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RAM PRAKASH

v.

MOHAMMAD ALI KHAN (DEAD) THROUGH L.R.'S

April 4, 1973

B

[J. M. SHELAT, ACTING C.J., S. N. DWIVEDI AND
Y. V. CHANDRACHUD, JJ.]

C

U. P. Zamindari Abolition and Land Reforms Act 1950, s. 18(1)—Land held by an intermediary as an intermediary's grove on the date immediately preceding the date of vesting deemed to be settled by the State Government with such intermediary—Earlier rights are extinguished—Res Judicata—No res judicata when issue in earlier decision was different.

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In February 1946, H leased his share in a grove in Uttar Pradesh to the appellant and sold to him the trees standing thereon. Similarly A, a widow, leased her share and that of her minor children in the grove and sold the standing trees to the appellant. Subsequently the proprietary right of some other co-sharers in the grove was sold to one M. The appellant instituted a suit sometime in 1946 against M and others for injunction and alternatively for possession over the grove. Sometime in 1947 M and others also instituted a rival suit for cancellation of the aforesaid leases on the contention that under s. 246 of the U.P. Tenancy Act the execution of a lease by some of the co-sharers only, was invalid. The trial court dismissed the appellant's suit and decreed M's suit. The lower appellate court granted a decree in favour of the appellant for joint possession over the share of H and A in the grove land. It was held that the lease executed by A as guardian of the minors was invalid. M filed two appeals in the Allahabad High Court. During the pendency of the appeals M died and his legal representatives were brought on record. The appeal filed by M in his own suit was dismissed by a Single Judge of the High Court. The appeal filed by M in the appellant's suit was heard by another single Judge, and was allowed with respect to the lease of grove land and dismissed as regards the sale of the trees. It was held that after the commencement of the U.P. Zamindari Abolition and Land Reforms Act the appellant had no subsisting interest in the land. The appellant was granted special leave to appeal to this Court.

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Dismissing the appeal,

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HELD : (i) As the grove in dispute was an intermediary's grove M and others who were intermediaries on the relevant date became its bhumidars. The lessee of an intermediary's grove land is not an intermediary because he does not fall within the definition of the word 'intermediary'. No other provision of the Act gives him any kind of interest in the intermediary's grove land. The appellant got no right in the grove land in dispute. [895E]

H

Rana Sheo Ambar Singh v. Allahabad Bank Ltd. Allahabad, [1962] 2 S.C.R. 441 and Jamshed Jahan Begam and others v. Lakhari Lal and others, [1970] 2 S.C.R. 566, relied on.

(ii) The dismissal of M's other appeal by the High Court could not operate as *res judicata* in the present appeal because the questions at issue in the two appeals were different. [895G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1860 of 1967. A

Appeal by special leave from the judgment and order dated August 8, 1967 of the Allahabad High Court in Special Appeal No. 2350 of 1953.

K. P. Gupta, for the appellant. B

J. P. Gopal and *Sobhag Mal Jain*, for respondents Nos. 1 to 7.

The Judgment of the Court was delivered by

DWIVEDI, J.—In this appeal the bone of contention is a certain zamindari grove. The grove belonged to a number of co-sharers. But in a partition it fell to the share of one Sakhawat Ali and one Hafiz Ali. On February 16, 1946 Hafiz Ali executed a composite document of lease and sale in favour of the appellant, Ram Prakash. He let out his share in the grove land and sold his share in the standing trees to Ram Prakash. On the same day another similar document was executed in favour of the appellant by Smt. Abbasi, widow of Sakhawat Ali. She executed the document for self and as guardian of her minor sons and daughters. The document was in respect of her share and her childrens share. Subsequent to the execution of those documents the proprietary right of some other co-sharers (presumably some successors of Sakhawat Ali) in the grove land was sold to one Mohammad Ali. The appellant instituted a suit some time in 1946 against Mohammad Ali and others for injunction and alternatively for possession over the grove. Some time in 1947 Mohammad Ali and others also instituted a rival suit for cancellation of the aforesaid leases. Their case was that the leases were invalid as section 246 of the U.P. Tenancy Act prohibited the execution of a lease by some of the co-sharers only. The two suits were tried together. The trial court dismissed the suit of the appellant and decreed the other suit. Two appeals were preferred against the decree of the trial court. The lower appellate court granted a decree in favour of the appellant for joint possession over the share of Hafiz Ali and Smt. Abbasi in the grove land. It was held that the lease executed by Smt. Abbasi as guardian of the minors was invalid. So no decree was passed in respect of their shares. The other appeal was disposed of on the same terms. Mohammad Ali then filed two second appeals in the Allahabad High Court. They were numbered 2350 and 2351 of 1953. Second appeal No. 2350 of 1953 was filed against the decree passed in the appellant's suit; second appeal No. 2351 of 1953 was filed against the decree in his own suit. During the pendency of the appeals, Mohammad Ali died and his legal representatives were brought on record. Second appeal No. 2351 of 1953 was dismissed by a learned Judge of the High Court. Second Appeal No. 2350 of 1953 came up for C
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A hearing before another learned Judge. The appeal was allowed with respect to the lease of grove land and dismissed as regards the sale of trees. Hence this appeal by special leave.

B We agree with the learned Judge that after the commencement of the U.P. Zamindari Abolition and Land Reforms Act (hereinafter referred to as the Act), the appellant has no subsisting interest in the grove land. Section 18(1) of the Act provides that all lands in possession or held or deemed to be held by an intermediary as an intermediary's grove on the date immediately preceding the date of vesting shall be deemed to be settled by the C State Government with such intermediary. Section 2(12) of the Act defines an intermediary as "a proprietor, under-proprietor, sub-proprietor, thekedar, permanent lessee in Avadh, permanent tenure-holder of an estate or part thereof." Section 2(13) defines "intermediary's grove" as grove land held or occupied by an intermediary as such. D

E As the grove in dispute was an intermediary's grove Mohammad Ali and others, who were intermediaries on the relevant date, became its bhumidars. The lessee of an intermediary's grove land is not an intermediary because he does not fall within the definition of the word "intermediary". No other provision of the Act gives him any kind of interest in the intermediary's grove land. Accordingly, the appellant gets no right in the grove land in dispute. The scheme of the Act is to create new rights in place of old rights. The old rights are dead and gone after the commencement of the Act. (vide *Rana Sheo Ambar Singh v. Allahabad Bank Ltd., Allahabad*⁽¹⁾ and *Jamshed Jahan Begam and others v. Lakhan Lal and others*⁽²⁾).

G The decision of the High Court in second appeal No. 2351 of 1953 cannot operate as *res judicata* in this appeal. Second appeal No. 2351 of 1953 arose out of the suit instituted by Mohammad Ali and others. That suit was for cancellation of the leases on the ground that they were made in contravention of the provisions of s. 246 of the U.P. Tenancy Act. The question whether the Zamindari Abolition and Land Reforms Act gave any rights to the appellant in the grove land in dispute could not be and was in fact not considered in that appeal. In that appeal the material H

(1) [1962] 2 S. C. R. 441.

(2) [1970] 2 S. C. R. 566.

issue was whether the leases were void. The argument on behalf of Mohammad Ali and others in second appeal No. 2350 of 1953 now is that assuming that the leases are valid, the lessee has no subsisting right in the grove land after the enforcement of the Act. A

As the grove is land covered by the Act; it will be governed by the provisions of the Act and not by the provisions of the Transfer of Property Act. We have already held that the appellant's lessee rights came to an end on the commencement of the Act. And the Act conferred on him no new rights. In the result, there is no force in this appeal. It is dismissed with costs. B

G.C.

Appeal dismissed. C