and P3), recorded, earlier to the date of vesting, Therefore, the findings recorded by them are vitiated and not binding on this Court.

Mr. Mehrotra next contends that entries in the Khasra cannot be regarded as sacrosanct as to be binding on the parties with regard to the actual position. We cannot accept this broad contention.

The entries in annual village papers create presumption albeit rebuttable in favour of a person whose name is recorded. We find that a procedure is prescribed to challenge the entries made in the annual village papers. The procedure is contained in the Madhya Bharat Land Revenue and Tenancy Act of 1950 (for short 'Land Revenue Act'). Section 45 of that Land Revenue Act specifies that Khasra, Jamabandi or Khatoni and such other village papers as the Government may from time to time prescribe shall be annual village papers. Section 46 enjoins preparation of annual village papers each year for each village of a District in accordance with rules made under the Act. Section 52 embodies the presumption that all entries made under that Chapter in the annual village papers shall be presumed to be correct until the contrary is proved and Section 50 prescribes the method or procedure for correction of wrong entries in the annual village papers by superior officers. Thus it is clear that in the event of wrong entries in the annual village papers the same is liable to be corrected under Section 50 and unless they are so corrected the presumption under Section 52 will govern the position.

Insofar as Samvat year 2008 is concerned it is not in dispute that initially the names of the appellants were recorded. They were subsequently scored off by the Patwari and the name of Gayadeen was entered. There is nothing to show that this correction was made in accordance with the procedure prescribed under Section 50 of the Land Revenue Act. Indeed it is not the case of the respondent that correction was carried out under the said provisions. Therefore, the subsequent entry will be of no consequence and it confers no benefit either on Gayadeen or anybody claiming through him.

For all these reasons we hold that the judgment and decree of the High Court under appeal cannot be sustained. Accordingly, the judgment and decree of the High Court confirming the judgment of the 1st Appellate Court and that of the Trial Court, are set aside. The appeal is accordingly allowed and the Original Suit is decreed. Having regard to the circumstances of the case we direct the parties to bear their own costs.