

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2430 OF 2002

SHANTI RAWAT & ORS. APPELLANTS

VERSUS

BOARD OF REVENUE, ALLAHABAD & ORS. RESPONDENTS

O R D E R

One Major J.S. Rawat and Captain B.S. Rawat, sons of Late Frank Rawat, filed a suit under Section 180 of the U.P. Tenancy Act, 1939 against Lokmani Shanguri and others seeking eviction of the defendants from the suit land which was leased out in favour of Ram Kishan Shanguri and Lokmani Shanguri on 15.1.1950. The said suit was decreed subject to payment of Rs.42,000/-, spent for improvement of the land by the plaintiffs, to the defendants. The defendants filed an appeal questioning the validity and correctness of the judgment and decree passed by the trial court. The Appellate Court allowed the appeal filed by the defendants and remitted the matter to the trial court with a direction that an issue be framed as to

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whether defendants acquired Adhivasi rights over the land in dispute and decide the case on merits. After remand, the Assistant Collector, Haldwani passed the decree directing that the defendants be evicted from the suit land and that they shall also pay four times the annual rent as compensation for damages. The defendants again filed an appeal. This time the appeal filed was allowed and the suit was dismissed. Aggrieved by the order made in the appeal, Shanti Rawat, the appellant No.1 herein filed second appeal before the Board of Revenue U.P., Allahabad. It may be noticed that the other respondents including the sons of the appellant did not file any second appeal. The Board of Revenue allowed the appeal. Aggrieved by the same, the respondents herein filed writ petition before the High Court challenging the validity and correctness of the order made by the Board of Revenue in the second appeal. In the writ petition one of the grounds raised was that the decree passed in the second appeal by the Board of Revenue was a nullity as it was passed against respondent No.8, who had died. An application was also filed in the Board of Revenue stating that the order passed in the second appeal

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against respondent No.8, who has died before passing the order, was bad in law. The Board of Revenue allowed the application, recalled the earlier order, heard the second appeal again on merits after substitution of the legal representatives of respondent No.8 and dismissed the second appeal. It is thereafter the present appellant No.1 filed the writ petition before the High Court. The High Court, by the impugned order rejecting the contentions of the appellants, dismissed the writ petition. The High Court took the view that the judgment and decree passed in the second appeal by the Board of Revenue was inseparable inasmuch as it had become final against the other parties who did not file any appeal including the sons of the present appellant; the appellant was not a legal heir and she could not claim any right under Section 171 of the U.P. Zamindari Abolition & Land Reforms Act, 1950 (for brevity, 'the Act') when her sons were alive. The High Court also rejected the claim of the appellant based on the Will, observing that the Will having not been produced earlier before the Authorities, was also placed before the High Court for the first time and as such, it could not be accepted to allow the claim of the appellant. In this view, the writ petition was dismissed. Hence, this appeal

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Before us, the learned Senior counsel for the appellants contended that the High Court was not right and justified in dismissing the writ petition without examining the validity and genuineness of the Will; not accepting the claim of the appellants, based on the Will, amounts to denying the rights to the appellants available under the Will. The learned counsel also added that if the findings of the High Court made in the writ petition touching the Will remain undisturbed, that would seriously affect and prejudice the rights of the appellants. The learned Senior counsel representing the respondents made submissions supporting the impugned order. He urged that no fault can be found with the findings recorded by the High Court; the High Court was right in holding that the appellant No.1 could not claim any rights over the land as legal heir having due regard to Section 171 of the Act. Further, when the decree had become final against the other parties, they having not challenged the validity of the decree which was not separable; at the instance of the appellants claim could not be entertained. Otherwise, it may lead to conflict of decrees. As regards, the claim made on the basis

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of the Will, learned counsel submitted that the High Court did not rightly consider the claim of the appellants made on the basis of the Will, which Will was produced for the first time before the High Court.

Having considered the respective submissions made by the learned counsel for the parties, we do not find any good ground or valid reason to disturb the impugned order. It is not disputed that under Section 171 of the Act, the appellant No.1 could not claim as legal heir. It is also not disputed that the other respondents who suffered the decree by the order passed by the Board of Revenue in the second appeal, did not challenge the same. The parties, against whom the decree was passed, having not chosen to challenge the decree and the appellant No.1 not being the legal heir, filed the writ petition. The High Court was right in holding that such a writ petition could not be maintained. As regards the complaint that certain observations made in the impugned order relating to the Will may prejudice the rights of the appellant No.1, we make it clear that the observations made in regard to the Will were only confined for the purpose of disposal of the writ

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petition so far it related to the subject matter of the writ petition. If the appellant No.1 has got any other rights under the Will, those rights are not affected by any observations made in the impugned order.

Thus, we do not find any merit in the appeal. Hence, it is dismissed. No costs.

.....J.
(SHIVARAJ V. PATIL)

.....J.
New Delhi, (Dr. AR. LAKSHMANAN)
February 10, 2004.
ITEM No.103 Court No. 9 SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.2430/2002

SHANTI RAWAT & ORS. APPELLANT(S)

VERSUS

BOARD OF REVENUE, ALLAHABAD & ORS. RESPONDENT(S)
(With appln.(s) for substitution of L.Rs. of the deceased
respondent and with office report)

Date : 10/02/2004 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE DR. JUSTICE AR. LAKSHMANAN

For Appellant (s)Mr. Dinesh Diwedi, Sr.Adv.
Mr. Ritesh Agrawal, Adv.
Mr. Vishwajit Singh, Adv.
Mr. Aporva Mishra, Adv.

For Respondent (s)Mr. R.B. Mehrotra, Sr.Adv.
Mr. S.S. Nehra, Adv.
Dr. I.B. Gaur, Adv.

Mr. Krishna Pal Singh, Adv.

UPON hearing counsel the Court made the following
O R D E R

Mr. Ritesh Agrawal, learned counsel for the appellants made his submissions for 10 minutes. Mr. Dinesh Diwedi, learned Senior counsel representing the appellants started his arguments at 11.00 a.m. and concluded at 11.20 a.m. Mr. R.B. Mehrotra, learned Senior counsel for the respondents made his submissions for five minutes.

Substitution allowed.

The appeal is dismissed with no costs in terms of the signed order.

Sarita (Kanwal Singh)
Court Master

(Signed order is placed on the file)