

(1983) 12 PAT CK 0009

In the Patna High Court

Case No : A.F.A.D. No's. 801 and 802 of 1973

Budhu Dusadh and Others etc.

APPELLANT

Vs

Mangani Devi and Others

RESPONDENT

Date of Decision : 02-12-1983

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 145, 35, 6, 6(2), 8
Bihar Land Reforms Rules, 1951 — Rule 7
Civil Procedure Code, 1908 (CPC) — Section 96

Citation : AIR 1984 Patna 123 : (1984) PLJR 473

Hon'ble Judges : Chaudhary Sia Saran Sinha, J

Bench : Single Bench

Advocate : Baidyanath Prasad, No. 2, for the Appellant; Madan Mohan Prasad Singh, Rajendra Prasad Sinha, (for Nos. 1 and 2), Harendra Narayan Sinha, (for Nos. 5, 6 and 13), Ashok Kumar Sinha, (for No. 7), Mithilesh Kumar Khare, (for Nos. 5, 6 and 13) and D.C. Chakravarty, (for No. 7), for the Respondent

Final Decision : Dismissed

Judgement

Chaudhary Sia Saran Sinha, J.—These two second appeals, at the instance of the defendants of two titles suits, namely, Title Suits 131 and 132, each of the year 1962. are directed against the common judgment of affirmance. The two second appeals have been heard together and are being disposed of by this common judgment.

2. The plaintiffs in the two suits were the same. The appellants of Second Appeal 801 of 1973 were the defendants in Title Suit 131 of 1962. The land in suit of this title suit was 52 decimals comprising of three plots, namely, plot Nos. 871 (21 decimals), 638 (17 decimals) and 2194 (14 decimals), all of Khata No. 195 in tauzi No. 11,840 of village Brahamadaspur, police station Silao in the newly created district of Nalanda. The appellants of Second Appeal 802 of 1973 were defendants in Title Suit 132 of 1962 and the land in suit of that case was 46 decimals comprised in three plots, namely, plot Nos. 637 (20 decimals), 872 (12 decimals) and 2193 (14 decimals), all appertaining to khata No. 196 in the

aforesaid tauzi and mauza.

3. In view of the limited contentions raised before this Court it is needless to trace the past history of the suit land. It is undisputed that the plaintiffs were the 16 annas landlords of the suit land at the time and prior to the vesting of the zamindari. It is further undisputed that the suit lands of both the suits were recorded as Khidmati Jagir under the proprietors in the cadastral survey of the year 1910. It is also undisputed that the defendants of the two suits are the descendants of the persons in whose name the suit lands were recorded as Khidmati Jagir.

4. The plaintiffs case is that the defendants and their ancestors having ceased to render services to the landlords, the Khidmati Jagir was resumed by the landlords and they came in possession thereof as their bakasht lands long before the vesting of the zamindari and they continued in khas possession over the suit lands all along and were also in khas possession on the date of the vesting of the zamindari and thus they became statutory tenants in respect of the suit lands under the provisions of Section 6 of the Bihar Land Reforms Act, 1950 (Bihar Act 30 of 1950), hereinafter referred to as "the Act". Having greedy eyes on the suit lands the defendants raised some objection about the suit lands being the statutory tenancy of the plaintiffs before a Revenue Authority and Misc. Case No. 35 of 1956-57 was accordingly registered. The plaintiffs allege that on enquiry it was found that the plaintiffs were in khas possession of the suit land and, therefore, the case was dismissed. A portion of the suit plots was acquired under the Land Acquisition Act. On 3-5-1952 the defendants raised objection to the payment of the said compensation to the plaintiffs and then got rent of the suit lands assessed in their names by the Block Development Officer concerned by order dated 1-5-1962 without any notice to, or knowledge of, the plaintiffs. The plaintiffs, therefore, instituted the two suits for a declaration that the suit lands were their bakasht lands in their khas possession on the date of vesting of the zamindari and they being proprietors of the tauzi in question, they became statutory tenants in respect of those lands. Consequential relief claimed for by them was confirmation of possession over the suit land or, in the alternative, for recovery of possession. There was a further prayer, namely, a declaration that the order of the Block Development Officer dated 1-5-1962 fixing the rent of the suit lands in the name of the defendants was illegal and not binding on them.

5. The defendants contested the suit. While admitting that the lands in suit were recorded as their Khidmati Jagir, they asserted that they never rendered any service to the plaintiffs and were coming in possession of the suit lands all along and got the rent thereof assessed by the Block Development Officer. By long possession they claimed to have acquired title to the suit land by adverse possession.

6. The trial court accepted the case of the plaintiffs and decreed the plaintiffs' suit. The defendants took up the matter in two appeals but the appeals were dismissed.

7. The sole substantial question of law formulated by this Court, while admitting these two second appeals, is noted in Order No. 14, dated 24-8-1977, of Second Appeal 801 of 1973. It is to the following effect:

"Whether the suit filed by the ex-proprietors for declaration that the order passed u/s 6 (2) of the Bihar Lands Reforms Act was illegal, not binding and barred u/s 35 of the said Act."

In addition to this substantial question of law Shri Baidyanath Prasad No. 2, learned counsel for the appellants, urged for determination of two further points, namely, (1) whether the decree under appeal for confirmation of possession is valid in view of the order u/s 145 of the Criminal P. C., there being no prayer made by the plaintiff-respondents to set it aside or to declare it bad or illegal, and (2) whether the finding of possession recorded by the lower appellate court was tenable in law.

8. On the facts and in the circumstances of this case the learned counsel was permitted to urge these two points as well. The relief sought for by the plaintiffs can be divided into two parts, which appear to be quite separable, namely, (i) for a declaration of title to and confirmation of possession over the suit lands in their capacity as statutory tenants u/s 6 of the Act, and (ii) for a declaration that the order of the Block Development Officer dated 1-5-1962 determining the rent of the suit lands in favour of the defendants is not binding on them. According to Shri Baidyanath Prasad No. 2, Section 35 of the Act will stand as a bar in respect of both the reliefs. It is to be noted that no such plea about non-maintainability of the suit in view of the provisions of Section 35 was taken in either of the two courts below and, as the counsel conceded, this is being raised for the first time in the second appeals. The submission of Shri Baidyanath Prasad was that the determination of rent by the Block Development Officer in favour of the defendants will be deemed to be a decision u/s 6 (2) of the Act. The plaintiffs would have preferred an appeal against the said decision u/s 8 which they did not choose to do, and as such the suit shall be barred u/s 35 of the Act.

9. Section 6 (2) of the Act states inter alia, as follows:

"If the claim of an intermediary as to his khas possession over the lands referred to in Sub-section (1) or as to the extent of such lands is disputed by any person prior to the determination of rent, of such lands under the said subsection the Collector shall, on application, make such inquiry into the matter as he deems fit and pass such order as may appear to be just and proper." Section 35 of the Act runs as follows:

"No suit shall be brought in any civil court in respect of any entry in or omission from a * Compensation Assessment roll or in respect of any order passed under Chapters II to VI or concerning any matter which is or has already been the subject of any application made or proceedings taken under the said Chapters."

10. So far as the first part of the relief is concerned, namely declaration of title

and confirmation of possession and in the alternative for recovery of possession, it cannot come within the mischief of Section 35 of the Act. It neither relates to any entry in or omission from a Compensation Assessment roll, nor in respect of any order passed under Chapters II to VI, nor does it concern any matter which is or has already been the subject of any application made or proceedings taken under the said Chapter.

11. Question of determination of title and the consequential relief of possession flowing from the same is not a matter for adjudication by the Revenue authorities under the provisions of subsection (2) of Section 6 of the Act, on which learned counsel for the appellants sought to rely upon.

12. In the case of Gurucharan Singh Vs. Kamla Singh and Others, their Lordships of the Supreme Court held that there is nothing in Section 35 of the Act depriving the Civil Court of the jurisdiction to decide question of declaration of title and consequential relief of possession. Their Lordships further observed that Section 35 deals with different types of suits. Section 6 (1) also contains no inhibition against the Civil Court's power to decide the issue of title and right to possession of the plaintiff and, as a necessary corollary, the claim of actual possession set up by the defendants. Nor can Section 6 (2) inferentially interdict the plenary power of the Civil Court.

13. The facts of the two cases relied upon by the learned counsel for the appellants, one reported in Raja Sailendra Narayan Bhanj Deo Vs. Kumar Jagat Kishore Prasad Narayan Singh, , and the other reported in Krishna Prasad and Others Vs. Gauri Kumari Devi, are different from the facts of the instant case and they can be of no avail to the appellants. In the case of Raja Sailendra Narayan Bhanj Deo v. Kumar Jagat Kishore Prasad Narayan Singh (supra) the matter concerned the decision of the Claims Officer u/s 18 (3) of the Act which lays down that the decision of the Board and, where no appeal has been preferred to the Board, the decision of the Claims Officer shall be final. No such finality is attached to the decision in appeal u/s 8 of the Act. In the case of Krishna Prasad v. Gouri Kumari Devi (supra) while dealing with the question of claims of creditors, their Lordships observed that the claims of creditors have to be submitted before the Claims Officer, the claimant have to follow the procedure prescribed by the Act and cannot avail of any remedy outside the Act by instituting a suit or any other proceedings in the Court of ordinary civil jurisdiction. Both the two Courts below have concurrently found that the plaintiffs have subsisting title to the suit property and continuous possession since long. In such a situation, this part of the relief cannot come within the mischief of Section 35 of the Act.

14. I shall now come to the second part of the relief regarding which the Courts below have found that the order of the Block Development Officer fixing rent in favour of the defendants is illegal and not binding on the plaintiffs. Sub-section (1) of Section 6 of the Act lays down provisions for statutory tenancy contemplated therein, subject to the payment of such fair and equitable rent as

may be determined by the Collector in the prescribed manner. Then comes Sub-section (2) of Section 6 which has been quoted earlier.

15. The submission of Shri Baidyanath Prasad No. 2 was that although the provisions of Sub-section (2) of Section 6 of the Act stand in a somewhat different context, the same will be attracted in this case as the defendants succeeded in getting the rent determined prior to the determination of fair and equitable rent in favour of the plaintiffs. 16 Certain facts are undisputed and they are these. After the vesting of the proprietary interest in the State of Bihar the defendants filed petitions for taking back the jagir lands claimed by the plaintiffs as statutory tenancy on which Misc. Case No. 35 of 1956-57 was registered. There was an inquiry about possession. On the possession of the plaintiffs over the suit land being found, that case was dismissed. A subsequent event took place, namely, that a portion of the suit plots was acquired under the land acquisition proceeding. When the plaintiffs went to withdraw the compensation money they learnt that the defendants had raised objections to the payment of compensation to them on the ground that the lands belonged to them and they filed a petition No. 24-4-1957 before the Block Development Officer for fixation of rent. The Block Development Officer fixed the rent in favour of the defendants without going into the merits of the case for which there was no notice to the plaintiffs nor they had any knowledge about the same. On the facts and in the circumstances of this case Sub-section (2) of Section 6 of the Act is not directly attracted. Even assuming that the petition dated 24-4-1957 filed by the defendants for fixation of rent would come within the purview of Sub-section (2) of Section 6 of the Act, the said petition not having been disposed of in accordance with the provisions of Rule 7 (f) of the Bihar Land Reforms Rules, 1951 after notice to the plaintiffs, it cannot be regarded as legal much less binding on the plaintiffs. The submission of Shri Baidyanath Prasad No. 2 was that the procedural mistake committed by the Block Development Officer as pointed out by the trial Court may introduce illegality in the order, but the order cannot be regarded as without jurisdiction and the illegality, if any, could have been cured by appeal u/s 8 of the Act. This argument is somewhat attractive, if it be assumed that the petition filed by the defendants for determination of rent gave rise to a proceeding under Sub-section (2) of Section 6 of the Act. But the question is if the plaintiffs are entitled in law to get first part of the relief, the suit cannot fail because of inclusion of the second relief particularly when the decision of the Civil Court on the question of title and possession would set at naught the derision of the Revenue authority in fixing rent in favour of the defendants. In such situation Section 35 of the Act cannot stand as a bar to the maintainability of the suit instituted by the plaintiffs, so far as the relief for declaration of title and consequential relief for possession are concerned. The decision of the Civil Court correctly arrived at on the first part of the relief, as stated above, will set at naught the order of the Block Development Officer referred to above. This contention, therefore, fails.

17. Coming to the second contention the declaration allowed by the trial Court is

that the lands in suit have become the raiyati lands of the plaintiffs since the vesting of the zamindari and their possession "is hereby confirmed". This has been confirmed by the lower appellate Court. The trial Court has observed in paragraph 25 of its judgment that the order u/s 145, Cr. P. C. is based on the rent receipt granted to the defendants in pursuance of the order of the B. D. O. and it has, therefore, no binding effect on the plaintiffs. It has farther been observed that apart from that there is overwhelming evidence on the point of possession in favour of the plaintiffs and as such this Court is not bound by the findings of possession arrived at by the learned Magistrate. If certain rights have accrued to the plaintiffs from statutory provisions, it could not be withheld on account of wrong decision arrived in the 145. Cr.P.C. proceeding and the plaintiffs, on the facts and in the circumstances of the case, cannot be non-suited if they have not directly prayed for setting aside the decision of Section 145 Cr. P. C. proceedings. In the case of Bhinka and Others Vs. Charan Singh, their Lordships of the Supreme Court observed as follows (at p. 966):

"In passing an order u/s 145(6), Cr. P. C., the Magistrate does not purport to decide a party's title or right to possession of the land but expressly reserves that question to be decided in due course of law. The foundation of his jurisdiction is an apprehension of the breach of the peace, and, with that object, he makes a temporary order irrespective of the rights of the parties, which will have to be agitated and disposed of in the manner provided by law, The life of the said order is conterminous with the passing of a decree by a Civil Court and the moment a Civil Court makes an order of eviction, it displaces the order of the Criminal Court. The orders are thus merely police orders and decide no question of title." In such a situation the judgment of the Civil Court in a properly constituted civil suit will take away the effect of the final order passed u/s 145, Cr. P. C. and will set it at naught and the plaintiffs cannot be non-suited merely because they have not expressly prayed for declaring the said order to be illegal. The second contention thus also fails.

18. The third contention relates to the grievance of the learned counsel for the appellants that the lower appellate Court has recorded finding of possession without considering the oral evidence adduced by the defendants in detail. This contention is not correct. The trial Court has discussed the evidence, both oral and documentary, fully. It has also discussed the evidence of the pleader commissioner in paragraph 26 of the judgment. The lower appellate Court has also discussed the oral evidence in paragraph 27 of its judgment and has observed in that paragraph that the oral and documentary evidence adduced on behalf of the defendants "is not at all satisfactory and reliable."

19. Learned counsel for the appellants raised the grievance about the observation of the lower appellate Court in the last few sentences of paragraph 18 where it observed as follows;

".....I do not find any materials on the record to differ from the reasons assigned by him for such conclusion or to disturb his findings. I do not think it proper to re-

narrate the same reasonings in this judgment for arriving at the same conclusion."

Important and material evidence, both oral and documentary, adduced by both the parties having been duly discussed by the lower appellate Court, the contention that if the lower appellate court has failed to consider any circumstance or evidence relied upon by the trial Court, the judgment shall stand vitiated, cannot be upheld particularly in a case where the judgment of the lower appellate Court is of affirmance. The findings of fact recorded by the lower appellate Court is based on consideration of evidence and I do not see any reason to set it aside, This contention, therefore, also fails.

20. The result is that the two appeals fail and are dismissed. The judgment and decree of the lower appellate Court in both the suits are confirmed. On the facts and in the circumstances, there would be no order as to costs and the parties are directed to bear their own costs of these second appeals.