
(2001) 08 PAT CK 0079

In the Patna High Court

Case No : Appeal From Appellate Decree No. 29 of 1987

Badri Prana and Others

APPELLANT

Vs

Collector, Nalanda at Biharsharif and Others

RESPONDENT

Date of Decision : 22-08-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 27, 36

Citation : (2001) 3 BLJR 2064 : (2001) 4 PLJR 432

Hon'ble Judges : Someshwar Nath Pathak, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Pathak, J.—This second appeal is directed against the judgment and decree passed by the Additional Subordinate Judge, IIrd, Biharsharif, in Title Appeal No. 7 of 1975/11 of 1982 affirming the judgment of the trial Court, passed in Title Suit No. 159 of 1968 by the Munsif at Biharsharif on 20-12-1974. The plaintiffs of that suit are the appellants herby.

2. The case of the plaintiff-appellants was that the suit land was owned and possessed by one Sk. Makhdum. Sk. Makhdum gifted 3.29 acres of land to his sons and daughter by registered deed of gift dated 6-7-1923. Makhdum died in the year 1926. The rest of his lands measuring 3.29 acres were inherited by sons and daughters of Sk. Makhdum, plaintiff-appellants purchased the entire suit land from the heirs and successors of Makhdum. However, Evacuee Department of the Government of India declared the suit property as Evacuee Property. The plaintiff-appellants learnt of this declaration in the year 1965, when the suit property was being auction-sold on 5-2-1965 by bid officer. They raised objection, but their objection was rejected. They also filed revision and appeals against the aforesaid rejection, but the same had also been dismissed. Plaintiff-appellants claimed that no notice was served upon them u/s 7 of the Evacuee Property Act, 1950. So, all steps taken in the evacuee proceedings were illegal.

When defendant No. 5, D.G. Yadav. attempted to dispossess the plaintiffs from the suit land, the plaintiffs filed the suit seeking declaration of the title and confirmation of the possession. The plaintiffs had filed the suit after serving notice u/s 80 C.P.C. upon the defendants.

3. Defendants 1 to 4 who are respondents before this Court contested the suit through a written statement and they took up a plea that the suit was not maintainable, and it was barred u/s 46 of the Act. All orders passed by the officers under the Evacuee Property Act were legal and valid. The alleged deed of gift by Makhdum and the alleged registered sale-deeds executed by his successors were never acted upon. The suit land was rightly taken in possession by the custodian of the evacuee property and it was rightly sold to defendant No. 5.

4. I find that the trial Court held on the basis of evidence that Makhdum died in the year 1926. So, no notice could be served upon a dead person. The suit was, however, dismissed by the trial Court on the ground that the suit was barred u/s 45 of the Act and also under Sections 27 and 36 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The trial Court also held on the basis of evidence that notices were, of course, served upon defendants 1 to 4 and Exts. 5 to 5/D and 4 to 4/D proved the same fact. But the trial Court held that since there was no averment in the plaint that notices were served upon the defendants, except that it was served upon the Collector, Patna, and so the trial Court held that the suit was not properly framed as mandated under the Court of Civil Procedure.

5. The appellate Court confirmed all the findings of the trial Court and dismissed the suit.

6. In this appeal the only substantial question of law framed was "whether the suit was barred u/s 46 of the Evacuee Property Act". In this connection, I find that Section 2 (d)(i)(ii) of Evacuee Property Act are only applicable to the facts of this case. The aforesaid section has clearly laid down that if anybody leaves the territory of India on or after the 1st March, 1947, on account of partition of dominions of India and Pakistan or anybody who is a resident of Pakistan and who owns a property which has ceased to be occupied, supervised or managed by any person or is being occupied, supervised or managed by an unauthorized person, such a property is called evacuee property. In the instant case, I find that all the plaintiff-appellants are Hindus and residing in the district of Nalanda (Biharsharif) and they claimed to have purchased the suit property from the heirs and successors of Sk. Makhdum. A large number of documents filed on behalf of the plaintiff-appellants were exhibited. These documents related to the years 1923, 1947, 1949 or 50's or 60's. The trial Court and the appellate Court both failed to give any finding on the validity of the deeds on the ground that since the suit was barred under the Evacuee Property Act, there was no necessity to give any finding regarding the same. But the fact that these deeds were registered ones, presumption attaching to their genuineness and validity all exist,

unless rebutted by cogent and reliable evidence. The aforesaid fact will also indicate that Makhdum who died in the year 1926 had left behind his heirs and successors. There was no evidence by the defendant-respondents that any of the successors of Makhdum had left India on or after 1st March, 1947, and they had left their property in India uncared for or occupied by trespassers or unauthorised person. In such a situation, it was not understandable why the custodian of the Evacuee Property Act declared the suit land as evacuee property without serving notice upon the successors of Makhdum or purchasers from them. Admittedly, notice was served upon Makhdum, a dead person. So, there was no valid notice u/s 7 of the Evacuee Property Act. When there was registered deeds in favour of the plaintiff-appellants who were all Hindus, it was to be held that there was prima facie evidence that they were holding the property of Sk. Makhdum on the basis of valid registered deeds and unless those deeds were declared to be null and void, they could not be held to be in unauthorised possession of the suit property. So, notice u/s 7 of the Evacuee Property Act was mandatorily to be served upon them. Admittedly, no notice was served upon them or even their predecessors-in-interest, i.e., the heirs of Makhdum. The suit land, therefore, did not legitimately come under the definition of Evacuee Property as laid down u/s 2 (d) of the aforesaid Act. Of course, the plaintiffs had raised objection to the auction sale of the suit property and their objections were rejected by revision and the appellate authorities under the Act; but that in itself will not debar the suit unless it is held that the officers of the Evacuee Property Act had lightly assumed jurisdiction over the suit land. As I have already held above that the suit property did not fall under the description of Evacuee Property u/s 2 (d) of the aforesaid Act. I am of the opinion that the custodian of the Evacuee Property did not have any proper jurisdiction over the suit land nor did they act in bona fide behalf and with sincerity that the suit land was evacuee property. Non-service of notice upon the plaintiff-appellants was also to be considered and held whether the officers of the Evacuee Property Act and rightly assumed jurisdiction over the suit land. When the very jurisdiction assumed by the officers of the Evacuee Property Act was bad, I am of the opinion that the suit was not barred u/s 46 of the aforesaid Act. The plaintiffs were entitled to challenge the very assumption of the jurisdiction by evacuee property custodian and in that view of the matter no bar u/s 46 of the Act shall operate. The suit was, therefore, maintainable and it was not barred under the aforesaid provisions of the Act. So far the Displaced Persons (Compensation and Rehabilitation Act, 1954) is concerned, its provisions were not applicable to the facts of this case because none of the plaintiffs was claiming compensation for being displaced from their hearth and home in the older India which now formed part of the Pakistan. None of the other provisions of the Evacuee Property Act, which the two lower Courts have referred to are also applicable to the facts of this case and, so, I am further of the opinion that the suit was not at all barred by any provision of the aforesaid Act or Acts.

7. So far the finding of the trial Court that the suit was not properly framed

because there was no averment in the plaint that notice u/s 80 C.P.C. was served. I find that all that is required for maintaining the suit against Government Officials is that notice is to be served two months prior to the filing of the suit, upon the Secretary to the Central Government, if the suit is filed against Central Government, and upon the Secretary to the State Government if the suit is filed against the State Government and upon any officials of the Government; Central Government or State Government, if the suit was filed against these officers. It has been laid down in Sub-section 1(c) of Section 80 C.P.C. that the plaint shall contain a statement that notice was delivered to such an officer or left at his office. So, this shows that under the aforesaid provision of Section 80 C.P.C. the plaint has to contain a statement that notice was delivered or left at the office of the concerned public officer, who is sued,. In the suit under appeal the plaint contained the amended endorsement that notice was served upon the Collector of the concerned district. So, of course, there was omission of the statement in the plaint regarding other public officers who are defendants of the suit (barring defendant No. 5). But when the lower Court itself held that notice was served. I do not think that the plaintiff-appellants shall be allowed to suffer and would be deprived of the reliefs which they otherwise deserve. Therefore, I am of the opinion that the suit could not be dismissed on taking a hyper technical view that it was not properly framed in view of the omission of the statement regarding the service of notices upon all the public officials who were sued. So I am of the opinion that the suit could not be dismissed on the ground of defect in its frame as referred to by the trial Court.

8. In the result, this appeal is allowed. The judgment and decree passed by the two lower Courts are set aside. The suit shall stand decreed for all the reliefs the plaintiff-appellants sought. There shall be no order as to cost.