

VISWANATH (DEAD) BY LR.

A

v.

CHANDRA BHAN AND ORS.

DECEMBER 13, 1995

[K. RAMASWAMY AND B.L. HANSARIA JJ.]

B

*U.P. Zamindari Abolition and Land Reforms Act, 1950—Sections 209, 331, (1) Schedule II—Courts constituted under the Act—Jurisdiction of Land mortgaged by the guardian, prior to the enactment of the Act—Suit for ejectment—Held, Courts constituted under the Act get exclusive jurisdiction excluding jurisdiction of Civil court—Mortgage statutorily extinguished after enforcement of the Act, therefore redemption of Mortgage, not required, Civil Procedure Code, 1908—Section 9.*

C

"H", brother in law of Minor "G" as a guardian mortgaged the land in dispute to the respondent. After enforcement of U.P. Zamindari Abolition and Land Reforms Act, 1950, appellant filed suit for ejectment of the Respondent under the Act.

D

The Assistant Collector and the Board of Revenue held the mortgage as void holding that "H" was neither natural nor property guardian of "G".

E

The High Court allowing the writ petition of the Respondent held that since the Respondent came into possession of the land in his title as a mortgage, until a suit for redemption of the mortgage and the eviction of the respondent is filed in the civil Court, the proceedings under Section 209 of the Act is not maintainable. Hence this appeal.

F

Allowing the appeal, this Court :

**HELD :** 1.1. The appellant is not obliged to file a suit for redemption of the mortgage. Since, after the Zamindari Abolition and Land Reforms Act, 1950 has come into force, the mortgage stood extinguished and the Bhumidhari rights acquired under the Act cannot be burdened with any liability to redeem the mortgage debt which was statutorily extinguished creating an encumbrance on the land. [636-A, 635-C]

G

*Rana Sheo Ambar Singh v. Allahabad Bank Ltd. Allahabad, [1962] 2 SCR 2141, referred to.*

H

A 1.2. The jurisdiction of the Civil Court to take cognizance of the  
 cause of action, under Section 9 of the C.P.C. stands excluded and the  
 Courts constituted under the Act, get exclusive jurisdiction to take cog-  
 nizance and deal with the matters referred to under the Act. Since Section  
 209 of the Act expressly referred to a person taking or retaining possession  
 B of land from a Bhumidhar otherwise than in accordance with the provision  
 of law. Any other person who has taken possession of the land without his  
 consent is liable to be ejected. Schedule II of the Act clearly mentions in  
 item 24 that cognizance could be taken in respect of Section 209 and the  
 competent Court has been enumerated in the schedule as Assistant Col-  
 lector. [637-A-B]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 157 of  
 1978.

From the Judgment and Order dated 14.1.76 of the Allahabad High  
 Court in C. Misc. W. No. 7483 of 1971.

D J.P. Goyal, M.R. Bidsar and R.P. Goyal for the Appellants.

Ms. Rani Chhabra and R.B. Misra, (NP) for the Respondents.

The following Order of the Court was delivered :

E The only question in this appeal is whether the High Court in its  
 order dated 12.1.1976 made in Civil Misc. Writ No. 7483/71 is correct in  
 law. the admitted position is that one Hanuman Singh, the brother in law  
 of Gulab Singh (sister's husband), as a guardian had executed a mortgage  
 of the lands in plot Nos. 120, 122, 145/1 and 145/2 situated in village  
 F Kanjauli Uparhar and village janjauli Kachhar, Tappa Chaurasi, P.O.  
 Khairagarh, District Allahabad in favour of the respondent. After the U.P.  
 Zamindari abolition and Land Reforms Act, 1950 (for short, 'the Act') was  
 brought into force with effect from 26.1.1951. The appellant laid the suit  
 under Section 209 of the Act for ejection of the respondent. All the  
 G courts including the Board of Revenue concurrently held, which was also  
 upheld by the High Court, that Hanuman Singh is neither a natural  
 guardian nor a property guardian appointed to manage the estate of the  
 minor Gulab Singh. Therefore, the mortgage is a void mortgage.

H The respondent contended that he had perfected his title by adverse  
 possession. That contention was rejected. He also contended that he

became an 'asami' under the Act and thereby he is not liable to be ejected. That contention too was rejected. When he filed the writ petition, the High Court, for the first time, held that since the respondent came into possession of the aforesaid lands in his title as a mortgagee, until a suit for redemption of the mortgage and eviction of the respondent is filed in the civil court, the proceedings Section 209 of the Act is not maintainable. Therefore, the learned judge allowed the writ petition with the above order and set aside the orders passed by all the tribunals referred to hereinbefore. Thus, this appeal by special leave.

The only question is whether the tribunals have jurisdiction to have the respondent ejected from the lands. This Court in *Rana Sheo Ambar Singh v. Allahabad Bank Ltd., Allahabad*, [1962] 2 SCR 441 had held that after the Act has come into force, the mortgage stood extinguished and the bhumidari rights acquired under the Act cannot be burdened with any liability to redeem the mortgage debt which was statutorily extinguished creating an encumbrance on the land. It was held;

"... that the intention of the U.P. zamindari Abolition and Land Reforms Act was to vest proprietary rights in the Sir and Khudkast land and grove land in the Estate by virtue of s.6(a)(i) and resettle it on the intermediary not as compensation but by virtue of his cultivatory possession of lands comprised therein and on a new tenure and confer upon the intermediary a new and special right of Bhumidari, which he never had before, by s.18 of the Act:

The proprietary rights in Sir, Khudkast land and grove land which were mortgaged were extinguished, and the Bhumidari right which was altogether a new right could not be considered to be included under the mortgage.

The mortgagee could only enforce his rights against the mortgagor in the manner as provided by s.6(h) of the Act read with s.73 of the Transfer of Property Act and follow the compensation money; and so far as the Sir, Khudkast land and grove land were concerned, he could not enforce his rights under the mortgage by the sale of Bhumidari rights created in favour of the mortgagor against them as a substituted security."

As a consequence the liability to redeem the mortgage having been

A statutorily extinguished and the mortgage being void, the appellant is not obliged to file a suit for redemption of the mortgage. The question then is whether the proceedings in the courts below is validly instituted and the courts have jurisdiction to order ejectment. Section 209 of the Act envisages that :

B "209. Ejectment of persons occupying land without title.— (1) A person taking or retaining possession of land otherwise than in accordance with the provisions of the law for the time being in force, and ----

C (a) where the land forms part of the holding of a bhumidhar or asami without the consent of such bhumidhar, or asami;

(b) where the land does not form part of the holding of a bhumidhar or asami without the consent of the Gaon Sabha

D shall be liable to ejectment on the suit in, cases referred to in clause (a) above of the bhumidhar or asami concerned, and in cases referred to in clause (b) above, of the Gaon Sabha and shall also be liable to pay damages."

E It, therefore, postulates that a person taking or retaining possession of land otherwise than in accordance with the provisions of the law for the time being in force, where the land forms part of the holding of a bhumidhar without his consent, shall be liable to be ejected, in cases referred to in clauses referred to above and shall also be liable to pay damages.

F Sub-section (1) of Section 331 of the Act postulates that :

G "331. Cognizance of suits, etc. under this Act.— (1) Except as provided by or under this Act no court other than a court mentioned in column 4 of Schedule II shall, notwithstanding anything contained in the Civil Procedure Code, 1908 (V of 1908), take cognizance of any suit, application, or proceedings mentioned in column 3 thereof or of a suit, application or proceedings based on a cause of action in respect of which any relief could be obtained by means of any such suit or application."

H The Court constituted under the Act therefore, is empowered to take cognizance of the suits under the Act, despite the provisions contained in

Section 9 CPC. In other words, the jurisdiction of the civil court to take cognizance of the cause of action under Section 9 of the CPC stands excluded and the courts constituted under the Act get exclusive jurisdiction to take cognizance and deal with the matters referred to under the Act, since Section 209 of the Act expressly referred to a person taking or retaining possession of land from a bhumidhar otherwise than in accordance with the provisions of law. Any other person who has taken possession of the land without his consent is liable to be ejected. Schedule II of the Act clearly mentions in item 24 that cognizance could be taken in respect of Section 209 and the competent court has been enumerated in the Schedule as Assistant Collector. So, the Assistant Collector had jurisdiction to take cognizance and he ordered ejection of the respondent which was upheld on appeal and revision by the Board of Revenue. A  
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Though the learned counsel for the appellant sought to rely on Section 331(1)(a) which enjoins to take an objection at the earliest and precludes the respondent to raise the issue of jurisdiction of the court at any subsequent stage of the proceedings, it is not necessary for us to deal at length with that contention. Suffice it to state that under Section 209, the trial court has jurisdiction, as referred to earlier, to order eviction of the respondent and it was upheld by all the courts. D

The appeal is accordingly allowed. The order of the High Court is set aside and that of the tribunals below under the Act stand restored. But, in the circumstances, there shall be no order as to costs. E

K.T.

Appeal allowed.