

(1963) 08 PAT CK 0005
In the Patna High Court
Case No : A.F.A.D. No. 733 of 1962

Ishar Dayal Thakur

APPELLANT

Vs

Sheoparsan Singh and Another

RESPONDENT

Date of Decision : 13-08-1963

Acts Referred:

Bihar Tenancy Act, 1885 — Section 179, 21A
Transfer of Property Act, 1882 — Section 105, 54

Citation : AIR 1964 Patna 71

Hon'ble Judges : U.N. Sinha, J

Bench : Single Bench

Advocate : A.C. Sinha and Ramji Saran, for the Appellant; Dinesh Charan and Rama Raman, for the Respondent

Final Decision : Dismissed

Judgement

U.N. Sinha, J.—This appeal has been filed by the plaintiff. It arises out of a suit instituted by him for declaration of title over and confirmation of possession or in the alternative, recovery of possession of 4.39 acres of land. In substance, the plaintiff's case was that he had obtained a permanent Mokarrari lease of the disputed property from defendant No. 1. There was an alternative prayer to the effect that if the plaintiff is not held entitled to a decree for confirmation or recovery of possession, then a decree for Rs. 1350/- may be passe in plaintiff's favour as against defendant No. 1.

The facts are as follows: The Plaintiff alleged that defendant No. 1 had borrowed a sum of Rs. 1350/- from the plaintiff on two handnotes in 1951. As, the plaintiff was demanding his dues, it was agreed between him and defendant No. 1 that the disputed property would be settled with the plaintiff permanently on payment of a Nazrana of Rs. 5000/-. The plaintiff was put in possession of the disputed property in Jeth 1361 Fs. in lieu of the interest due on the two handnotes mentioned above. Thereafter on the 20th November, 1954, the disputed document was executed, settling the land permanently at a fixed rent with the

plaintiff. The Nazrana was settled at Rs. 5000/- and the amount of Rs. 1350/- due on the handnotes, was set off. It was agreed that the balance amounting to Rs. 3650/- would be paid by the plaintiff to defendant No. 1 on receipt of the registration receipt of the lease.

It was alleged by the plaintiff that after the registration of the document, at the request of defendant No. 1, plaintiff had paid Rs. 1617/- to one Sheopujan Thakur to whom money was due from defendant No. 1. According to the plaintiff, he had paid another sum of Rs. 1783/- to defendant No. 1 in cash on two occasions. Thus, the only sum which remained due from the plaintiff was Rs. 250/-. According to the plaintiff, he had several times approached defendant No. 1 to accept this amount of Rs. 250/- and to hand over the registration receipt after endorsement, but defendant No. 1 had avoided doing so on one pretext or another. The plaintiff thereafter came to know that defendant No. 1 had executed a deed of cancellation of the patta dated the 20th November, 1954, on the 19th March, 1955, According to the plaintiff, on the same date defendant No. 1 had executed another lease in favour of defendant No. 2. Defendant No. 2 started interfering with the plaintiff's possession on the strength of his settlement, said to have been made on the 19th March, 1955. Hence this suit by the plaintiff.

2. The suit was contested by both the defendants. Recording to defendant No. 1, nothing had been paid to him in cash by the plaintiff. It was contended that this defendant did not owe any amount of money to Sheopujan Thakur and he had never asked the plaintiff to pay any amount of money to Sheopujap Thakur. According to defendant No. 1, in spite of repeated demands, the plaintiff had not paid to him the balance of the consideration money, and therefore, he had cancelled the patta and had executed another lease in favour of defendant No. 2. Defendant Ho. 1 had, however, alleged that defendant No. 2 had not also paid defendant No. 1 in full and an amount of Rs. 1850/- was still due from defendant No. 2 to defendant No. 1. The case of defendant No. 2 was that a fresh lease had been rightly executed in his favour by defendant No. 1, but that the allegation of defendant No. 1 that a sum of Rs. 1850/-was still due was wrong. Substantially, on these allegations the parties went to trial and the learned Additional Subordinate Judge passed a decree in favour of the Plaintiff for a sum of Rs. 1350/- as against defendant No. 1.

It was held by the learned trial Judge that title had not passed to the plaintiff merely on the execution and registration of the Patta on the 20th November, 1954. According to the learned trial Judge, defendant No. 2 was entitled to recover possession of the disputed property from the plaintiff. On appeal by the plaintiff, the learned Additional District Judge has confirmed the money decree passed in favour of the plaintiff as against defendant No. 1. But the decree for possession in favour of defendant No. 2 has been set aside.

3. Learned counsel appearing for the appellant has argued three points in this appeal. First, it has been contended that the Courts below have wrongly held that title had not passed to the plaintiff on the execution and registration of the

lease on the 20th November, 1954, on the ground that the intention of the parties was to the effect that title would pass on payment of the full consideration, namely, Rs. 5000A. It is argued by the learned counsel that there is a distinction between Section 54 and Section 105 of the Transfer of Property Act, in the sense, that in the case of a sale governed by Section 54, the passing of title to the property sold may depend on the intention of the parties. But, it is urged that in the case of a lease covered by Section 105 of the Transfer of Property Act, only a right to enjoy the property "passes, and, therefore, the transfer of the right to enjoy occurs on the execution and registration of a document and not on the theory of intention of the parties. It is argued by learned counsel for the appellant that the decisions of this Court dealing with the transfer of title under a sale will not govern the case of a lease covered by Section 105 of the Act. The distinction raised by learned counsel for the appellant is to the effect that when a sale of a property takes place u/s 54, the property itself passes, whereas when a lease is effected u/s 105, what is transferred is merely a right to enjoy the property. Having heard learned counsel for the parties in this context. I am not inclined to accept the distinction raised on behalf of the appellant.

It may be that when a sale of property takes place u/s 54, the tangible property itself passes, but nevertheless when a transfer of a right to enjoy a property governed by Section 105 comes into existence, the right that passes is also in the nature of an immovable property. Therefore, in both cases, in my opinion, it has to be ascertained on the facts and circumstances as to what was the intention of the parties concerned. In the instant case, the Court below have rightly considered the question as to what was the intention of the parties on the 20th November, 1954, and as to when title, in the sense, title to the lease-hold property, passed from defendant No. 1 to the plaintiff. Both the Courts below have held that the intention of the parties could not have been that title to the lease hold property would pass on the 20th November, 1954, even though an amount of Rs. 3650/- was still due from the plaintiff to defendant No. 1. It has been held that the parties must have intended that a title to the lease hold property would pass only when, the entire consideration money had passed, i.e., after the amount of Rs. 3650/- was paid by the plaintiff to defendant No. 1, after the patte had been registered and there had been an exchange of equivalent. This question, in my opinion, has been correctly decided by the Courts below.

4. It is then urged by the learned counsel for the appellant that this case was governed by Section 21-A of the Bihar Tenancy Act introduced in 1947. It is urged that the Nazrana of Rs. 5000/- settled on the 20th November, 1954, was in contravention of Section 21-A (2) (c)(i) of the Bihar Tenancy Act. This provision of law relied upon by learned counsel, reads thus:

"In settling his bakasht land, the proprietor or tenure-holder as the case may be --

"shall not charge any premlmum or salami--" In the case of lands which became

bakasht before the date of the commencement of Section 162-A, at a rate exceeding ten times the rent payable in respect of such lands under Clause (b)".

According to learned counsel for the appellant, the amount of Rs. 5000/- settled as Nazrana by the lease in question was in contravention of this provision of law and the amount of Rs. 1350/-, which was set off for the dues on the handnotes, was sufficient Nazrana or premium, and, therefore, title passed on the 20th November, 1954, on the execution and registration of the lease. It appears to me that this contention is also devoid of any force. Even assuming that the disputed property became bakasht before the date of the commencement of Section 162-A of the Bihar Tenancy Act, there is no evidence on record to ascertain the appropriate rent u/s 21-A (2) (b) of the Act. The latter provision of law runs thus:

"Shall not be entitled to charge rent at a rate exceeding the rate of rent payable for lands of similar description and with similar advantages in the same village or in the neighbouring villages by more than ten per centum".

In the instant case, there is no evidence as to the rent payable for lands of similar description with similar advantages in the same village or in the neighbouring villages. As a matter of fact, no attention was directed to the requirement u/s 21-A(2)(b), in order to apply Section 21-A(c)(i) of the Act. Moreover, the Courts below have held that the parties in this case had contracted out of the restrictions imposed by Section 21-A of the Act, In view of Section 179. The latter section reads thus:

"Permanent mukarrari leases -- Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently -- settled area from granting a permanent mukarrari lease on any terms agreed on between him and his tenant".

Learned counsel for the appellant has contended that Section 179 of the Bihar Tenancy Act should not be held to be applicable in this case in view of the special provision of law, viz., Section 21-A, inserted by an Amending Act in 1947. According to learned counsel, where there is a special provision in Section 21-A, the general provision of Section 179 should not apply. In my opinion, this contention is not valid. When Section 21-A of the Bihar Tenancy Act was incorporated by the Amending Act of 1947, Section 179 was already on the Statute book. If it was intended that in settling bakasht land the proprietor or tenure-holder was not entitled to contract out of the stringent provisions of Section 21-A, it was not at all impossible for the Legislature to say so in Section 21-A itself. Section 179 of the Act, as it stood in 1947, had allowed the parties to enter into permanent mukarrari leases on any terms agreed between the parties. It is difficult to hold that Section 21-A was introduced in 1947 without keeping in view Section 179 which was already existing.

In my opinion, the Courts below have rightly held that the parties in this case were at liberty to agree upon whatever terms they liked In view of Section 179 of the Bihar Tenancy Act. In any event, the argument advanced by learned counsel

for the appellant based on Section 21-A of the Bihar Tenancy Act cannot be of any advantage because the plaintiff himself is relying on the document dated the 20th November 1954. It is difficult to appreciate how the plaintiff can rely on his title based on this document and also contend that the most Important term settled between the parties was void or was against public policy. If the document dated 20th November, 1954, is held to contain terms in contravention of S. 21-A of the Bihar Tenancy Act, then the Court cannot give a decree in favour of the plaintiff based on his title springing from that document. The second contention raised on behalf of the appellant must also fail.

5. It is lastly urged by learned counsel for the-appellant, based on an additional ground filed on the 6th August, 1963, that after the estate in question had vested in the State of Bihar on the 26th January, 1955" defendant No. 1 had no right to cancel the lease on the 19th March, 1955, and settle it with defendant No. 2. Although the decree for possession in favour of defendant No. 2 passed by the trial Court has been set aside on appeal, my attention is drawn to some observation made by the learned Additional District Judge. In paragraph 14 of his judgment where he has stated that the plaintiff will, however, give up possession of the property on receipt of payment of Rs. 1350/-. If it is contended that on the strength of this observation, defendant No. 1 may now approach the Court for a decree for possession, on payment of Rs. 1350/- and no Court can now give a decree for possession of bakasht land to the ex-proprietor, after his estate has vested in the State of Bihar under the Land Reforms Act. Whatever may be the apprehension of the learned counsel for the appellant, it is not possible to speculate as to what may happen in future.

At the moment, no decree has been passed for possession in favour of any of the parties. The decree that has been passed is one in favour of the plaintiff only, Under which he is entitled to receive Rs. 1350/- from defendant No. 1. As to what will happen, if and when defendant No. 1 asks for possession, if he does so, cannot be decided in this appeal. So far as the land is concerned, it must lie where it is, as far as the result of the present litigation is concerned. All that can be field In this litigation is that the plaintiff did not obtain a permanent Mokarrari lease, on the 20th November, 1954, of the disputed property and that he is only entitled to a refund of Rs. 1350/- from defendant No. 1. The appeal in this Court must, therefore, fail and It is dismissed with costs.