

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.21012 OF 2017
(arising out of SLP (C) No.31002 of 2015)

VIJAY KUMAR AND ANOTHERAppellant(s)

VERSUS

BAL KRISHAN AND OTHERSRespondent(s)

With

CIVIL APPEAL No.21013 OF 2017
(arising out of SLP (C) No.34286 of 2017 @ SLP(C).... CC
No.21194/2015)

VIJAY KUMAR AND ANOTHERAppellant(s)

VERSUS

BAL KRISHAN AND OTHERSRespondent(s)

JUDGMENT

NAVIN SINHA, J.

Delay in SLP(C)...(CC) No. 21194 of 2015 is condoned.

Leave granted in both special leave petitions.

2. The challenge in these two appeals, is to the order dated 7.08.2013 allowing W.P. (M/S) No. 1209 of 2002 preferred by the Respondent, and the order dated 23.07.2015 dismissing MCC No. 554 of 2013 for recall of the same, preferred by the Appellants who were the Respondents in the writ petition.

3. The Appellants and Respondent no.1, as plaintiffs, together filed Revenue Suit No. 22/15 of 1987-88 under Section 229(B) of the [Uttar Pradesh Zamindari Abolition and Land Reforms Act](#) (hereinafter referred to as “U.P.Z.A.L.R. Act”) for declaration of bhumidari rights in respect of the suit lands against Omprakash and Balraj Singh. The suit was decreed on 18.04.1991 by the Assistant Collector, declaring them to be joint bhumidhars of the suit lands. Appeal No. 150/98 of 1990-91 preferred against the same was dismissed on 24.03.1993 by the Additional Commissioner. In Suit No. 22/108 of 1991-92 preferred by the Respondent under Section 176 of the U.P.Z.A.L.R. Act for a partition and declaration of his share, he was held entitled to 1/10th share only by the

Assistant Collector on 26.04.1995. Pursuant to an order of remand by the Additional Commissioner on 19.12.1995, the Assistant Collector on 23.12.1998 held that the suit lands having been recorded in the joint names of the parties, the Respondent was entitled to 1/3rd share and the regional Patwari was directed to prepare separate kurrah and map.

4. The Appellants appeal against the order of the Assistant Collector was allowed on 19.05.1999 by the Commissioner holding that the Respondent was entitled to 1/10th share. The second appeal by the Respondent was dismissed on 19.09.2002. Aggrieved, the Respondent preferred W.P.(M/S) No. 1209 of 2002 assailing the same. The learned Single Judge allowed the writ petition holding that the declaration of the Respondent having 1/10th share only in the suit lands suffered from perversity as it did not take into consideration the decree in Revenue Suit No. 22/15 of 1987-88 preferred jointly declaring them as co-bhumidars and which had

attained finality. The order of the Assistant Collector dated 23.12.1998 was restored.

5. Subsequently, the Appellants preferred MCC 544 of 2013 for recall of the order dated 7.08.2013 seeking to assail the finding on merits in the garb of a review application. Dismissing the same it was observed that in absence of any material with regard to the respective shares, and more particularly in view of the pleadings in the joint plaint followed by a declaration of co-bhumidars, the order called for no interference.

6. We have heard learned counsel for the parties at length. The short question for consideration is whether in view of the joint purchase and declaration in Suit No. 22/15 of 1987-88, the two Appellants and Respondent no.1 are co-bhumidhars to the extent of $1/3^{\text{rd}}$ share of each, or is Respondent no. 1 owner to the extent of $1/10^{\text{th}}$ share only as contended by the Appellants?

7. Indisputably, Suit No. 22/15 of 1987-88 was filed by the Appellants and the Respondent together as plaintiffs for declaration of co-bhumidari rights over the entire suit lands. There is no evidence of any partition having taken place between them. The rejoinder by the Appellant to the counter affidavit filed by Respondent no.1, does not deny that before the order of status quo was passed in the present proceedings on 08.01.2016, the impugned order stood complied on 22.09.2015 in Execution Case no. 22/69 of 2012-13.

8. The impugned orders call for no interference. The appeals are dismissed.

.....**J.**
(R.K. Agrawal)

.....**J.**
(Navin Sinha)

New Delhi,
December 08, 2017