

Milkha Singh, etc. v. Maharaj Kishan Kesar (Mehar Singh, J.)

merits. Nothing said in this order decides any question of fact which has been decided by the Rent Controller and is a matter of controversy or is likely to be a matter of controversy before the Appellate Authority. There is no order in regard to costs in this application.

B.R.T.

LETTERS PATENT APPEAL

Before D. Falshaw, C.J. and H. R. Khanna, J.

MAYA RAM AND OTHERS,—Appellants.

versus

SATNAM SINGH AND ANOTHER,—Respondents.

Letters Patent Appeal No. 233 of 1965.

April 4, 1966.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Land allotted to displaced person in lieu of ancestral land left in West Pakistan—Whether ancestral—Letters Patent Appeal—Finding that no inquiry was made by vendee as to necessity for the sale—Whether can be interfered with in Letters Patent Appeal.

Held, that the land allotted to a displaced person in India in lieu of the land left in Pakistan which was ancestral, will be deemed to be ancestral *qua* his sons.

Held, that a finding that no enquiry as to necessity for the sale was made by the vendee is a finding of fact which cannot be interfered with in a Letters Patent Appeal.

Letters Patent Appeal under clause 10 of the Letters Patent from the Court of the Hon'ble Mr. Justice Harbans Singh, dated the 26th day of July, 1965, passed in Regular Second Appeal No. 1440 of 1963, affirming that of Shri Manmohan Singh Gujral, District Judge, Ambala, dated the 14th October, 1963 who affirmed that of Shri Dev Bhushan Gupta, Sub-Judge, 1st Class, Jagadhri, dated the 29th August, 1962, decreeing the plaintiff's suit for possession of the land in suit but dismissing his suit for declaration and leaving the parties to bear their own costs throughout.

G. C. MITTAL, ADVOCATE, for the Appellants.

A. S. AMBALVI AND R. S. AMOL, ADVOCATES, for the Respondents.

JUDGMENT

KHANNA, J.—The question, as to whether the land acquired by a displaced person in lieu of the ancestral land left by him in areas now forming part of West Pakistan should be held to be the ancestral property, arises for determination in this appeal under clause 10 of the Letters Patent filed by Maya Ram and others against the judgment of learned Single Judge affirming on second appeal the decisions of the Courts below. It has arisen in the following circumstances:—

Bishen Singh, who held land in areas now forming part of West Pakistan, migrated to India on the partition of the country. Bishen Singh, after migration was allotted some land including the land in dispute situated in village Mehalanwali, district Ambala, on a quasi-permanent basis. Bishen Singh, died in 1949, whereafter the allotment was made in favour of his son Ajmer Singh. On the coming into force of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, proprietary rights were granted to Ajmer Singh in the land which had been originally allotted to him on quasi-permanent basis by way of compensation for the land left in Pakistan. Ajmer Singh thereafter made a number of alienations including the sale for Rs. 3,500 of the land in dispute in favour of the appellants as per sale-deed, dated 21st November, 1957. Satnam Singh minor, son of Ajmer Singh, thereafter brought the present suit through his mother Joginder Kaur, as his next friend on the allegation that the vendor was governed by the Customary Law of the Punjab and that the sale of the land in dispute, which was ancestral of Ajmer Singh, *qua*, the plaintiff, was not binding upon the plaintiff as it had been made without consideration and valid necessity. In the alternative the plaintiff claimed that the parties were governed by Hindu Law and the sale being of coparcenary property was without consideration and necessity. The plaintiff, accordingly, claimed a decree for possession of the land. The trial Court held that the vendor was governed by Hindu Law and not by Customary Law, that the land in dispute was ancestral of Ajmer Singh *qua*, the plaintiff and as such was coparcenary property and that the payment of consideration of Rs. 3,500 had been proved, but not the necessity thereof. In the result the trial Court awarded a decree for possession of the land in favour of the plaintiff against the defendant-appellants. On appeal the findings of the trial Court were affirmed by the learned District Judge, Ambala.

In second appeal two contentions were raised on behalf of the appellants. One of the contentions was that the land in dispute was

Maya Ram, etc. *v.* Satnam Singh, etc. (Khanna, J.)

not ancestral of Ajmer Singh *qua*, his son and the other was about the legal necessity for the sale. The learned Single Judge repelled both the contentions.

Mr. Mittal on behalf of the appellants has argued that the Courts below were in error in holding that the land in dispute, of which the proprietary rights were granted to Ajmer Singh, was his ancestral property *qua* his son. In this respect we find that proprietary rights were granted to Ajmer Singh, in the land in dispute because his father had owned land in areas now forming part of West Pakistan and it was in lieu of the land abandoned by Bishen Singh, consequent upon the partition of the country that Ajmer Singh got the proprietary rights in the land in dispute. In the circumstances the land in dispute should partake the character of the land in lieu of which it was given to Ajmer Singh. As the land left in West Pakistan, in lieu of which the proprietary rights in the land in dispute were conferred upon Ajmer Singh, was admittedly ancestral of Ajmer Singh, having been held by his father Bishen Singh, the land in dispute should be held to be ancestral of Ajmer Singh *qua*, his son. The question, as to whether in the case of an exchange the land received in exchange is ancestral if the land given in exchange was ancestral, arose in *Ghauns v. Imam Din and others* (1), and was answered by Shah Din, J., in the affirmative. Same view was taken by a Division Bench (Scott Smith and Martineau, JJ.), in *Thakur, etc. v. Ram Singh* (2), and Abdul Raof and Harrison, JJ., in *Mokha and others v. Dhan Singh* (3). In *Sardar and another v. Pir Muhammad and another* (4), it was held by Harris and Rattigan, JJ., that where the amount of compensation awarded by the Government for ancestral land is used to purchase other land, the property so purchased becomes ancestral property as the transaction is in the nature of an exchange. In our opinion, the principle enunciated in the above cases, even though they were of exchange, would hold good in the present case also as the proprietary rights in the land in dispute were conferred upon Ajmer Singh, in lieu of the land left by his father in areas now forming part of West Pakistan. It is also not disputed by Mr. Mittal on behalf of the appellants that in case of consolidation of Holdings the land allotted in consolidation partakes the character of the land in lieu of which it is allotted.

(1) 57 P.R. 1910.

(2) 120 P.R. 1918.

(3) 63 I.C. 719.

(4) 3 P.L.R. 1901.

Mr. Mittal has, however, placed reliance upon the case of *Sukh Ram v. Lekh Ram and others* (5), wherein it was held by Bhandari, C.J., and Falshaw, J., (as he then was), that when a widow enters into enjoyment of the occupancy rights in succession to her deceased husband and subsequently acquires ownership rights in that land in accordance with the provisions of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, she becomes the absolute owner of that land and is entitled to alienate it in any manner she likes. The appellants, in our opinion, can derive no assistance from the dictum laid down in that case because the occupancy rights of the widow were converted into full proprietary rights after she had paid the necessary sum required under the provisions of the Act to the landlords for effecting change of status. It was the payment of the requisite amount which weighed with the learned Judges in coming to the conclusion that the widow became the full owner of the land, but no such consideration comes into play in the present case, for undoubtedly Ajmer Singh, had to pay nothing for getting proprietary rights in the land in dispute. He simply got the same in lieu of the land left by his father in West Pakistan.

We would, therefore, hold that as the land, in lieu of which Ajmer Singh, got proprietary rights in the land in dispute, was ancestral *qua* his son, the land in dispute is also ancestral *qua* the son.

Argument has then been advanced that the sale of the land in dispute was for legal consideration. In this respect we find that there are the concurrent findings of the three Courts that the sale has not been proved to be for necessity. In the sale-deed it was mentioned that the sale of the land was being effected with a view to purchase land in Rampur in Uttar Pradesh. There is nothing to show that after the sale any such land was purchased in Rampur. According to Mr. Mittal, the vendor represented that he wanted to purchase land in Uttar Pradesh and the appellants on enquiry were satisfied that the above representation was correct. In this respect we find that the learned District Judge has given a finding that no enquiry was made by the appellants. This is a finding of fact and it cannot be interfered with in the present Letters Patent Appeal.

The appeal, consequently, fails and is dismissed, but in the circumstances we leave the parties to bear their own costs of the appeal.

D. FALSHAW, C.J.—I agree.

R.S.