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(2010) 08 PAT CK 0099

In the Patna High Court

Azizur Rahman and Others — APPELLANT

Vs

Ramdeo Ram and Others — RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 32, 5
Bihar Privileged Persons Homestead Tenancy Act, 1947 — Section 10, 11, 12, 13, 14
Bihar Tenancy Act, 1885 — Section 49C
Chotanagpur Tenancy Act, 1908 — Section 46
Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 — Section 20

Citation : (2010) 08 PAT CK 0099

Hon'ble Judges : Mungeshwar Sahoo, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mungeshwar Sahoo, J.—The original plaintiff, B.B. Rashda Khatoon had filed this second appeal against the judgment and decree dated 21.12.1995 passed by Sri Paras Nath, the learned 3rd Additional District Judge, Muzaffarpur in Title Appeal No. 42 of 1975 affirming the judgment and decree dated 11.06.1975 passed by Sri Shyama Prasad Singh, the learned Munsif, East Court, Muzaffarpur in Title Suit No. 31 of 1969.

2. During the pendency of the second appeal, the original plaintiff, B.B. Rashda Khatoon died and in her place, the legal representatives have been substituted.

3. The plaintiff-appellant filed the aforesaid suit for declaration of title with regard to suit property, detailed in Schedule 1 of the Plaint and further prayed for a direction to the defendant No. 1 to hand over registration receipt of the Registered Deed dated 22.11.1967, executed by defendant No. 1 in favour of the plaintiff and also prayed for a decree for redemption of Bharna Bond dated 15.04.1947. Prayer has also been made to give time to the plaintiff to deposit the balance consideration money of Rs. 135 in favour of defendant second party and also prayed for recovery of possession of the suit property.

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4. The plaintiff-appellant''s case in short is that one Ram Khalawan Ram mortgaged the suit land with one Chulhai Sah, the defendant No. 5 under registered Bharna Bond dated 15.04.1947 for Rs. 135 and the due date of payment of Bharna Bond was 30 Baishakh, 1359 Fasli. On the death of Ram Khalawan, the defendant Ramdeo Ram being the son inherited the property. The defendant No. 5 assigned the Bharna Bond to defendant No. 2 on 25.11.1959.

5. The further case is that the defendant No. 1 negotiated with the plaintiff to sell the suit property for Rs. 500 and plaintiff paid Rs. 150 as part consideration. Rs. 135 was kept with the plaintiff for payment to the mortgagee and the balance amount of Rs. 215 was to be paid to the defendant No. 1 at the time of exchange of equivalent. The defendant on these terms executed and registered sale deed on 22.11.1967 for Rs. 500 with respect to suit property. The plaintiff several times requested the defendant No. 1 to accept the balance consideration money of Rs. 215 and hand over the registration receipt but the defendants evaded. Hence, the suit was filed.

6. The defendant No. 1 contested the suit. Besides taking various legal pleas, the defendant No. 1 contended that the plaintiff never paid Rs. 150 and the title was to pass after payment of full consideration amount. Rs. 365 was payable in cash. In spite of demands for several times, the amount was not paid. Hence, the defendant cancelled the sale deed by Cancellation Deed dated 08.05.1968.

7. The learned Trial Court dismissed the suit on two grounds. Firstly, on the ground that the sale deed was executed in contravention of the provision of the Bihar Privileged Persons Homestead Tenancy Act, 1947, as such, it is void and secondly, that the Registered Sale Deed was executed without obtaining permission of the Consolidation Officer. Thus, without complying the provisions of Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956, as such, it is void.

8. On appeal, the learned Lower Appellate Court reversed the finding of the Trial Court on the question of Consolidation of Holdings Act and it is held that the Registered Sale Deed executed is valid and not void, even without permission by authorities of consolidation proceeding but confirmed the finding of the Trial Court holding that the sale deed in question was executed in contravention of the Bihar Privileged Persons Homestead Tenancy Act and the same is void.

9. At the time of admission of the second appeal, the following substantial questions were framed on 05.04.2006:

(i) Whether the suit land can be legally held to be homestead within the scope and meaning as provided by the Bihar Privileged Persons Homestead Tenancy Act?

(ii) Whether defendant No. 1 was rightly held to be a privileged tenant as according to his own case did not hold any homestead under any other person?

10. The learned Counsel for the appellant submitted that both the Courts below

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have gravely erred in holding that the sale deed Exhibit (C) is void because the same has been executed in contravention of Section 12 of the Bihar Privileged Persons Homestead Tenancy Act. According to the learned Counsel, no such plea was taken by the plaintiff in his written statement that he is a "Privileged Person" or a "Privileged Tenant" and moreover, the land is agricultural land, so the Act itself is not applicable. The learned Counsel further submitted that even if the defendant is Privileged Persons, then also, permission u/s 12 is not necessary because Sections 9 and 12 applies where the defendant is a Privileged Tenant. The learned Counsel for the appellant placed the definition of "Privileged Person" and "Privileged Tenant" and submitted that the findings of both the Courts below are erroneous and therefore, liable to be set aside.

11. The learned Counsel for the respondent submitted that there is no illegality in the finding of the Courts below and moreover, since it is a question of law without pleading, it can be raised at any stage. The learned Counsel further submitted that there is no estoppel against statute. The learned Counsel further submitted that not only the substantial question of law formulated at the time of admission is involved in this case but also the other substantial question of law is involved in this case which may also be decided. According to the learned Counsel for the respondent, the learned Lower Appellate Court has wrongly interpreted Section 32 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 and held that the sale deed is not void. The learned Counsel relied upon a Full Bench decision of this Court reported in Panna Devi Vs. State of Bihar and Others . On the basis of this Full Bench decision, the learned Counsel submitted that the sale deed is void ab initio. Therefore, the learned Counsel submitted that the other substantial question of law involved in this case between the parties is "whether in view of the Full Bench decision of this Court interpreting Sections 5 and 32 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956, the learned Lower Appellate Court should have reversed the finding of the learned Trial Court on this point interpreting the said provision in favour of the appellant?"

12. Admittedly, in this case, there is no pleading in the written statement regarding the applicability of Bihar Privileged Persons Homestead Tenancy Act. The defendant nowhere claimed himself to be either a "Privileged Person" or a "Privileged Tenant". Nowhere also, he pleaded that the sale deed is void because of the fact that it is in contravention of Section 9 read with Section 12 of the Bihar Privileged Persons Homestead Tenancy Act. Section 2 (i) defines "Privileged Persons" as follows:

(i) "Privileged persons" means a person-

(a) who is not a proprietor, tenure-holder, under tenure-holder or Mahajan; and

(b) who, besides his homestead, holds no other land or holds any such land not exceeding one acre;

but does not include any person who has come into possession of the homestead

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land in contravention of the provisions of Section 20 of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 (Bihar Act XIV of 1949) or Section 46 of the Chotanagpur Tenancy Act, 1908 (Bengal Act VI of 1908) or Section 49-C of the Bihar Tenancy Act, 1885 (Act VIII of 1885.)

Likewise, Section 2(j) defines "Privileged Tenant" as follows:

(j) "privileged tenant" means a privileged person who holds homestead under another person and is or but for a special contract would be, liable to pay rent for such homestead to such person;

Sections 9 and 12 reads as follows:

9. Restriction on transfer of privileged tenant''s right- No transfer made by a privileged tenant of his right in his holding or in any portion thereof, by private sale, gift, will, mortgage, lease or any contract or agreement shall be valid to any extent except as provided in Sections 10 to 17.

12. Transfer by way of private sale, gift or will to be made with permission of Collector- A privileged tenant may with the written permission of the Collector transfer his holding or any portion thereof by way of private sale, gift or will to any privileged person to use it for residential purposes.

13. In view of the above provisions of the Bihar Privileged Persons Homestead Tenancy Act, the restriction is on transfer of privileged tenants'' right. Thus, defendant No. 1 cannot be said to be a privileged tenant within the meaning of the said term as defined in Section 2(j). Nowhere it is stated that the defendant No. 1 holds homestead under another person. The Bihar Privileged Persons Homestead Tenancy Act, 1947 was enacted to make better provisions relating to the law of landlord and tenant in respect of homestead held by certain classes of persons in Rural Areas such as Labourers and Artisans etc., who live either in houses built by themselves on lands given to them by the landlords or the houses built by the landlords and to provide them with greater security in the matter of their houses and occupation of such homesteads and the idea behind the Act is to secure a piece of land for residential purposes. Therefore, in my opinion, the Act is not applicable in the present case, because the subject matter of the sale deed is not a homestead land of a privileged tenant. It is the case of the defendant that it is agricultural land. Therefore, neither the land is homestead land nor the defendant is privileged tenant. Accordingly both the substantial questions of law are answered in favour of the appellant and the findings of both the Courts below on these points are hereby set aside.

14. From perusal of the judgment of both the Courts below and the pleadings of the parties, it is apparent that the substantial question of law as formulated above regarding Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 also arises. The defendant in the written statement has clearly raised this question and it was answered by the Trial Court in favour of the defendant whereas it has been answered by the learned Appellate Court against the

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defendant.

15. In the case of Panna Devi, the Full Bench of this Court(Supra) considering the provisions of Consolidation Act in Paragraph 20 has held as follows:

20. As is evincible from the decision, the Division Bench has held that it would be void with regard to the consolidation proceedings and not transaction inter se parties. The said conclusion does not take note of the provision contained in Section 39 of the Act which clearly provides that the provisions of the Act shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force and, that apart, the Bench has attached a degree to the term ''void'' which is not permissible in law. As has been discussed hereinabove, the language of the statute is absolutely clear and as the term ''void'' has been used, no transaction can take place without prior sanction. The command in the statute is imperative and categorical. Nothing can be read into it to mean that it is qua consolidation proceeding under the scheme and would bind the parties thereto. The same would be totally in transgression to the language employed and would defeat the object of the Act and runs contrary to the intendment of the Legislature.

16. In view of the above decision, the transaction in question between the parties is void altogether. The finding of the learned Lower Appellate Court on this point is hereby set aside. Therefore, the substantial question of law is answered against the appellant.

17. In view of the above findings, no relief can be granted to the appellant.

18. In the result, the second appeal is dismissed. No order as to costs.

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