

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 1534 of 2009**

FAROOQI BEGUM (D)

BY LRS.

APPELLANT(S)

VERSUS

**THE STATE OF
UTTAR PRADESH**

RESPONDENT(S)

J U D G M E N T

Vikram Nath, J.

Appellant has assailed the correctness of Judgment and Order dated 21.07.2006 passed by the Single Judge, Allahabad High Court in Second Appeal No. 813 of 1975 between Farooqi Begum vs. State of Uttar Pradesh, whereby the Second Appeal was dismissed giving rise to the present appeal.

FACTS

2. The State of U.P. through Collector, Rampur, instituted a suit for declaration, possession and damages before the Court of District Judge, Rampur, registered as Original Suit No.1 of 1964, State of U.P. vs. Smt. Farooqi Begum with respect to land in suit measuring 20 bighas 10 biswa (pukhta) situated in Village Thotar, Tehsil Sadar, District Rampur, that it was a government grove (known as '*Bagh Hazoor Pasand*') and presently belonging to the U.P. State Garden Department, Rampur.

3. According to the plaint averments, the said grove was rent free grant of the defendant long before the merger of Rampur State and like other *Muafis*; it was granted by His Highness

Nawab Hamid Ali Khan to his different wives and was liable to resumption at the pleasure of the ruler of erstwhile Rampur State; after the death of Nawab Hamid Ali Khan in 1930, his successor Nawab Raza Ali Khan resumed all the *Muafis* of all the widows of his father including that of the defendant; the possession of the same was taken over by the State Authorities soon after the resumption; the same was given effect to in the revenue papers and the grove concerned came to be recorded in the name of the State (*Shamil Khalasa*); the defendant and her Karpoons through collusion of the revenue officers managed to get her name continued in the Patwari's record even though her possession had been removed; the grove in question along with similarly resumed grove came into the

hands of the State of U.P. at the time of merger; ever since the State has been selling its Bahar; the defendant on the basis of continuance of her name, though illegally, continued to interfere in the possession of the State even in 1959 claiming the grove in question in her ownership; the State of U.P. took legal steps to get the revenue records corrected by expunging the name of the defendant and for incorporating the name of the State but the revenue court declined such request of the State as such the necessity to file the suit arose.

4. Smt. Farooqi Begum, the sole defendant, filed the written statement denying the plaint allegations except that the proceedings before the revenue courts culminated in her favour; it

was further alleged that the defendant had been in continuous possession since 1924; the property in suit was the holding of the defendant on the commencement of U.P. Zamindari Abolition and Land Reforms Act, 1952 and as such on the commencement of the Act, the defendant became the 'Bhumidhar' thereof; that in proceedings for ejectment against one Laddan Khan initiated by the defendant, the State being a party had acquiesced to the defendant's title as such the suit was barred by estoppel; further that the *Bagh Hazoor Pasand* was in possession of defendant and was her own property and adjoining grove measuring 13 bighas 2 biswas was the grove of the plaintiff State and was in its possession; both these groves are separated

by a *Nala* (a drain); the plaintiff had filed a suit on a wrong advice that the grove in question was resumed; other formal pleas of defence were also taken in the written statement.

5. The Trial Court proceeded to frame issues on the basis of pleadings and allowed the parties to lead their evidence. The defendant filed an application under Order VI Rule 17 of the Code of Civil Procedure, 1908¹ for amendment in the written statement on 01.11.1965. The Trial Court vide judgment dated 13.11.1966 decreed the suit and at the same time rejected the amendment application on the ground that it had been filed at a very belated stage after the arguments had been heard. Against the said judgment dated

¹ In short "CPC"

13.11.1966, the defendant preferred an appeal which was originally filed before the High Court and registered as First Appeal No.61 of 1967 but later on transferred to the Court of District Judge, Rampur, after the U.P. Civil Laws Amendment Act, 1970.

6. In the Court of District Judge, Rampur, it was registered as Civil Appeal No. 50 of 1970, Smt. Farooqi Begum vs. State of U.P. The District Judge, Rampur, vide judgment and order dated 08.09.1971 allowed the amendment dated 01.11.1965, set aside the judgment of the Trial Court dated 13.11.1966 and remanded the matter to the Trial Court for a fresh decision after necessary reframing of issues and opportunity to the parties to adduce evidence.

7. After remand, the Trial Court in addition to the already framed ten issues, further framed four more issues and allowed the parties to lead evidence. The Trial court vide judgment and order dated 01.05.1973 again decreed the suit.

8. The First Appeal filed by the defendant registered as Civil Appeal No.73 was dismissed by IInd Additional District Judge, Rampur, vide judgment dated 06.03.1975. Aggrieved by the same, the defendant preferred the Second Appeal before the High Court registered as Second Appeal No. 813 of 1975. The learned single Judge of the Allahabad High Court vide judgment and order dated 21.07.2006 dismissed the Second Appeal which has given rise to the filing of the present appeal.

9. We have heard Ms. Nitya Ramakrishnan, learned senior counsel for the appellants and Mr. Tanmaya Agarwal, learned counsel for the State. We have been taken through the material on record by the learned counsel for the parties.

Arguments of the appellant:

10. The following submissions have been advanced on behalf of the appellant stating that the courts below committed the following serious errors of law.

- i. The burden of proof was wrongly shifted on the defendant-appellant.
- ii. Inadmissible evidence was relied upon to record finding in favour of the plaintiff-respondent.

- iii. Secondary evidence was relied upon without the Record-keeper being examined to prove the same.
- iv. Even the secondary evidence relied upon smelt of manipulation and interpolation, which was illegally ignored.
- v. Documents were prepared in the name of the defendant-appellant, which were specifically denied, but the same was illegally relied upon.
- vi. The core issue as to whether an unconditional gift by a husband in favour of his wife during the subsistence of the marriage was irrevocable, has not been looked into, thereby resulting into grave error of justice.

- vii. The plaintiff-respondent had completely failed to prove their case as there was no evidence to support their claim but still the suit was decreed.
- viii. Relevant and admissible evidence was illegally ignored.
- ix. The pleadings of the plaintiff-respondent were vague and not specific, nor was duly established by evidence despite the same, the suit was decreed.
- x. The defendant-appellant was throughout in possession and, as such, had perfected her right, title and interest on the coming of the U.P. Zamindari Abolition & Land Reforms Act, 1951, which aspect has not been considered.

11. On all the above submissions, learned

counsel for the appellants has referred in detail to the evidence and the relevant material, which we will refer to at a later stage.

12. On the other hand, learned counsel for the plaintiff-respondent made the following submissions:

- i. All the three courts below have recorded concurrent findings of fact and, as such, do not call for any interference.
- ii. Once the plaintiff and defendant both have equal opportunity to lead evidence, the argument regarding shifting of burden of proof would lose its significance.
- iii. The plaintiff-respondent had led cogent, reliable and admissible evidence to establish his case.

- iv. The courts below have taken into consideration all the material placed before it and after due appreciation of the same, in accordance with law, the findings have been recorded.
- v. All the three courts have dealt with all the specific issues framed and have recorded their findings after due consideration of the material placed by both the sides.

ANALYSIS:

13. The suit of the respondent instituted for the relief of declaration, possession and mesne profits was based on the averments that the grant given by Nawab Hamid Ali Khan in 1924 in favour of the appellant, had been resumed by his successor, Nawab Raza Ali Khan in the year 1930, thereafter, the respondent had entered

into possession, the records were corrected, however, the appellant on account of some omission in the maintenance of the records, re-entered into possession sometimes in 1959 and, therefore, they were compelled to file a suit. It is also stated that the respondent made an attempt to get the records corrected through the revenue court by way of an application for correction of revenue records, but the same was rejected by the Deputy Collector in 1953.

14. On the above pleadings, the first thing required to be proved by the plaintiff-respondent was that there was resumption of the grant given in favour of the appellant. For the said purpose, neither any such order resuming the earlier grant was filed, nor any order of the

revenue court was filed to show that the said resumption of grant had been incorporated in the revenue records. The defense taken was that all the records had been destroyed in a fire in 1947. The only evidence led by the plaintiff-respondent was filing of a true copy of Muafiat Register and the statement of PW-2 (Roop Kishore), who was said to be working as a Clerk in the Revenue Department.

15. We have examined the statement of PW-2. According to learned counsel for the appellant, two basic objections were taken for not relying upon the Muafiat Register. Firstly, it had torn binding and had loose pages. Secondly, the entire register was written in blue-black ink and it is only the entry relating to the land in

question regarding resumption was written in black ink. These two aspects casted a doubt on the veracity of the entries in the register and in particular the entry relating to the resumption. The document was, thus, a document not free from suspicion and as such, no reliance could be placed upon it.

16. Apart from the above, no other evidence was led by the plaintiff-respondent to prove the resumption. PW-2 in his cross-examination, had no explanation for the loose pages, the index i.e. the first page and the last page being missing with no detail of the number of pages in the said register. Further, there was no explanation for the difference in the ink and that too only on the page by which, the entry relating to resumption

with respect to the land in dispute was made. The courts below relied upon the entries in the Muafiat Register only for the reason that it was a document produced by the State and the State would have no reason to make any kind of interpolation. There was no other supporting document with regard to presumption of the land in question.

17. Referring to the above documents and statements, counsel for the appellants submitted that grave injustice has been done to the appellant by the courts below in holding that there was a resumption, in the absence of any credible, reliable evidence to that effect.

18. Prima facie, we find substance in

submission of the learned counsel for the appellants that apparently there was no evidence to prove the resumption of the grant.

19. Insofar as the issue of possession is concerned, learned counsel for the appellant submitted that it was the specific case of the defendant-appellants that they had continued in possession right from 1924 i.e. the time when the grant was given. It is also submitted that throughout in the revenue records, the possession of the defendant-appellant is recorded. It was also submitted that 20 bighas and odd piece of land given under the grant was separated by a *Nala*(drain) with a separate piece of land measuring 13 bighas and odd, which was in the possession of State Department of

Government Garden and it was this smaller piece of land, which was being let out by the State of U.P., Garden Department by selling usufruct thereof.

20. It was next submitted that Deputy Collector in the proceedings for correction of records initiated by the plaintiff-respondent, had made a spot inspection not once but a couple of times. In its order dated 03.01.1961, while rejecting the application of the State for deleting the name of the defendant-appellant and recording the name of the plaintiff-respondent, had categorically recorded that the defendant-appellant was in occupation and in possession of the land in question.

21. It may be noted that the finding recorded by a Class-I Officer of the State could not be easily ignored. It is true that correction of record proceedings is summary in nature, but when the inspection was carried out, such finding recorded in the order regarding possession ought not to have been ignored.

22. It is thus apparent that plaintiff-respondent led no evidence to establish that it was throughout in possession since 1930 after the resumption. The courts below have proceeded on assumptions and presumptions to hold in favour of the State on the question of possession and to decree the suit.

23. On the other hand, we find that that the

defendant-appellants had filed not only documentary evidence to prove their continuous possession but also oral evidence, which has been ignored.

24. It was further submitted on behalf of the appellants that courts below have placed reliance upon a letter of the defendant-appellant dated 19.07.1954 to draw presumption that the defendant-appellant was not in possession in 1954 and it is for this reason that she had applied for seeking to be put back into possession. The contents of the said letter have been perused. According to it, there is some land of Government and after merger the Government Garden Department, Rampur has taken possession over her grove and the request

made was to direct the Government Garden Department, Rampur to remove their possession from her garden so that she may have full possession of her share. This clearly means that there was issue of some part of the land granted to the defendant-appellants being in possession of the Garden Department, Rampur.

25. This letter has been heavily relied upon by the courts below to record the finding of possession in favour of the plaintiff-respondent. The signatures on the said letter were denied by the defendant-appellant, but the same was sought to be proved through a nephew of step-sister instead of getting the same verified by a hand-writing expert.

26. P.W.-3, Shakir Ali Khan, who claims to be a Clerk posted as Clerk in the Garden Department Office, in his examination-in-chief has stated that he recognizes the signature of the defendant-appellant as his wife is the step-daughter of the sister of the defendant-appellant. However, in his cross-examination, he states that:

- i. he does not know the name of the sister of Farooqui Begum, the defendant-appellant, whose step-daughter was his wife; he even does not know the name of her father; he had never exchanged any letter with the defendant-appellant; he had not seen defendant-appellant reading and writing; he does not have any direct relationship with the defendant. The

credibility of the statement of PW-3 to prove the signature of the defendant also appears to be far-fetched and doubtful. We may also note here that even if the said letter contain the signature of the defendant, it's content cannot be read to mean that the defendant was expecting complete loss of possession over her entire piece of land but it was only with respect to part of the land where the Government Garden Department had apparently encroached upon while demarcating.

27. Learned counsel for the plaintiff-respondent has sought to justify the findings recorded by the courts below referring to the various parts of

the judgments and also taking us through the evidence on record.

28. Learned Counsel for the defendant-appellant has vehemently argued that the gift by a muslim husband to his wife during marriage will be irrevocable. She has placed reliance upon a few judgements in support of the said submission. We are not inclined to enter into that question as prima facie, we are of the view that the matter requires reconsideration by the High Court and such an issue could be raised at that stage.

29. We have given our anxious consideration to the arguments advanced and are of the view that the High Court fell in error in not taking

into consideration the relevant material and instead relying upon inadmissible evidence or evidence which had no bearing to the findings. Even the burden had been wrongly placed on the defendant-appellant. Further, the High Court ought to have carefully scrutinized the evidence available on record and only thereafter arrived at a conclusion.

30. In view of the above, the appeal deserves to be allowed. It is, accordingly, allowed.

31. The judgment of the High Court impugned in the appeal is set aside. The matter is remitted back to the High Court.

32. The Second Appeal be restored to its original number and may be heard and disposed of afresh in the light of the observations made

above.

33. Learned counsel for the parties would be at liberty to raise all the points before the High Court. They undertake to extend all co-operation in the hearing of the appeal before the High Court. We also request the High Court to decide the appeal as expeditiously as possible.

.....**J.**

[S. ABDUL NAZEER]

.....**J.**

[VIKRAM NATH]

NEW DELHI

JULY 12, 2022.