
(2013) 03 PAT CK 0045
In the Patna High Court
Case No : Civil Revision No. 2200 of 2001

Brij Nandan Mahto

APPELLANT

Vs

Smt. Ranjoo Devi and Others

RESPONDENT

Date of Decision : 21-03-2013

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3)
Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 7 Rule 11, Order 7 Rule 11, Order 7 Rule 11(d)

Citation : (2013) 2 PLJR 687

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Advocate : Kali Das Chatterji and Mr. Amlesh Kumar Verma, for the Appellant; Sukumar Sinha Mr. Aditya Narayan Singh-1, Mr. Arvind Kumar Tripathi and Mr. Santosh Kumar Jha, for the Respondent

Judgement

Jyoti Saran, J.—This civil revision application is directed against the order dated 29.9.2001 passed by learned Munsif, Barh in Title Suit No. 37 of 2000 whereby the objection raised by the defendant-petitioner under Order 7 Rule 11 of the CPC (hereinafter referred to as the "Code") has been disposed of observing inter alia that the objection as to the maintainability of the suit in context with the cause of action being connected with the merits of the claim shall be tried along with other issues at the stage of final hearing and disposal of the suit. The suit in question has been filed by the plaintiffs-opposite party Nos. 1 to 3 seeking inter alia a declaration of title and possession over the suit land described in Schedule 1 of the plaint as also for a declaration that the defendant Nos. 1 and 2, who are the petitioner before this Court, have acquired no title or possession and cannot interfere with the peaceful possession of the plaintiffs over the land described in Schedule 1.

2. The relief prayed in the suit together with schedule property is as follows:-

19. That the plaintiffs pray for the following reliefs:-

(A) That on adjudication of the facts stated above, it be declared by the decree of the Court that the plaintiffs have absolute title and possession over the suit land described in Schedule 1 of the plaint and the defendant nos. 1 and 2 have acquired no title or possession in the suit land or defendant nos. 1 and 2 have no right to interfere in absolute title and peaceful possession of the plaintiff in respect of the lands described in Schedule 1 of the plaint (B) the deed of sale executed by D.C.L.R. Barh dated 12.7.1991 in favour of defendant no. 1 and 2

(B) That it be declare that the illegal, invalid, void, without jurisdiction obtained by the defendant no. 1 and 2 practicing fraud and misrepresentation which does not effect to the title and possession of the plaintiff in suit land.

(C) That the title and possession of the plaintiffs over the suit land be confirmed by

(D) The defendants be restrained by order of temporary injunction from interfering in title and peaceful possession of the plaintiffs over the suit land mentioned in Schedule-1 of the plaint, till disposal of this suit.

(E) That the cost of the suit be awarded to the plaintiffs against the defendants.

3. An objection under Order 7 Rule 11 of the Code was filed by the defendant Nos. 1 and 2-petitioner questioning the maintainability of the suit inter alia in view of the provisions underlying Section 43 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the "Act") and in absence of a valid cause of action for maintaining the suit. The objections having been disposed of by the order impugned hence this application.

4. By the order passed on 20.10.2008 this application was admitted for hearing and the interim order staying further proceeding in the suit dated 1.8.2002 was allowed to continue until disposal of the application.

5. The suit property is an area admeasuring 0.64 acres in Plot No. 195 Khata No. 52 in Mauza Rani Sarai in the District of Patna.

6. The plaintiffs-opposite party Nos. 1 and 2 are purchasers of the suit property from one Siddheshwar Pandey under separate registered sale deed(s) dated 18.5.1990, the details whereof is mentioned in Schedule-2 and Schedule-2(A) of the plaint placed at Annexure-2 to the proceedings. Following the sale/purchase aforementioned, an application for preemption u/s 16(3) of the Act was filed by the petitioner inter alia on grounds that he was boundary raiyat on the adjoining land measuring 32 decimals in the Southern portion of Plot No. 195 by virtue of four sale deeds executed in between 1948 to 1970.

7. The preemption application was allowed by the DCLR Barh by order passed on 15.12.1990 and following which a sale deed was executed by the DCLR in favour of the petitioner and his brother on 12.7.1991. The order of the DCLR, Barh was

questioned by the plaintiffs-opposite party No. 1 before the Collector, Patna by filing statutory appeal and which was also dismissed on 5.2.1997. The plaintiff-opposite party No. 1 thereafter filed a revision before Member Board of Revenue and which was dismissed vide order passed on 8.1.1998 thus affirming the orders passed by the DCLR and the Collector. The plaintiff-opposite party No. 1 thereafter questioned the order of the Member Board of Revenue by filing a writ application giving rise to CWJC No. 8579 of 1998 and which was dismissed vide order passed on 25.1.2000, copy whereof is placed at Annexure-1 to the application. It is at this stage that the suit in question was filed by the plaintiff-opposite party Nos. 1 to 3 for the reliefs as already set out hereinabove. On the other hand the plaintiff-opposite party no. 1 also questioned the order of the writ Court by filing an Intra Court Appeal giving rise to Letters Patent Appeal No. 477 of 2000.

8. In between, the petitioner had questioned the maintainability of the suit on grounds of absence of cause of action and the provisions of Section 43 of the Act and the same having been rejected, he preferred the present civil revision application. During the course of consideration attention was drawn of this Court regarding the pendency of the Letters Patent Appeal preferred by the plaintiff-opposite party No. 1 and whereupon the hearing of the present application was adjourned until disposal of the letters patent appeal. The Letters Patent Appeal also stood dismissed by a judgment and order dated 25.4.2008 and whereafter the matter was considered on 29.9.2008 and was admitted for hearing on 20.10.2008.

9. Mr. K.D. Chatterji, learned Senior counsel has appeared for the petitioner and Mr. Sukumar Sinha, learned Senior counsel has appeared on behalf of the plaintiff-opposite party Nos. 1 to 3.

10. Mr. K.D. Chatterji, learned Senior counsel with reference to the submission made in the plaint has submitted that the plaintiffs having contested the matter right from the stage of the DCLR up to the Division Bench of the High Court and having lost at all stages, by the suit in question, the plaintiffs seek to nullify the effect of the orders passed by the statutory authorities under the Act allowing the preemption application of the petitioner and which orders stand affirmed by the writ Court as well as the Division Bench of this Court.

11. It is contended that an illusion is sought to be created by the plaintiff by seeking a declaration of title and possession over the entire area of 64 decimals in Plot No. 195 when the very issue which is being reagitated before the Civil Court are the issues which fell for consideration before the statutory authorities and the High Court and has been negated. With reference to the judgments of this Court, it was submitted that the proceedings before the statutory authorities u/s 16(3) of the Act are not summary proceedings but are capable of adjudication on issues of title also.

12. Mr. Chatterji also referred to a judgment of this Court reported in Narendra

Kumar Ghose and Another Vs. Sheodeni Ram and Others, and with reference to paragraphs 7 and 9 thereof it was submitted that the power of the statutory authorities is wide enough to go into the disputed questions of fact including questions of Benami transaction, issues of co-sharership etc.

13. With reference to a Division Bench judgment of this Court reported in Gujan Yadav and Another Vs. Sitaram Choudhary and Others, it was submitted that a similar issue fell for consideration before this Court when it was argued on behalf of the petitioners that a proceeding u/s 16(3) of the Act is a summary proceeding and it is beyond the scope of such proceedings to venture into issues of title which were matters within the exclusive jurisdiction of the Civil Court. It was submitted that the said issue has been answered in paragraph 7 of the judgment when it was held that the scheme of the Act and the Rules suggests that all relevant questions which can be raised by the transferer or transferee should be raised before and conclusively settled or dealt with by the Revenue Courts. It is submitted that the Court also held that permitting such suits would lead to multiplicity of litigation. Reliance was also placed on a judgment of this Court reported in Bhagirath Mandal and another Vs. The State of Bihar and others, . It is further with reference to the statement made in paragraphs 13 to 17 of the plaint submitted that the foundation for maintaining the suit is manifest from the said statements and the intent of the plaintiffs by way of the suit is to render the orders passed by the statutory authorities under the Act as affirmed by the Division Bench nugatory. It is with reference to the observation of the learned Single Judge made in the order passed the writ application placed at Annexure-1, submitted that the status of the petitioner as an adjoining Raiyat stands affirmed. It is further with reference to the judgment and order passed in the Letters Patent Appeal submitted that even the issue of title of the preemptors-petitioners over the suit land is no more in contest.

14. The arguments of Mr. Chatterji, learned Senior counsel for the defendant-petitioner has been contested by Mr. Sukumar Sinha, learned Senior counsel for the plaintiffs-opposite parties.

15. With reference to the provisions underlying Order 7 Rule 11 of the Code and Order 14 Rule 2 thereof, it is submitted that once the trial Court upon perusal of the statements made in the plaint has opined that the matter requires adjudication, the High Court while exercising revisional jurisdiction should not interfere in the matter. It is submitted that the opinion of the trial Court as found in the order impugned neither suffers from any jurisdictional error nor suffers from any legal infirmity rather the trial Court has consciously opined that the matter requires consideration. It is submitted that once these two contentions are satisfied then there remains no occasion for the High Court to exercise revisional jurisdiction causing interference in the opinion so formed.

16. Learned counsel for the plaintiffs-opposite parties with reference to a judgment of this Court reported in Dhirendranath Chandra Vs. Apurba Krishna Chandra and Others, more particularly paragraph 6 and a recent judgment of this

Court rendered in the case of Chandrama Singh versus Registrar, Civil Court reported in Chandrama Singh @ Nathuni Singh Vs. Registrar, Civil Court (Administrative) and Another, , submitted that there should not be a piecemeal adjudication and the trial Court should be allowed to pronounce judgment on all issues.

17. Mr. Sinha, with reference to the statement made in paragraphs 2 to 9 of the plaint present at Annexure-2 has submitted that these statements by itself are sufficient to demonstrate that the defendant Nos. 1 and 2 have no right or title over any portion of CS Plot No. 195 and which is the foundation to maintain the preemption application. The order passed in the Ceiling Appeal No. 27 of 1991-92 by the Collector, Patna is present at Annexure-B of the counter affidavit filed in the proceedings and with reference to the observation of the appellate authority found at page 2 of the order, it is submitted that even the Collector was of the opinion that the issue of title required adjudication by a competent Civil Court. It was thus submitted that where the plaintiffs have questioned the very title of the defendant-petitioner over the piece of land which is the basis for maintaining the preemption application, it would require an adjudication by a competent Civil Court and that the revenue authorities are not technically and juristically accomplished enough to adjudicate on this issue. It was thus submitted that mere consequences of a finding in favour of the plaintiff in the suit would not be sufficient to render the suit itself barred by law.

18. Mr. Chatterji, in rejoinder has submitted that the provisions of rule 19 of the Bihar Land Ceiling Rules, 1963 vests the statutory authorities powers to adjudicate upon the issue of title and the plaintiffs-opposite parties not having raised issues of title of the defendant-petitioner before the statutory authority under the Ceiling Act, any such plea at this stage would be barred on the principles of constructive resjudicata.

19. I have heard learned counsel for the parties and have perused the materials on record.

20. There has been extensive arguments from either side in support of the impugned order as well as in criticism thereof.

21. Two issues emanating from the arguments advanced on behalf of the contesting parties, are whether the plaintiffs-opposite parties having lost at all stages of the proceedings originating from the preemption application filed by the defendant-petitioner u/s 16(3) of the Act, can yet maintain a title suit questioning the title of the preemptor and secondly, whether the opinion expressed by the trial Court upon consideration of the materials that the objection raised by the defendant-petitioner under Order 7 Rule 11 of the Code questioning the maintainability of the suit raises issues which requires adjudication and would be considered at the stage of final hearing, suffers from any legal infirmity or jurisdictional error.

22. It is manifest from the pleadings and the arguments advanced on behalf of

the parties that even if the plaintiffs-opposite parties have been unsuccessful in the preemption matter upto the Division Bench of this Court yet if she succeeds in the title suit, the orders would be rendered infructuous because the very foundation would stand removed. The defendant-petitioner had filed the preemption application claiming to be a boundary raiyat on the basis of sale deeds executed in between 1948 to 1970 in respect of southern portion of Plot No. 195 admeasuring 32 decimals. Whereas the plaintiffs-opposite parties through the suit in question has tried to contend that the defendant-petitioner did not derive any title by virtue of the sale deeds, it is the case of the defendant-petitioner that this issue was very much available with the plaintiff during the course of preemption proceedings and an observation to this effect being found in the judgment and order of the Division Bench in the Letters Patent Appeal, it is no more open for the plaintiffs-opposite parties to raise this issue through the suit in question.

23. Whether the suit raises issue requiring adjudication or is a means adopted for setting aside the orders of the statutory authorities passed in the preemption proceedings as affirmed by the High Court is laid before the Court below and any expression on merits, would be prejudicial to the parties but at the same time a cleverly drafted plaint should not be allowed to reopen closed chapters.

24. The scope of Order 7 Rule 11 has been a subject matter of numerous judgments. The provision itself reads-"Rejection of plaint", meaning thereby if the trial Court is of the opinion that the plaint suffers from any of the legal infirmities as mentioned in the provision then it would be well within its jurisdiction to reject the plaint at the threshold and assign the grounds therefor. At that stage the trial Court is not required to enter into the merits of the rival claims nor read into the contents of the written statement. All that the trial Court is required to do is to satisfy itself whether or not the suit is maintainable and is not hit by any of the grounds mentioned in Order 7 Rule 11 of the Code. If upon such examination and consideration of objection, the trial Court comes to a conclusion that the matter would require an adjudication, normally such opinion is not to be interfered by the High Court in revisional jurisdiction. While on the issue, it would be apposite to refer to a recent judgment of this Court rendered in the case of I.T.C. Limited Vs. Shakuntala Devi and Others more particularly to paragraphs 10 thereof.

10. It is by now established that the law of rejection of plaint under Order 7 Rule 11 of the CPC is broadly based upon the "Plea of Demurrer" whereby a demurrer admits the truth of the plaintiffs set of facts, but contends that the plaintiff cannot get the relief as prayed even on the basis of those facts, either because of the bar of any law or insufficiency inherent therein. The scope and applicability of the provision of Order 7 Rule 11 (d) have been now almost well settled by a number of illumining decisions of the Apex Court and it will be apt here to refer to the decision in the case of Kamala and Others Vs. K.T. Eshwara Sa and Others, where the Apex Court has laid down as follows:

...Order VII Rule 11 (d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in plaint... What would be relevant for invoking Clause (d) of Order VII Rule XI of the Code is the averments made in the plaint. For that purpose, there cannot be any addition or subtraction...

It has been further held:

For the purpose of invoking Order VII Rule 11 (d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties could not be within the realm of the Court at that stage...

In another decision in the case of C. Natrajan Vs. Ashim Bai and Another, , the Apex Court has similarly held as follows:-

An application for rejection of the plaint can be filed if the allegations made in the plaint even if given face value and taken to be correct in their entirety appear to be barred by any law. The question as to whether a suit is barred by limitation or not would, therefore, depend upon the facts and circumstances of each case. For the said purpose, only the averments made in the plaint are relevant. At this stage, the court would not be entitled to consider the case of the defence.

However, while considering the question of rejection of plaint under Order 7 Rule 11 C.P.C., the another aspect also has been highlighted by the Apex Court in Abdul Gafur and Another Vs. State of Uttarakhand and Others, as follows:-

If the High court is convinced that the plaint read as a whole does not disclose any cause of action, it may reject the plaint in terms of Order 7 Rule 11 of the Code. As a matter of fact, as observed by V.R. Krishna Iyer, J., in T. Arivandandam, if on a meaningful not formal reading of the plaint, it is manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, the court should exercise its power under the said provision. And if clever drafting has created an illusion of a cause of action, it should be nipped in the bud at the first hearing by examining the party searchingly under Order 10 C.P.C. Nonetheless, the fact remains that the suit has to be disposed of either by the High Court or by the Courts Subordinate to it in a meaningful manner as per the procedure prescribed in the Code and not on one's own whims.

In view of the aforesaid principles and also on the basis of the decisions of the Apex Court on the issue of rejection of plaint under Order 7 Rule 11(d) C.P.C., the following broad principles can be culled out:-

- (i) the averments made in the plaint are germane and have to be taken as correct;
- (ii) The whole plaint has to be read not in formal but in a meaningful manner;
- (iii) No part of defence or evidence is to be considered;
- (iv) Being summary in nature, the court should exercise this jurisdiction only

when it becomes absolutely certain that the litigation is doomed to fail. Now keeping in view, these principles the rival contentions of the parties are to be examined.

25. No doubt the orders passed by the statutory authorities in the preemption proceedings cannot be questioned in a suit and is expressly barred under the provisions of Section 43 of the Act but the same is not without reservations. The plaintiff it is seen, has neither shirked nor suppressed any information regarding the preemption proceedings upto its affirmation by the writ Court. Perhaps since the order in the Letters Patent Appeal was passed subsequent to the suit, hence the said information is not available. It is thus to be considered whether the learned trial Court below having noticed the sequence of events leading to filing of the suit and having yet proceeded to express opinion that the issue would require consideration at the hearing stage, it would be proper for this Court to interfere with the same. The submission of Mr. Chatterji that the plaintiffs could have raised the issue of title before the statutory authorities and not having done so, her endeavour through the suit would be barred by a constructive res judicata, may not be strictly applicable to the present case for the reasons that issues of title are best adjudicated under the competence of a Civil Court. The finding of the writ Court and the Division Bench on this issue in the Letters Patent Appeal No. 477 of 2000 is an affirmation of the opinion of the statutory authorities under the Ceiling Act and who even while upholding the claim of the petitioner of being a boundary raiyat, have not ventured into the intricacies of title. I would at this stage refer to the observations made by the appellate authority considering the pre-emption appeal as well as the order of the writ court in this context.

26. The Collector, Patna as the appellate authority under the Act, upon consideration of rival claims and while affirming the order of the DCLR has observed as follows:

[Emphasis is mine]

27. The writ Court while affirming the order of the statutory authorities has held as such in paragraph 6:

6. I have perused the orders impugned. All the three authorities vide orders, as contained in annexure 7, 9 and 11, have recorded concurrent findings of facts and have held that the deed of gift in favour of Siddheshwar Pandey with respect to 64 decimals of land in plot no. 195 was a paper transaction, as the possession of the land in question, which is said to have been purchased in auction sale was never given in possession of Ambika Singh, the auction purchaser, and thus, no right was created in favour of Siddheshwar Pandey, and the registered sale deed executed by Siddheshwar Pandey dated 18.5.1990 was void. The Courts below have categorically recorded a finding that the deed of gift was executed in the year 1988, whereas pre-emptors had purchased 32 decimals of land of plot no. 195 much prior to that and the sale deeds so executed in favour of the pre-

emptors or their father were never invalidated by any competent civil court. The sale deeds created in favour of the pre-emptors are of the years 1948 and 1950, respectively. The authorities further held that Siddheshwar Pandey had not derived his title by virtue of the gift deed, and, thus, the purchases made by the petitioner from Siddheshwar Pandey are also of no avail to the petitioner. From the findings arrived at by the authorities under the Act and after hearing the parties as also considering their respective pleadings, I will have no hesitation to hold that the pre-emptors were the adjoining raiyats and the petitioner does not hold any land in the boundary of the land in question. [Emphasis is mine]

28. Whether the findings of the statutory authorities as affirmed by the writ Court is conclusive, again can not be considered at the stage of Order 7 Rule 11 and has to be considered during hearing, for a decision either way. These are evidences and it is well settled that the trial Court would not venture into evidences at the stage of consideration of objections under Order 7 Rule 11 of the Code.

29. A Division Bench of this Court in a case reported in *Dhaka Singh and etc. Vs. Baleshwar Prasad Singh and Others*, , while noticing the views expressed in the judgment rendered in the case of *Narendra Kumar Ghosh (supra)* which was affirmed in a Full Bench judgment reported in 1985 PLJR 554 (*Jugal Kishore Singh versus State of Bihar*), has proceeded to hold in paragraph 12 of the judgment that suit which is purely of civil nature involving questions of title and possession, is not barred u/s 43 of the Act. Similar views has been expressed in context with similar bar available under the Bihar Consolidation of holdings and Prevention of fragmentation Act, 1956 by another Full Bench of this Court in a judgment reported in *Kalika Kuar @ Kalika Singh Vs. The State of Bihar and others*,

30. There thus remains no dispute on the issue that Section 43 of the Act cannot act as a bar to suits raising purely issues of title and possession.

31. Whereas in the present case the plaintiff claims to be a purchaser from one Siddheshwar Pandey who had obtained title and possession over the land by virtue of a gift deed dated 14.12.1988 executed by one Ambika Singh who in turn had auction purchased the land in question in Auction Sale Case No. 763 of 1952, the defendant-petitioner claimed title and possession over the southern portion of Plot No. 195 to the extent of 32 decimals by virtue of purchase made through four sale deeds executed by the vendor in between the year 1948-70.

32. Whether or not the plaintiffs-opposite parties are able to establish their plea that the defendant-petitioner did not derive any title over the southern portion of Plot No. 195 under the sale deeds relied upon by him, is a matter to be seen during the course of trial and not prior thereto. Unless the result is eloquent from reading of the plaint, the ultimate success or failure of the parties cannot be a matter of concern at the stage of consideration of an objection raised under Order 7 Rule 11 of the Code and the only consideration for the trial Court at that

stage is to see whether the suit can proceed. As each of the contesting party seeks to run the other side out, on the basis of documentary evidences, it would be in the fitness of things that the contest is best left at the level of the trial Court. Perhaps, the suit instituted over 12 years back could have been considered and disposed of by now but for the pendency of the matter in the present proceedings Finding no legal infirmity or jurisdictional error in the order passed by the trial Court, this Court would refrain from interfering with the order impugned and this application is accordingly, disposed of with a direction to the trial Court to consider and dispose of the suit expeditiously and preferably within a period of one year from the date of receipt/production of a copy of this order and without giving any undue adjournments to either of the parties.