
(1945) 12 PAT CK 0023
In the Patna High Court

Bhola Mahton and Others

APPELLANT

Vs

Mt. Kuer Dei Kuer and Others

RESPONDENT

Date of Decision : 05-12-1945

Acts Referred:

Bihar Tenancy Act, 1885 — Section 162A

Citation : AIR 1946 Patna 284

Hon'ble Judges : Fazl Ali, C.J.;Manohar Lall, J

Bench : Full Bench

Judgement

Manohar Lall, J.—This is an appeal from a decision of a learned Single Judge of this Court who has reversed the decision of the learned District Judge in the following circumstances:

2. The property of the tenant was put up to sale in 1939. The proceedings in execution of three rent decrees started in that year but the exact date is not clear from the record, but it is clear that the sale proclamation was issued on 9th March 1939. The actual sale was held on 17th May 1939. In that sale 82 acres of land forming a portion of Plot No. 359 appertaining to Khata No. 89 in village Pachaura was purchased jointly by three decree-holders. The delivery of possession was effected on 11th January 1940. It should be observed that between the date of the sale proclamation and the date of sale the Bihar Tenancy Act was amended on 26th April 1939 by which a new provision was inserted in the Act by Section 162A which expressly authorises the sale of a portion of a holding in circumstances prescribed in the section, but it was also enacted by proviso 2 that nothing in this Section shall be deemed to authorise the sale of a portion of a plot comprised in a holding. Before the rent decrees were obtained the raiyats had executed an ijara on 15th January 1919 of the holding including the plot in question in favour of the plaintiffs who were in possession as such. Another fact that, requires to be stated is that the plaintiffs have also acquired milkiat and tenancy rights of the tenant judgment-debtors by two sale-deeds dated 25th August 1939 and 7th October 1939. The plaintiffs, therefore, have

two capacities, one as ijaradars and the other as transferees from the tenants. But, in the meantime, as I have already stated, the sale took place by which the landlords became the auction-purchasers of a portion of the plot on 17th May 1939.

3. Accordingly the plaintiffs instituted the suit giving rise to this appeal for setting aside the sale which was held on 17th May 1939 on the ground that it was obtained by means of fraud perpetrated on the Court or against the tenants and also for a declaration that the sale had merely the effect of conveying the right, title and interest of the judgment-debtors and for a consequential relief that the landlord auction-purchaser had no right to actual possession. They also sought for a confirmation of their possession.

4. The learned Munsif held that he could not discover any fraud in the rent decrees which were put in execution, but he held that the proviso to Section 162A, Bihar Tenancy Act, invalidated the sale and therefore the sale must be set aside. Against this decision there was an appeal to the learned District Judge who relying upon the decision of this Court in Mahodev Maharaj Vs. Jagdev Singh and Others, came to the conclusion that as the plaintiffs were willing to redeem the charge of the landlord, they should be allowed to do so and passed a decree in these terms:

In these circumstances the decree of the lower Court will be set aside and in substitution a decree for redemption will be passed on the following terms: An account will be prepared as follows for the purpose of ascertaining the amount payable to the present appellant. They will be entitled to the total amount due under the three execution cases up to the date of sale (17th May 1939)--If the plaintiffs pay the total of these amounts by 31st January 1943 the appellant will be required to hand over the title deed, i.e., the sale certificate and to convey the property to the respondents and to give possession to the respondents (the respondents bearing the cost of the sale-deed). If payment is not made as aforesaid, the plaintiffs' right to redeem will be extinguished.

5. It was assumed that the sale was a valid sale. Against this decision, there was an appeal to the learned single Judge of this Court who on 31st August 1944 came to the conclusion that the sale of 17th May 1939 had the effect of a rent sale and that even if the purchaser had not taken any action to annul the encumbrances he would take priority over the usufructuary mortgage bond of the plaintiffs and the plaintiffs are not entitled to khas possession. The learned Judge in this Court took the view that the learned District Judge was wrong in granting the relief of redemption to the plaintiffs when they had not sought for that relief in the plaint. There was no appeal by the plaintiffs who thus accepted the position that the sale was valid. In appeal it is argued before us that the learned Judge of this Court was wrong in reversing the decision of the learned District Judge.

6. In my opinion upon a plain reading of Section 162A, Bihar Tenancy Act, it is

clear that a portion of a plot comprised in a holding cannot be sold. The language of the Section is clear and plain and indeed the learned advocate for the respondent was not in a position to support the judgment of the learned Judge of this Court upon this question. It must, therefore, be held that the sale of a portion of Plot 359 on 17th May 1939 did not convey any interest to the landlord auction-purchaser.

7. The learned advocate, for the respondent, however, argued that as in this case the sale proclamation had already been issued on 9th March 1939, that is to say, before the amending Act came into operation, it must be held that the sale of a portion of the plot which took place on 17th May 1939 was perfectly valid. I do not agree with this contention. The amending Act will operate and apply to those sales which had yet to be effected.

8. Here, as I have already stated, the sale actually took place on 17th May 1939. When that date was reached, the executing Court should have stayed its hands and refused to sell a portion of the plot as has been expressly enjoined by the Legislature. But the order passed by the learned District Judge appears to be correct as there was no appeal by the plaintiffs against his decision.

9. In following the Full Bench decision of this Court Mahodev Maharaj Vs. Jagdev Singh and Others, he has directed correctly that the plaintiffs will redeem the landlord auction-purchaser by paying up the charges acquired by the auction-purchaser in execution of the decree for rent.

10. The result is that the appeal is allowed and the decision of the learned single Judge of this Court is set aside and the decision of the learned District Judge is restored. The appellant is entitled to his costs in this Court and the costs incurred before the learned District Judge.

Fazl Ali, C.J.

I agree.