

Court No. - 48

Case :- WRIT - B No. - 136 of 1977

Petitioner :- Jagdamba Prasad

Respondent :- Kailash

Counsel for Petitioner :- A.N. Bhargava

Counsel for Respondent :- S.C.,Niraj Kumar Sharma,S.L.Yadav,Sandeep Saxena,Ved Mani Sharma

Hon'ble Saurabh Shyam Shamsbery,J.

1. Heard Sri Santosh Kumar Dwivedi, learned counsel for petitioners and Sri Neeraj Kumar Sharma, Advocate for contesting-respondents.
2. This is a case arising out of the proceedings initiated under Section 9A(2) of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as “Act, 1953”).
3. It is not disputed that rival parties belongs to common ancestor. The dispute was with regard to Khatas No. 13, 105 and 18. The objections filed by petitioners with regard to aforesaid Khatas were on the basis of Bainamas executed by Mata Prasad with regard to his share.
4. Consolidation Officer vide order dated 03.12.1974 rejected objections of petitioners and land was distributed in accordance with respective share in family.
5. Aforesaid order was challenged by way of filing an appeal. Appellate Authority accepted objections of petitioners with regard to Khata No. 105 on the ground that it was converted in Bhumidhari land after paying 10 times rent and Bhumidhari Sanad was issued. However, claim with regard to Khatas No. 13 and 18 was rejected in absence of Bhumidhari right of vendor. The appeal was accordingly decided vide order dated 02.04.1975.
6. Order of Appellate Authority was challenged by petitioners and others by way of filing two revisions. During argument petitioners have limited their claim only with regard to Khata No. 13 and placed reliance on Bainama. Revisional Authority has not disputed about existence of Bainama, however, it has upheld the findings returned by both lower authorities that since vendor has not attained

Bhumidhari right, therefore, he was not empowered to execute Bainama. Revisional Authority has referred relevant provisions of United Provinces Tenancy Act, 1939 (hereinafter referred to as “Act, 1939”).

7. Learned counsel for petitioners submits that Bainama executed in favour of petitioners was not disputed. They remained in possession on Khata No. 13 also for many years. Respondents have never tried to initiate any proceeding to dispossess petitioners. Therefore, they have perfected their right. Learned counsel has placed reliance on Section 33 of Act, 1939 and submits that petitioners are liable to be granted benefit of Section 33(2)(c) of Act, 1939.

8. For reference Section 33 is reproduced hereinafter:

“33. Interest of other tenants--(1) The interest of a tenant holding on special terms in Oudh, of an ex-proprietary tenant, of an occupancy tenant, of a hereditary tenant, and of a non-occupancy tenant is heritable, but is not transferable otherwise than in accordance with the provisions of this Act.

(2) Nothing in the foregoing provisions of this section shall render illegal—

(a) a sub-lease of a holding as hereinafter provided;

(b) a sale of the interest of a tenant under the provisions of Section 251;

(c) a release or transfer of an interest in favour of a co-tenant;

Provided that no person shall be deemed to be a co-tenant notwithstanding that he may have shared in the cultivation of the holding, unless he was a co-tenant from the commencement of the tenancy, or has become such by succession or has been specifically recognised as such in writing by the landholder.”

9. Learned counsel for petitioners fairly submits that on the basis of record available there is no Bhumidhari Sanad on record.

10. Per contra, learned counsel appearing for contesting-respondents has supported impugned order that since the vendor has not attained right to execute sale deed, therefore, claim of petitioners was rightly rejected by a reasoned order.

11. Heard learned counsel for parties and perused the material available on record.

12. In above background the limited issue before this Court is, whether on basis of a sale deed, without attaining right of Bhumidhari with regard to land in dispute, i.e., Khata No. 13, right of petitioners would be perfected over said Khata as well as effect of aforesaid provision, if any?

13. As referred above, in the present case execution of Bainama / Sale deed is not in dispute. The dispute is only with regard to right of vendor, i.e., he was competent to execute the Bainama/ sale deed or not as well as effect of long possession?

14. As reflected above, in the present case one of the Bainama was found to be legally sustainable since vendor has paid 10 times rent and got Bhumidhari Sanad. However, admittedly with regard to Bainama of Khata No. 13 no such process was undertaken, i.e., neither ten times rent was deposited nor Bhumidhari Sanad was issued.

15. Learned counsel for petitioner is not able to dispute that without such process the vendor could not get any right to sell the land under the provisions of U.P. Zamindari Abolition and Land Reforms Act, 1950. Therefore, the findings returned by authorities that Bainama with regard to Khata No. 13 that it's vendor has no right to execute it, are legally sustainable.

16. The other issue with regard to effect of possession as well as effect of Section 33(2)(c) of Act, 1939, as referred above, in this regard no documentary evidence was brought on record and as such no benefit, if any, could be granted of said provision.

17. In aforesaid circumstances, I do not find any illegality in impugned order.

18. Writ petition is accordingly dismissed.

19. Interim order, if any, stands vacated.

Order Date :- 23.11.2023

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