

A

RAM JANAM

v.

RADHAKRISHNA CHAUBE AND ORS.

MARCH 13, 1996

B

[K. RAMASWAMY AND K. VENKATASWAMI, JJ.]

U.P. Tenancy Act, 1939 : Sections 59 and 61.

C

Bihar and Uttar Pradesh (Alteration of Boundaries) Act, 1968 : Sections 2(a), 3, 8, 26 and 30.

D

Suit—Jurisdiction of Court—Suit filed by appellant seeking declaratory relief against respondent—Appellant claiming to have acquired hereditary tenancy rights being in possession for 50 years—Suit land situated in Ballia district of UP—With the coming into force of Boundaries Act it formed part of Shahbad District in Bihar—Suit decreed by Trial Court after coming into force of Boundaries Act—Decree affirmed by Appellate Court—Concurrent finding by Trial and Appellate Court that appellant was tenant under the Tenancy Act and had perfected his title by adverse possession—Appeal by respondents—Challenge on the ground of lack of jurisdiction—High Court holding that since there was submersion and re-emergence of the lands by alluvion or de-alluvion from time to time, changing of boundaries of the States of U.P. and Bihar, the continuous possession for over statutory period of 12 years was interrupted and consequently the finding of adverse possession recorded by the trial Court was not correct in law—But no evidence placed on record—Held High Court was not right in interfering with the concurrent findings of fact recorded by the courts below—By virtue of section 26 the U.P. Tenancy Act continued to be applied to the land in question—Appellant held entitled to the relief sought for in the suit.

E

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G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3095 of 1981.

From the Judgment and Order dated 7.5.81 of the Allahabad High Court in S.A. No. 1442 of 1974.

H

S.S. Javeli, T. N. Singh, S. N. Singh, H.L. Srivastava and B. N. Sharma

for the Appellants.

The following Order of the Court was delivered :

This appeal by special arises from the judgment and decree of the Allahabad High Court made in S.A. No. 1442/74 on May 7, 1981.

The facts not in dispute are that the appellant had instituted a suit under Sections 59 and 61 of the U.P. Tenancy Act, 1939 (for short, the 'Act) claiming that the appellant has been in possession of the land for over 50 years and had acquired hereditary tenancy rights therein. The Raja of Dumraon had interfered with his rights to possession thereof and that, therefore, they claimed for declaratory relief against the respondents. The respondents had disputed his rights saying that the lands are their own khudkasht lands and were never in possession of the appellant. The trial Court, after framing appropriate issues and adduction of evidence by the parties, has held that the appellant has been in possession over 50 years in his own right by hereditary succession as tenant and that, therefore, he became tenant under the Act. On appeal, it was confirmed. The respondents challenged the correctness of the decree and judgment of the courts below on question of jurisdiction of the court in the High Court. The High Court found that under the Bihar & Uttar Pradesh (Alteration of Boundaries) Act, 1968 (Act 24 of 1968) (for short, the 'Boundaries Act') passed by the Parliament, the village of Mohammadpur in the district of Ballia in Uttar Pradesh was part of Shahabad District in Bihar State. At the time when the suit was instituted the Act had no application. The trial Court and the appellate Court also lacked inherent jurisdiction to entertain the suit. Therefore, the suit was not maintainable in law. Accordingly, the appeal was allowed and the decrees of the courts below were set aside. Thus this appeal by special leave.

The trial Court and the appellate Court recorded concurrently as a fact that the appellant was a tenant under the respondents and that he had tenancy rights as declared under Sections 59 and 61 of the Act. The High Court found that since there was submersion and re-emergence of the lands by alluvion or de-alluvion from time to time, changing of boundaries of the States of U.P. and Bihar, the continuous possession for over statutory period of 12 years was interrupted. Consequently, the finding of adverse

A possession recorded by the trial Court was not correct in law. It is clear from the record that there is no factual evidence placed on record in this behalf to show as to when this submersion or re-emergence of the appellants' lands had taken place. Under those circumstances, the High Court was not right in interfering with the concurrent findings of fact recorded by the courts below that the appellant had perfected his title by adverse possession.

The only crucial question that could touch the jurisdiction of the courts is whether the trial Court had jurisdiction to entertain the suit to grant the relief prayed for. It is seen that on account of the flow of Ganga river and floods on account thereof, the abutting riverbeds were either submerged or accredited to the respective territories. Preceding the Boundaries Act, the admitted position was that the line of deep stream was a determinative factor. On account of the administrative and revenue difficulties felt by the State Governments of Bihar and U.P. both the Chief Ministers had requested the Prime Minister to resolve the dispute, pursuant to which Shri C.M. Trivedi came to be appointed as an arbitrator who submitted his report. Consequent upon the report, the Boundaries Act came to be enacted. The Statement of Objects and Reasons of the Act clearly indicates that "(A)t present the deep stream of the river Ganga forms inter-State boundary between the Shahabad district of Bihar and Ballia district of U.P....." In para 3 thereof it is stated thus :

"Clause 26 of the Bills provides that the existing laws shall continue to be in force in the transferred territories until otherwise provided by a competent legislature or other competent authority. However, because of the fluctuating nature of the present boundary, the actual extent of the transferred territories may not be clear to the authorities who have to implement the laws. Hence, provision has been made for the demarcation of the fixed boundary on land, determination of the deep streams of the two rivers and preparation and publication of a map of the transferred territories before the actual transfer is effected."

Consequently, the appointed day, viz., June 10, 1970 was determined under the Boundaries Act by operation of Section 2 (a) thereof. Section 3 deals with transfer of territories as and from the appointed day. Section 8

deals with the extension of the jurisdiction and transfer of proceedings to High Court at Allahabad and *vice versa* to Patna. Section 30 deals with transfer of the proceedings to courts other than the High Courts. At this point of time it would be relevant to note that Section 26 of the Boundaries Act envisages the extent of the territorial extent of lands as envisaged under the Boundaries Act. It reads as follows :

"26. Territorial extent of laws. - The provisions of Section 3 shall not be deemed to have effected any change in the territories to which any law in force immediately before the appoint day extends or applies, and territorial references in any such law to the State of Bihar or Uttar Pradesh Shall, until otherwise provided by a competent legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day."

A reading thereof would clearly show that the provisions of Section 3 should not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Bihar or U.P. shall, until otherwise provided by a competent legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day. It is also not in dispute that right from 1959 the village continued to remain part of Ballia district in U.P. Consequently, the Act came to be applied and continued to be applied to the lands in question.

In view of the above legal setting, the question arises : whether the decree of the trial Court is a nullity or lacks inherent jurisdiction? Between 1959 and 1968, though the land by course of stream of Ganga river accredited to the territory of Bihar, in fact it remained to be within the district of Ballia by line of deep stream. Consequently, the trial Court had the jurisdiction to entertain the suit at that time. Though under the Boundaries Act the territories stood extended, in fact by operation of the Boundaries Act the jurisdiction of the area was not transferred to the Bihar courts. Consequently, the land remained to be within the jurisdiction of the trial Court. As on the date of the decree the Boundaries Act had come into force and consequently even the doubtful territorial jurisdiction of the

A trial Court stands rectified on the date when the decree was granted by the trial Court. Consequently, the Act applies to the rights claimed thereunder. The appellant, therefore, is entitled to the relief sought for in the suit. The courts below have rightly granted the relief.

B The appeal is accordingly allowed. The judgment and decree of the High Court in the Second Appeal No. 1442/74 is set aside and those of the trial Court and appellate Court stand restored. No costs.

T.N.A.

Appeal allowed.