

PETITIONER:
RAM NATH AND OTHERS

Vs.

RESPONDENT:
DY. DIRECTOR OF CONSOLIDATION AND OTHERS

DATE OF JUDGMENT 10/11/1987

BENCH:
MUKHARJI, SABYASACHI (J)
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MUKHARJI, SABYASACHI (J)
OZA, G.L. (J)

CITATION:
1988 SCR (1) 875 1987 SCC Supl. 683
JT 1987 (4) 388

ACT:
Suit for eviction from land under section 209 of the Zamindari Abolition and Land Reforms Act-Title to land by adverse possession.

HEADNOTE:
The High Court allowed the writ petition and quashed the order of the Deputy Director of consolidation. The appellants filed appeal in this Court against the order of the High Court. The appeal came up for hearing on May 7, 1987, when it was dismissed for default of appearance, where after an application for restoration was filed on the ground that counsel for the appellants was busy in the High Court at the time of hearing of the appeal. This Court found no justification for recalling its order, dismissing the appeal, but in view of the fact that the appellants would suffer for no fault of theirs, decided to hear the matter, directing that this practice should not be permitted in this Court any further.

Dismissing the appeal (on merits), the Court,

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HELD: There is no merit in the appeal. The High Court was right in holding that the respondents (concerned) were in possession of the land in 1958 when the case started under section 145 of the Cr. P.C. and their date of occupation could not be later than 8.5.1958, so that the six years' period of limitation for a suit for their eviction under section 209 of the Zamindari Abolition and Land Reforms Act would start running from July 1, 1958 and expire on June 30, 1964 i.e. before the consolidation operations commenced. The appellants contended that there was a break in the possession of the respondents concerned between 8.5.1958 and 29.1.60, but during that period the land was in the custody of the Criminal Court which must be deemed to have been holding possession of the land on behalf of the person eventually found to be entitled to possession. The respondents had matured their title by adverse possession and there could be no warrant for denying them the status of rightful owners. There was no break in the possession of the respondents and they must be held to have been in continuous occupation at least from May, 1958. 1877A-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Miscellaneous

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Petition No. 1483 of 1987. (In Civil Appeal No. 573 of 1974).

From the Judgment and order dated 9.4.1973 of the Allahabad High Court in Special Appeal No. 537 of 1970.

P.K. Bajaj and S.K. Bagga for the Appellants.

G.S. Chatterjee for the Respondents.

The following order of the Court was delivered:

O R D E R

The appeal was listed on 7.5.1987 before a bench consisting of Hon'ble Mr. Justice G.L. Oza and Hon'ble Mr. Justice K.N. Singh. The order recited "Heard learned counsel for the respondent for sufficient time. No one appears for the appellants. The appeal is, there fore, dismissed in default."

This C.M.P. was subsequently filed for recalling the order on the ground that the learned counsel was busy in the Delhi High Court on that date. It was further stated there "But when after arguing two cases viz. Company Petition No. 110 of 1983 Ishwar Singh and others v. Dharam Singh and others, (final hearing) and also other regular matter Suit No, 49 of 1976 A.C. Tamra v. Mercury Production (part heard) in the High Court of Delhi at New Delhi he (meaning thereby the counsel for the appellant) came to this Hon'ble Court, he came to know that this appeal had reached for hearing and was dismissed for default". This petition is signed not by the appellant but by M/s. Bagga & Co., Advocates for the appellant. It is verified by an affidavit of one P.K. Bajaj who state that he had been instructed to appear and argue the appeal. We are not sure as to who is making this application and whether the appellant is at all aware of these events. We find no justification for recalling the order on the plea that the counsel was busy somewhere. We were not inclined to act upon this kind of plea but on the basis that otherwise the appellant would suffer loss for no fault of his, we have decided to hear the counsel. This practice should not be permitted in this Court any further.

On perusal of the judgment of the High Court we find no merit in this appeal. By the impugned judgment of the High Court of Allahabad, writ petition was allowed and the order of the Deputy Director of Consolidation dated the 25th October, 1967 was quashed.

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The learned Judge has recorded that the respondents herein A have been held to be in possession in 1958 when the case started under Section 145 of the Code of Criminal Procedure and their date of occupation could not be later than 8.5.1958 with the result that the six years' period of limitation for a suit for their eviction under Section 209 of the Zamindari Abolition and Land Reforms Act would start to run from 1st July, 1958 and would expire on 30th June, 1964 i.e. before the consolidation operations commenced.

It was, however, contended on behalf of the appellants herein that there was a break in the possession of the respondents between 8.5.1958 and 29.1.1960, but it was obvious that though the land was in the custody of the criminal court during that period the court must be deemed to have been holding possession on behalf of the person eventually found to be entitled to possession. We are of the opinion that the learned Judge was right in so holding. It was argued that there was no justification for treating the

respondents to be entitled for possession of the land as they had occupied the land as mere trespassers but it was found that they had matured their title by adverse possession and there could be no warrant for denying them the status of rightful owners. The learned Judge did in the absence of any finding by a competent court negating the respondents claim was of the opinion that they must be deemed to have been in persons entitled to possession of the disputed plots with the result that during the period between 8.5.1958 and 29.1.1960 the criminal court must be held to have been in possession of the land. In that view of the matter there was no break in the possession of the respondents and they must be held to have been in continuous occupation at least from May, 1958. In that view of the matter the other contentions urged before the High Court need not be noticed.

In that view of the matter the appeal fails and is dismissed accordingly.

No one appears for the respondent. Therefore, there is no question of costs. We, however, direct the Registry to transmit a copy of this order to the appellant directly at the costs of Advocate for the appellant.

S.L.

Appeals dismissed.

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