VISHWA VIJAI BHARTI

v.

FAKHRUL HASAN & ORS.

May 4, 1976

[Y. V. CHANDRACHUD AND P. N. SHINGHAL, JJ.]

Civil Procedure Code—Secs. 100-103—*Powers of High Court to set aside finding of facts in a second appeal—If High Court must discuss evidence while going into questions of facts.*

Entries in record of rights—Presumptive value of—Presumption if applies to forged or fraudulent entries—Effect of fraud or forgery on a document.

Mahant Bharati of temple of Shankarji Maharaj gave lands belonging to the temple on Theka to one Sukai for a period of 10 years. The Mahant obtained a decree for eviction against Sukai but it could not be executed because of the objections raised by the respondents on the ground that they have been cultivating the lands for several years and they were entitled to continue in possession as Sirdars in spite of the decree against Sukai. The lessor, therefore, instituted two separate suits under Order 21 Rule 103, C.P.C. Respondents contended *inter alia,* that they had become hereditary tenants and they must be deemed to have become Adhivasis of the land. The trial court dismissed the suit. The district court reversed the finding of the trial court in appeal and held that the appellant being the Bhumidar of the lands was entitled to recover possession thereof from the respondents. The district Judge held that the entries in the record of rights showing the occupation of the respondents were fraudulent. The High Court in second appeal upset the decree of the district court.

Allowing the appeal,

HELD : (1) The only question before the High Court was whether the entries on which the respondents relied were genuine or fraudulent. This is a question of fact and the High Court had no jurisdiction to set aside the finding on that question in second appeal. The High Court erroneously assumed that the district Court had not given any finding on the question of fraud. The district Court had given at least half a dozen reasons for holding that the entries were fictitious and were made surreptitiously and fraudulently. [521H; 522A-H]

(2) If the High Court thought that the district court had not recorded a clear finding on that issue and if the High Court were to determine under section 103 C.P.C. the issue under whether the entries were fraudulent or not it was necessary for it to discuss the evidence. But, the High Court instead placed blind and easy reliance on the entries which are utterly uninspiring. [523A-B]

(3) Entries in the revenue record ought generally to be accepted at their face value and courts should not embark upon an appellate enquiry into their correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent entries. The distinction may be fine but it is real. Fraud and forgery rob a document of all its legal effect and cannot found a claim to possessory title. [523B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1122 and 1123 of 1970.

Appeals by special leave from the Judgment and order dated the 13th February 1970 of the Allahabad High Court in S.A. Nos. 267 and 268 of 1962.

A *S. C. Manchanda, S. K. Bagga, (Mrs.) Sureshta Bagga and (Miss) Yash Bagga;* for the Appellant.

R. N. Sharma and C. P. Lal; for Respondent.

The Judgment of the Court was delivered by

B CHANDRACHUD, J.—These appeals by special leave arise out of the judgment rendered by the High Court of Allahabad on February 13, 1970 in Second Appeals 267 and 268 of 1962.

Mahant Vishwa Nath Bharthi, the sarbrahkar of the temple of Shankarji Maharaj, Khowja, gave lands belonging to the temple, admeasuring about 44 acres, on Theka to one Sukai. The Thekanama C was executed on June 5, 1942 to be effective from July 1, 1942. The lease was to enure for a period of 10 years and was due to expire on June 30, 1952. The Thekanama contained an express term that the Thekadar will not sub-let the leasehold property and that on the expiry of the period of lease he shall hand over the possession of the property to the lessor.

D In spite of this term against sub-letting, on July 27, 1942 the lessee executed a power of attorney in favour of his nephews Haqiqullah and Ghani, apparently authorising them to cultivate the lands on his behalf. On the expiry of the period of lease the Mahant instituted a suit for ejectment of the lessee which was decreed on November 25, 1952.

E The Mahant then filed an application for executing the decree but an objection was raised thereto by the respondents, Sanaullah and Fakhrul Hasan who are respectively the brother and cousin of Haqiqullah. They filed two separate applications objecting to the execution of the decree on the ground that they had been cultivating the lands for several years and that they were entitled to continue in possession as Sirdars. On June 2, 1954 the objection raised by the respondents F was allowed by the executing court which passed an order that the possession of the lands which on March 13, 1953 was given to the decree-holder in execution of the decree should be re-delivered to the respondents. Accordingly, the respondents were put back in possession in July, 1954.

The lessor then instituted two separate suits under Order XXI, G Rule 103 of the Civil Procedure Code, the suit filed against Fakhrul Hasan being No. 17 of 1954 and the one against Sanaullah being No. 20 of 1954. His case was that the lands were given on lease to Sukai on condition that he shall not sublet them, that a decree for possession was accordingly passed against Sukai on the expiry of the lease and that the respondents had got their names entered fraudulently in the revenue record as the cultivators of the lands.

H Respondents took up various inconsistent pleas in answer to the suits. They contended that they were in possession of the lands with the consent of the original lessor, that they had become hereditary

tenants and that they must be deemed to have become Adhivasis of the lands. A

The learned Munsiff who tried the suits framed six issues, issue No. 2 being whether the respondents were Sirdars of the lands as alleged in paragraphs 17 and 18 of their written statements. This issue was referred to the revenue court for decision. The lessor having died during the pendency of those suits, the appellant was substituted in his placed as the Mahant of the Math. The revenue court found in favour of the respondents and accepting that finding the trial court dismissed the suits. In appeal, the District Court took the view that there was no justification for referring the particular issue to the revenue court and that the trial court ought to have decided all the issues for itself. The District Court accordingly remanded the suit with a direction that the Munsiff should decide the suit afresh uninfluenced by the finding given by the revenue court. The trial court then assessed the evidence, held in favour of the respondents and dismissed both the suits by its judgment dated November 17, 1961. B C

The District Court reversed the findings of the trial court in appeal and held that the appellant, being the Bhumidar of the lands, was entitled to recover possession thereof from the respondents. The appeals were accordingly allowed by the District Court by its judgment dated April 18, 1962. D

The respondents filed Second Appeals Nos. 267 and 268 of 1962 against the decrees passed by the District Court. The High Court having allowed those appeals the Mahant of the Math has filed these appeals by special leave. E

The decision of these appeals involves a very narrow question as regards the power of the High Court in second appeal. Section 100 of the Code of Civil Procedure provides to the extent material that an appeal can lie to the High Court from a decree passed in appeal by any court subordinate to it if the decision is contrary to law or to some usage having the force of law. The only question for decision before the High Court was whether the respondents were entitled to the protection of section 20(b)(ii) of the U.P. Zamindari Abolition and Land Reforms Act, 1 of 1951. That section provides, in so far as material, that every person who was recorded as an occupant of any land in the Khasra or Khatauni of 1356 Fasli but who was not in possession in the year 1359 Fasli shall be called an 'Adhivasi' of the land and shall be entitled to retain possession thereof. The names of the respondents were entered as occupants in the revenue record of 1356 Fasli but after considering the entire evidence, the District Court rejected those entries on the ground that they were fraudulent. Thus, the only question before the High Court was whether the entries on which the respondents relied were genuine or fraudulent. That is a question of fact and the High Court had no jurisdiction to set aside in second appeal the finding recorded on that question by the District Court. F G H

A The High Court assumed erroneously that the District Court had not given any finding on the question of fraud and on that assumption, it accepted mechanically the entries in the revenue record showing that the respondents were in possession of the lands as occupants. The learned District Judge, by his judgment dated April 18, 1962 had gone in great details into the question whether the particular B entries showing that the respondents were occupants of the land were genuine or fraudulent. Those entries are Exs. A-5 to A-12. As pointed out by the learned Judge, the original lessee Sukai had migrated to Bombay after handing over the charge of the lands to his nephews who got the names of the respondents entered in the revenue record "surreptitiously". The learned Judge points out that Fakhrul Hasan, who alone was examined on behalf of the respon- C dents, was just a lad of 10 at the time when he is alleged to have entered into adverse possession of the lands. Neither Sukai, who was the original lessee, nor Haqiqullah and Ghani who were said to be cultivating the lands under a power of attorney executed by Sukai, were examined by the respondents. The other respondent Sanaullah was not living in the village at all and is said to have been doing business in second-hand spares in Bombay. Haqiqullah was sum- D moned by the appellant for producing the power of attorney dated July 27, 1942 and taking advantage of that opportunity the respondents cross-examined him. Haqiqullah, being a close relation of the respondents was only too willing to oblige them by giving pre-conceived answers in the so-called cross-examination. But the learned trial Judge overlooked that Haqiqullah was only summoned to produce a document and by reason of section 139 of the Evidence Act, E he could not become a witness in the case and could not therefore have been cross-examined on the merits of the case. But, even after considering the evidence of Haqiqullah the learned District Judge recorded a finding that "The entries were all fictitious". He then proceeded to examine the documentary evidence in the case and held:

> "After a careful consideration of the pros and cons of F the whole case I am of opinion that the Thekedar Sukai had cultivated the Sir and Khudkashi of the temple land which was given to him on Theka through his brother and his cousin, namely Haqiqullah and Ghani and these two persons in order to create permanent rights in the Theka property, had fraudulently got the names of their boys entered in the revenue records right from the inception. I am also G of the opinion that these boys of the house-hold never cultivated the land and they acquired no right, title or interest in the Theka land."

We find it quite difficult to understand how the High Court could hold that the District Court had not recorded any "clear finding" that the entries in the revenue record for the year 1356 Fasli were H fraudulent. Evidently, the attention of the High Court was not drawn to at least half a dozen reasons given by the District Court for holding that the entries were "fictitious" and were made "surreptitiously" and "fraudulently".

We could have even appreciated if, under section 103 of the Code of Civil Procedure, the High Court were to determine the issue whether the entries were fraudulent, if it thought, wrongly though, that the District Court had not recorded a clear finding on that issue. But the High Court did not discuss the evidence at all and chose instead to place a blind and easy reliance on the entries which are utterly uninspiring.

It is true that the entries in the revenue record ought, generally, to be accepted at their face value and courts should not embark upon an appellate inquiry in to their correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent, entries. The distinction may be fine but it is real. The distinction is that one cannot challenge the correctness of what the entry in the revenue record states but the entry is open to the attack that it was made fraudulently or surreptitiously. Fraud and forgery rob a document of all its legal effect and cannot found a claim to possessory title.

In *Amba Prasad* v. *Abdul Noor Khan and Ors.*(1), it was held by this Court that section 20 of the U.P. Act 1 of 1951 does not require proof of actual possession and that its purpose is to eliminate inquiries into disputed possession by acceptance of the entries in the Khasra or Khatauni of 1356 Fasli. While commenting on this decision, this Court observed in *Sonawati and Ors.*, v. *Sri Ram and Anr.*(2) that "the Civil Court in adjudging a claim of a person to the rights of an *adhivasi* is not called upon to make an enquiry whether the claimant was actually in possession of the land or held the right as an occupant : *cases of fraud apart,* the entry in the record alone is relevant". We have supplied the emphasis in order to show that the normal presumption of corectness attaching to entries in the revenue record, which by law constitute evidence of a legal title, is displaced by proof of fraud.

For these reasons we allow these appeals, set aside the judgment of the High Court and restore that of the District Court. The suits filed by the appellant shall stand decreed. Respondents shall pay to the appellant the costs of these appeals in one set.

P.H.P. *Appeals allowed.*

(1) [1964] 7 S.C.R. 800.
(2) [1968] 1 S.C.R. 617, 620.