

(1968) 02 PAT CK 0009
In the Patna High Court
Case No : S.A. No. 600 of 1966

Bijli Sahu and Others

APPELLANT

Vs

Bahadur Mahton and Others

RESPONDENT

Date of Decision : 14-02-1968

Acts Referred:

Registration Act, 1908 — Section 47, 75

Citation : (1968) 16 BLJR 281

Hon'ble Judges : Raj Kishore Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Raj Kishore Prasad, J.—Defendants are the appellants. They have appealed from the judgment of the learned Additional Subordinate Judge, Begusarai, confirming the judgment and decree of the trial court decreeing the plaintiffs' suit.

2. Two points have been raised by Mr. Bindeshwari Chaudhary, who appeared for the appellants, in support of. the appeal: (i) that the suit was not maintainable in view of Section 49-C of the Bihar Tenancy Act, 1885, as amended by the Bihar Tenancy (Amendment) Act, 1955, (Bihar Act 19 of 1955)(hereinafter referred to as the Act of 1955), and, (ii) that the defendants were "privileged tenants" and, therefore, in view of Section 8 of The Bihar Privileged Persons Homestead Tenancy Act, 1947, (Bihar Act 4 of 1948), (hereinafter referred to as the Act of 1948), they could not be ejected, except on the grounds mentioned in Section 8 of this Act, which do not exist in the present case.

3. In order to appreciate the points raised, it would be useful to state briefly the material facts of the case:

Defendant-appellants had some properties which are described in Schedule A of the plaint in village Banwaripur. They sold those properties to the plaintiffs by a registered sale deed dated 29-6-1955 for Rs. 900/- and since then the plaintiffs were coming in possession over the same. As the defendant-appellants evaded

admission of the document before the registration office, the plaintiffs on 4-7-1955 filed the kebala before the Sub-Registrar, Teghra, for compulsory registration, and, then, it was compulsorily registered on 4-7-1955.

4. There were other litigations during the pendency of the compulsory registration case; but. it is not necessary to state them for the purpose of deciding the present appeal. It is enough to state that the plaintiffs filed a criminal case against Bijli Sahu, defendant appellant No. 1 but it was decided against the plaintiffs, and, therefore, arose the necessity of bringing the present suit for declaration of title to and recovery of possession over 5 kathas 7 dhurs with a house thereon appertaining to Plot 253, Khata 139, Tauzi No. 1035 in village Banwaripur.

5. The Bihar Tenancy Act was amended, as stated above, by Bihar Act 19 of 1955, which amendment came into force with effect from 4-11-1955 as per notification published in the Extra-ordinary Bihar Gazette dated 5-11-1955. On the above facts depends the decision of the two points raised in the appeal.

6. As regards the first submission that the suit was barred u/s 49-C of the Bihar Tenancy Act, the courts, below have held that Section 49-C of the Act of 1955 was not applicable to the facts of the case, because the sale deed was executed on 29-6-1955, although registered compulsorily on 4-7-1956, and Section 49-C came into effect from 4-11-1955. u/s 75 of the Indian Registration Act, a sale deed takes effect from the date of the sale deed and not from the date of its registration. The sale deed, therefore, was effective from 29-6-1955 when it was executed and the fact that it was registered on 4-7-1956, after Section 49-C came into effect, will have no effect. The trial court in paragraph 24 of its judgment has given good reasons for saying that the provisions of Section 49-C of the newly amended Bihar Tenancy Act have no application, because it came into effect from 4-11-1955, whereas the sale deed, Ext. 1, was executed, prior to this amendment, on 29-6-1955,

7. In the above connection, reference was made to Section 49-B, Explanation (3) of the amended Bihar Tenancy Act and to Section 49-C of the same Act. Section 49-B with Explanation (3) and Section 49-C are in these terms:

49-B. Application of Chapter.-This Chapter shall apply to tenants who are members of the scheduled castes, scheduled tribes and backward classes (hereinafter referred to as protected tenants).

...

(3) "Backward classes" means such classes of citizens as may be declared by the State Government by notification in the Official Gazette, to be socially and educationally backward.

49-C. Restriction on transfer of tenant's rights. No transfer by a protected tenant of his right in his tenure, holding or tenancy, 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 this Chapter.

Section 49-B lays down that this Chapter shall apply to tenants who are members of the scheduled castes, scheduled tribes and backward classes "hereinafter referred to as protected tenants". Admittedly the defendants-appellants are Telis by caste, and therefore, it was conceded that they do not come either under "Scheduled castes" or "Scheduled Tribes", but it was argued that they come under "backward classes" and, therefore, they would be deemed to be "protected tenants" within the meaning of Section 49-B, and, as such, Section 49-C would apply to them.

8. It will appear from a Full Bench decision of this Court in Chait Ram v. Sikandar Choudhary 1968 B.L.J.R. 103 in which "Mallahs" were concerned that the Notification contemplated by Explanation 3 to Section 49-B was mentioned. It is dated 7th February, 1956, and, it was conceded by both sides that "Telis" are included within the "backward classes"; but, in my opinion, that will not help the appellants. Even this Notification was issued on 7-2-1956, whereas the amendment was made, as mentioned above, with effect from 4-11-1955, and the sale deed was executed on 29-6-1955 and it was effective u/s 47 of the Indian Registration Act from the date of the sale. The crucial date is the execution of the sale deed and not its registration which only makes it effective from the date of its execution. In this view, therefore, Section 49-C will not invalidate the transfer as it does not operate retrospectively and as such, it has no application to the facts of the present case.

9. It was, however, contended that Section 49-C puts restriction on transfer of tenants' rights by protected tenants, like the appellants, and, therefore, even if the transfer is effected before Section 49-C came into force but if it is registered after Section 49-C came into effect, the transfer would be invalidated by virtue of Section 49-C. I am afraid this contention is not correct in law. Section 49-C does not expressly or impliedly say that it will act retrospectively and, therefore, it must be taken that it had no retrospective effect. If that is so, then Section 49-C cannot effect transfers executed before Section 49-C came into effect even though such transfers are registered thereafter. Section 49-C does not say that registration of previously executed transfers will be invalid. Section 49-C places restriction only on the transfer. The true meaning of Section 49-C, therefore, is that after Section 49-C came into effect there can be no transfer by a "protected tenant" of his tenancy rights and as such if such a transfer is both executed and registered after Section 49-C came into effect, such a transfer will be invalid u/s 49-C. The first contention, therefore, fails.

10. As regards the second submission, it is necessary to refer to Section 2, Clauses (i) and (j) of the Act of 1948 where the word "Privileged person" and "privileged tenant" have been defined by the Act of 1948. It may be mentioned that this objection was not specifically taken in the written statement, by defendants. Section 4 of the Act of 1948 provides that Privileged tenant will have permanent tenancy in his holding and Section 8 protects such a "privileged

tenant" from being ejected, except on one of the grounds mentioned in Section 8 of the Act of 1948, which, of course, are not present in the instant case. In the present case, this objection was taken in the trial court and the trial court has dealt with the point in paragraph 24 of its judgment, wherein the court has observed that no such defence was taken in the written statement or even before the appellate court which remanded the suit and there is nothing in the remand order to consider this aspect and nowhere neither in the pleading nor in the evidence it has been proved by the defendants that: they were "privileged persons". The appeal court has considered this point in paragraph 27 of its judgment wherein it has held that it was not proved that these defendants are "privileged persons" as defined in the Act of 1948 because the evidence on the record does not conclusively show that the appellants, besides the land in suit, did not hold any other land or their entire holding did not exceed one acre, as required by the definition of the words "privileged persons" in Section 2(i) of the Act of 1948. Section 2(i) and (j) of the Act of 1948 are in these terms:

2. Definitions-In this Act, unless there is anything repugnant in the subject or context.

...

(i) "privileged person" means a person-

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

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

(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.

...

11. From the above definition it is plain that in order to bring a person within the definition of "privileged person" it must be established, besides, What is mentioned in Section 2(i)(1), that besides his homestead he held no other land or holds such other land not exceeding one acre. This essential condition has not been proved. The appellants do not come also within the definition of "privileged tenant" as defined in Section 2(j) because in order to be a privileged tenant, he must at first be a "privileged person" which even the appellants here are not. For these reasons, the courts below have rightly held that the Act of 1948 did not apply here.

12. In the result, the appeal fails and is dismissed; but, in the circumstances of the case, there will be no order for costs.