

(2013) 12 PAT CK 0017
In the Patna High Court
Case No : Second Appeal No. 8 of 1998

Basiruddin and Others

APPELLANT

Vs

Bibi Khalique Khatoon and Others

RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : (2013) 12 PAT CK 0017

Hon'ble Judges : Mungeshwar Sahoo, J

Bench : Single Bench

Advocate : Najmul Hoda, for the Appellant; Subhro Sanyal, for the Respondent

Final Decision : Dismissed

Judgement

Mungeshwar Sahoo, J.—The defendants appellants have filed this Second Appeal against the Judgment and Decree of the lower appellate Court dated 28.11.1997 passed by learned Addl. District Judge, Kishanganj in Title Appeal No. 14 of 1994 whereby the learned lower appellate Court dismissed the appeal and thereby confirmed the Judgment and Decree of the trial Court dated 27.01.1994 passed by the learned Munsif, IInd Court, Kishanganj in Title Suit No. 22 of 1991. The plaintiffs filed the aforesaid suit for declaration of title and possession over the suit plot and also further for declaration that the defendant second party has no right to create any red card in favour of the defendant first party and so called red card in respect of suit lands are wrong as the suit land never vested with the defendant second party. The plaintiff claimed the aforesaid relief alleging that the plaintiff purchased 15.54 acres of land of R.S. khata No. 10 from the landlord Haji Ali Bux by terms of registered sale deed 24.1.1969. The State of Bihar and defendant 1st party appellants collusively brought red card in respect of 6.35 acres out of purchased land of the plaintiff. The plaintiff specifically pleaded that in land ceiling case of the year 1981-82 whereby the lands of the vendor was acquired under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 plaintiff was never made party. Therefore, the red

card issued is illegal, fraudulent and mala fide.

2. The defendants filed contesting written statement, mainly it was contended that to defeat the provision of the Land Ceiling Act, the landlord had transferred the property in favour of the plaintiff. Lands Ceiling proceeding was initiated being land ceiling case No. 276 of 1981-82 in favour of the plaintiffs vendor and total 101.17 acres land was acquired by the State of Bihar.

3. The trial Court on the basis of the materials recorded the finding that the plaintiff was never made party in the land Ceiling Act and she has purchased the property on 24.1.1969, therefore, the plaintiff has been able to prove title and possession over the property and the plaintiff's suit was decreed. The defendants 1st set and second set both filed Title Appeal before the lower appellate Court being Title Appeal No. 14 of 1994 and 16 of 1994. Both the Title appeals were heard together and by the common impugned Judgment and Decree, the lower appellate Court dismissed the appeal holding that the plaintiff has been able to prove title and possession over the suit property. It appears that before the lower appellate Court, the appellants raised a question regarding bar of the jurisdiction of Civil Court u/s 43 of the Bihar Land Reforms (Fixation of Ceiling area and Acquisition of Surplus Land) Act, 1961. Considering the provision of law and various decisions of this Court, the lower appellate Court held that the relief claimed by the plaintiff in the suit, i.e., for declaration of title and possession is not a matter to be settled or decided or dealt with by the authority under the Ceiling Act and, therefore, the appeal were dismissed.

4. On the date of admission on 13.04.1998, the following substantial question of law was formulated:-

Whether the Courts below had jurisdiction to annul the decision of the Ceiling Authority under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 in view of the bar u/s 43(2) of the said Act?

5. The learned counsel, Mr. Hoda appearing on behalf of the appellant submitted that in fact the plaintiffs has filed this suit for setting aside the order passed by the authorities under the Ceiling Act because if the plaintiff's title is decreed, automatically the orders of the authorities will be set aside. In such circumstances, the jurisdiction of the Civil Court is barred u/s 43(2) of the Ceiling Act. The learned counsel submitted that against the order whereby the lands of the vendor of the plaintiff was acquired, plaintiff should have moved higher authority either u/s 45(B) of the Ceiling Act or any other provision but instead of moving the Authority under the Ceiling Act, the plaintiff filed the civil suit before the Civil Court. According to the learned counsel after coming into force of the Act, the transfer was prohibited but the plaintiff's vendor transferred the land on 24.01.1969 with a view to override the provision of the law, therefore, the transfer itself was against the law as such on the basis of the sale deed which was against the law, the plaintiff's title could not have been declared by the Courts below. On these submissions, the learned counsel submitted that the

substantial question of law be answered in favour of the appellant and the plaintiff's suit be dismissed in toto.

6. On the other hand, the learned counsel, Mr. Subhro Sanyal appearing on behalf of the respondent submitted that the appointed date as defined u/s 2 Clause (A) of the Ceiling Act is dated 09.09.1970 and further subsequently the amendment u/s 5 of the Ceiling Act was made in the year 1972 and a Clause restraining any transfer was inserted, therefore, in any case the transfer in favour of the plaintiff made on 24.01.1969 cannot be said to have been executed by the vendor to overrule the proceeding of the Act. Although the plaintiff sale deed is of the year 1969 and the lands were acquired in the Lands Ceiling Act No. 276 of 1981-82, the plaintiff was not made party in the said land ceiling proceeding. The learned counsel further submitted that no proceeding was ever initiated by the authority under Ceiling Act according to provision u/s 5(iii) of the said Act to annul the transaction made by the vendor. Therefore, without there being any proceeding u/s 5(iii) of the Ceiling Act, it cannot be said that the transaction was made with the object of defeating or contravention of the provision of the Ceiling Act. According to the learned counsel in view of the Division Bench decision of this Court in the case of Nand Kishore Singh and Another Vs. Satya Narain Singh and Another, 5 the bar u/s 43(2) of the Ceiling Act is not applicable in the present case because the plaintiff is not praying for deciding the matter which is within the jurisdiction of the Authorities under the Ceiling Act. The plaintiff is praying for declaration of title and possession over the suit land which is not within the jurisdiction of the ceiling authority.

7. The learned counsel further submitted that if the proceeding is fraudulent and is in violation of the fundamental principle of natural justice then the Civil Court has the jurisdiction to decide the matter and set aside the order passed by the authority under any specific statute. On these grounds, the learned counsel submitted that the substantial question of law is liable to be answered against the appellant.

8. It is admitted fact that the plaintiffs filed the suit for declaration of title and possession over the suit property. The consequential relief has been prayed in the suit regarding declaration that the defendant second party had no authority to create any red card in favour of defendant first party. Therefore, the main relief of the plaintiff is for declaration of title and possession over the suit property. It is not disputed that so far the main relief claimed by the plaintiff is concerned, the revenue authorities have no jurisdiction to declare title and possession of the plaintiff. The consequential relief, i.e., claimed by the plaintiff is also dependent on the plaintiff declaration of title. Once it is declared that the plaintiff is the title holder and is in possession of the property automatically the consequential relief whether it is claimed by the plaintiff or not, red card issued will be in valid.

9. The learned counsel for the appellant relied upon a decision of this Court in Md. Ilyas Vs. Md. Hasibur Rahman and Others, . From perusal of the said

decision, it appears that this Court was deciding about the power of the Collector u/s 16(C) of the Ceiling Act and not the jurisdiction of the Civil Court.

10. In the case of Ramesh Gobindram (dead) through Lrs. Vs. Sugra Humayun Mirza Wakf, the Hon''ble Supreme Court has held that the jurisdiction of Civil Courts to try suits of civil nature is very expansive. Any statute which excludes such jurisdiction is, therefore, an exception to the general rule that all disputes shall be triable by Civil Court. Any such exceptions cannot be readily inferred by the Courts. The Court would, lean in favour of a construction that would uphold the retention of jurisdiction of the Civil Courts and shifts the onus of proof to the party that asserts that Civil Court's jurisdiction is ousted.

11. Section 43 of the Ceiling Act reads as follows:-

43. Bar of jurisdiction of Civil Court - (1) Save and except as provided in this Act no Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act, required to be settled, decided or dealt with by the Board of Revenue, the appellate authority or the Collector.

(2) No order of the Board of Revenue, the appellate authority or the Collector made under this Act, shall be questioned in any Court.

12. In view of the provision quoted above, the jurisdiction of the Civil Court is barred to settle or decide or dealt with any questions which is under the Ceiling Act required to be settled decided or dealt with. There is no provision in the Ceiling Act that the matter relating to declaration of title or confirmation of possession or that the order obtained fraudulently without making the plaintiff as party in the land ceiling proceeding can also be decided by the authorities under the Ceiling Act.

13. Recently, the Hon''ble Supreme Court in the case of Horil Vs. Keshav and Another, held that revenue Courts are neither equipped nor competent to effectively adjudicate on allegations of fraud that has overtones to criminality. u/s 9 Civil Court has inherent jurisdiction to try all types of civil dispute unless its jurisdiction is barred expressly or by necessary implication, by any statutory provision and conferred on any other tribunal or authority.

14. In view of the above settled proposition of law and in view of the discussion made above, the bar created u/s 43 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 is not applicable in this case because the plaintiff has prayed for declaration of title and confirmation of possession which can only be decided by the Civil Court and the Civil Courts have only the jurisdiction u/s 9 of the C.P.C. and except Civil Court, no authorities under the Ceiling Act or any tribunal has the jurisdiction to decide this question.

15. In view of my above discussion and in view of the settled proposition of law laid down by the Hon''ble Supreme Court as well referred to above, the substantial question of law formulated at the time of admission is answered against the appellant and in favour of the plaintiff-respondent. In the result, this

Second Appeal is dismissed. In the facts and circumstances of the case, there shall be no order as to cost.