

(2009) 05 SC CK 0212

In the Supreme Court Of India

Case No : Criminal Appeal No. 952 of 2009 (Arising out of Special Leave Petition (Criminal) No. 5981 of 2007)

Bharat Prasad and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-05-2009

Acts Referred:

Bihar Tenancy Act, 1885 — Section 13, 48(1)(E), 48(13), 48E, 48E(13)
Criminal Procedure Code, 1973 (CrPC) — Section 144, 145, 482, 5

Citation : AIR 2009 SC 2827 : (2009) AIRSCW 4314 : (2009) 57 BLJR 2016 : (2009) 8 JT 510 : (2009) 3 PLJR 151 : (2009) 7 SCALE 226 : (2009) 6 SCC 698 : (2009) 8 SCR 309 : (2009) 4 Supreme 803 : (2009) 6 UJ 2858

Hon'ble Judges : Asok Kumar Ganguly, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : Smashar Singh, S. Sagar, A. Nandan and T. Mahipal, for the Appellant; P.S. Mishra Gopal Singh, Manish Kumar, Anuj Prakash, Chandan Kumar, Ravi C. Prakash, Upendra Mishra, D.K. Jha, D.K. Pandey for Bijan Kumar Ghosh and Vishnu Sharma, for the Respondent

Judgement

Asok Kumar Ganguly, J.—Leave granted.

2. The order of the High Court dated 23.5.2007, passed u/s 482 of the Code of Criminal Procedure is impugned before this Court.

3. By that order, the High Court refused to quash the order dated 10.2.2005 passed by 3rd Additional Sessions Judge, Motihari in Cr.Revision No. 326 of 1992 whereby the order dated 27.7.1992 passed by the Executive Magistrate, Raxaul in case No. 548(M) of 1991 was confirmed.

4. By the said order dated 27.7.1992, the Executive Magistrate declared possession in favour of the opposite parties in a proceeding u/s 145 of the Code. The relevant portion of the order is:

I declare the possession of the first side on the said land until and unless they are dispossessed by the competent Court and the opposite side is ordered that

they shall not interfere in the peaceful possession of the first side.

5. The material facts of the case are as under:

6. The land in question is 1 Katha 8 dhura out of plot No. 1853 under Khata No. 289 in village Gambharia Kala, P.S. Darpa, District Motihari. The land originally belonged to one Ram Lagan Tiwari of village Amnaur of District Chapra.

7. The case of the appellants is that one Ram Lagan Tiwari mortgaged the said land to one Jagdish Prasad Singh son of Tapasi Rai of village Bhopatpur Bajhia, P.S. Keshariya, District East Champaran on 21.7.1920 for a period of 60 years.

8. It is further contended that some time on or about 9.11.1943, Ram Lagan Tiwari sold the land to one Jamadar Rai @ Jamadar Bhagat of Village- Lahadia, P.S. Darpa, District East Champaran by a registered sale deed. Neither Jamadar Rai @ Jamadar Bhagat nor Ram Lagan Tiwari redeemed the mortgage and as a result whereof Jagdish Prasad Singh continued in the possession over the disputed land. The said Jagdish Prasad Singh, the mortgagee gave the said agricultural land to the appellants and his brothers to cultivate as Bataidars.

9. The appellant contends that he along with Jai Bihar Sah took possession of the said and cultivated it as Bataidar.

10. It is further contended that on 18.8.1977, the said Jagdish Prasad Singh tried to dispossess the appellants and Jai Bihar Sah from the Batai Land whereupon the appellant No. 2 - Lakshman Prasad filed Sikmi Batai Case No. 480 of 1975 and Jai Bihar Sah filed Sikmi Batai Case No. 257 of 1976 before the L.R.D.C. Both the Sikmi Batai Cases were decided against Jagdish Prasad Singh and in favour of the appellants.

11. The concluding portion of the said order as follows:

...From the statements of different persons and inquiry report it has become undisputed that Sri Lakshman Prasad Sah, Batayidaar along with his family members had been cultivating this land for more than 30 years as batayidaar and distribute the share of the crops to Sri Jagdish Prasad Sah the remaining 1 bigha of land but till today 2 bighas and 2 katthas of land are in his peaceful possession and legally Sri Lakshman Prasad Sah has got Sikri right over the 2 bigha and 2 katthas of land which is equivalent to acre and decimel...

12. Against the said order no appeal was preferred. The said order has become final.

13. It is also the appellants' case that then Lakshman Prasad and his two brothers, namely, Ram Chandra Prasad and Bharat Prasad separated from each other and partitioned the entire land including the land in question among themselves.

14. It is alleged that then on 26.6.1979, Vendee of the original landlord Ram Lagan Tiwari, i.e. Jamadar Rai @ Jamadar Bhagat sold the entire land in favour

of Dharaman Prasad and his three sons, namely, Shesh Nath Prasad, Pramod Kumar and Binay Kumar by a registered sale deed on 26.6.1979.

15. It is alleged that on 26.12.1981, Laxman Prasad executed one "Ezabnama" for Sikmi Batai in favour of Dharaman Prasad and his sons.

16. Thereafter, a proceeding u/s 144 of the Code was initiated and the Sarpanch of Gamhari Kala Panchyat recommended initiation of such proceeding only on 2 Bigha, 2 Katha land against the appellants out of total land of 3 bigha, 22 Katha, 5 Dhurs.

17. However, the said proceeding was dropped by an order dated 9.1.1984 passed by the learned Sub-Divisional Magistrate in regard to some portion of the land and it was directed that the proceeding will be continued only on 1 Bigha, 8 Katha land and the proceeding u/s 144 of the Code was converted into Section 145 of the Code.

18. In the said proceeding, the appellants claim to have filed their show cause stating the history starting from 1920.

On the basis of police report, a separate proceeding u/s 144 of Cr.P.C was initiated which was converted into a proceeding u/s 145 of Cr.P.C and in the said proceeding the respondents herein filed Criminal Revision No. 333 of 1984 before the Patna High Court and the Hon'ble High Court rejected the same.

19. It appears that various proceedings u/s 144 of Cr.P.C were initiated between the parties. Ultimately appellants claim to have filed Bataidari (Tenant) Case No. 10 of 1995-96, 11 of 1995-96 and 12 of 1995-96 before the appropriate authority. All the cases were heard together and after hearing the parties Circle Officer came to a finding that appellants are the tenant in respect of the disputed land and directed them to deposit money for creating Zamabandi in their name and which they did. In support of this assertion, the appellants were referring to two orders dated 13.06.1995 and 15.10.1995, issued in Bataidari Case No. 10 of 1995-96. In view of such proceeding, the respondents herein filed Criminal Miscellaneous Case for quashing those proceedings and various criminal proceedings were initiated between the parties. Ultimately before the Court of Third Additional Sessions Judge (E.C.) Motihari, the criminal revision was filed by the appellants challenging the order dated 27.07.1992 passed by Executive Magistrate and the said criminal revision was dismissed. Challenging that order, the petition u/s 482 of Cr.P.C was filed before the High Court. The order of the High Court which was passed on that 482 petition has been challenged before this Court.

20. It appears from the impugned order that the High Court did not consider the effect of the relevant provisions of Bihar Tenancy Act (hereinafter referred "to the said Act") and the ambit of Section 145 of the Criminal Procedure Code. It has been held in Badri Yadav Vs. Sat Narain Das and Others, that whether a person is Bataidar or not rests on a "pure factual investigation and the record of the

case".

21. In the instant case clear finding has been arrived at that the appellants are Bataidars. Such a finding has been arrived at under the provision of the said Act which is a special law. The provisions of Section 48E of the said Act provides for a complete machinery for enquiry into the rights of a Bataidar and also provides for some protection. Section 49C also imposes some restriction on the transfer of such rights which is created in favour of the tenants. So provisions of Section 48E and those of Section 49C supplement each other.

22. The legislative purpose in enacting the provisions of Section 48E of the said Act is to ensure that the disputes between raiyats and under-raiyats are settled as amicably as possible and for that, detailed machinery has been provided u/s 48E of the said Act. In continuation of such legislative scheme Section 48E(13) has provided as follows:

Save as expressly provided in this Act, no Civil or Criminal Court shall have any jurisdiction over the subject matter of a dispute after a proceeding is initiated under Sub-section (1) by the Collector:

Provided that nothing in this Sub-section shall be deemed to affect the power of a Criminal Court to take such action as may be necessary for preventing breach of the peace pending the final disposal of the proceeding by the Collector.

23. In this context Section 5 of the Code of Criminal Procedure may also be noticed and which provides as follows:

Nothing contained in the Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

24. It cannot be doubted that said Act is a special and local law in the sense it is confined within the State of Bihar. If we read the provisions of Section 48E(13) of said Act as against Section 5 of the said Code, it will be clear that the effect of Section 5 of the Code of Criminal Procedure is to render the provisions of the Code of Criminal Procedure inapplicable in respect of all matters covered by such special law. [See *Ajmer Singh and Others Vs. Union of India (UOI) and Others*,].

25. Similarly, construing Section 5 of the Code, the Constitution Bench of this Court held in *Maru Ram and Others Vs. Union of India (UOI) and Others*, :

If a special or local law exists covering the same area, this latter law will be saved and will prevail.

26. Sub-section 13 of Section 48E of the said Act makes it clear that no Civil or Criminal Court shall have any jurisdiction over the subject matter of a dispute after a proceeding is initiated under Sub-section (1) of the Collector.

27. In the instant case, admittedly a proceeding u/s 48E was initiated and it

terminated in favour of the appellants holding their rights as Bataidar. The said adjudication has become final.

28. However, Sub-section 48E(13) has a proviso to the effect that nothing in this Sub-section shall be deemed to affect the power of a Criminal Court to take such action as may be necessary for preventing breach of the peace pending the final disposal of the proceeding by the Collector.

As in this case the proceeding u/s 48E has been finally decided, this proviso cannot be pressed into service.

29. Here, after the proceeding has become final and the rights of the appellants have been declared, repeatedly provision of Sections 144 and 145 of the Cr.P.C have been invoked to disturb the rights which the appellants have acquired in the Bataidari proceedings. But the main provisions of Section 48(13) have been enacted to protect the Bataidari rights of the parties and that is why it provides for an exclusion of the power of the Civil and Criminal Court over such rights. This is keeping in tune with the principle of distributive justice. Similar provisions have been made in various land reforms laws of different States. The Courts while construing the provisions of such socio economic legislation must interpret them in a manner which furthers its purpose rather than frustrates it.

30. The only argument of the respondents is that some of the appellants by Ezabnama gave away the rights in favour of the respondents. It may be noted that u/s 49C of the said Act restrictions are imposed on transfer of rights by under raiyat and if such a transfer is made, that is void. Apart from insisting on such transfer, which apparently is violation of the statute, no other argument was made by the learned Counsel for the respondents.

31. In this case, proceeding of Bataidari u/s 48(1)(E) was over and there was no pending proceeding. Therefore, proviso of Section 48E (13) is not attracted. In view of the main provision in Section 48(13) of the said Act jurisdiction of Criminal Court cannot be exercised in view of the express ouster.

32. In the case of Kunjbihari v. Balram and Anr. (2006) 11 SCC 66, a three-Judge Bench of this Court has held where rights of the parties have already been adjudicated upon by a different forum, the parties must respect that finding. In such a situation proceeding u/s 145 is not to be initiated to disturb the finding. In that case the High Court in a proceeding u/s 482 of Cr.P.C refused to quash the 145 proceeding. The same thing has been done here. However, this Court allowed appeal by setting aside the High Court's order as also directing that Section 145 proceeding be dropped.

33. In this case, this Court is of the opinion that if the respondents are aggrieved by the findings reached in the Bataidari proceeding they have the statutory right of the appeal to be exercised according to law. Without doing that the affect of Bataidari proceeding cannot be scuttled with the subterfuge and juggle of 144/145 proceedings. In the facts of this case, such a proceeding is an abuse.

34. For the reasons discussed above, we find that the High Court has not approached the legal issues involved in this case in their correct perspective nor considered the affect of Section 48E or Sub-section (13) of the said Act on a Section 145 proceeding.

35. Therefore, we quash the High Court's order and also the 145 proceeding. The appeal is allowed. There shall be no order as to costs.