
(1973) 02 PAT CK 0007
In the Patna High Court
Case No : A.F.A.D. No. 742 of 1969

Jokhan Jha and Another

APPELLANT

Vs

Ram Saran Jha and Others

RESPONDENT

Date of Decision : 02-02-1973

Acts Referred:

Registration Act, 1908 — Section 77

Citation : AIR 1973 Patna 443

Hon'ble Judges : Shambhu Prasad Singh, J;A.N. Mukharji, J

Bench : Division Bench

Advocate : Roy Paras Nath and Shree Krishna Chandra, for the Appellant; Uday Sinha and J.C. Sinha, for the Respondent

Judgement

1. This second appeal by the plaintiffs arises out of a suit u/s 77 of the Indian Registration Act for compulsory registration of a sale deed dated the 7th of September 1956 executed by defendant No. 1. The appellants presented the sale deed for registration before the Sub-Registrar on the 22nd of February, 1957. An application filed for registration u/s 73 of the Registration Act before the District Sub-Registrar was rejected by order dated the 25th February 1958. The present suit was instituted on the 22nd of March 1958. During the pendency of the suit, respondents 1 to 3 intervened and prayed for being added as defendants to the suit on the ground that they had purchased the property in dispute from defendant No. 1 by a sale deed dated the 14th February, 1957.

2. In their written statements, defendant No. 1 as well as the intervenor defendants denied the execution of the sale deed dated the 7th of September 1956 by defendant No. 1. Defendant No. 1, however, did not examine himself in the suit. The trial Court held that the sale deed dated the 7th of September 1956 was executed by defendant No. 1 and it accordingly decreed the suit

3. The intervenor defendants appealed to the lower appellate Court. In that Court they took a point that as permission of the Collector was not obtained by defendant No. 1 u/s 49-G of the Bihar Tenancy Act the sale deed was not valid

according to Section 49-C of that Act. In reply the plaintiffs challenged the vires of Section 49-C. The lower appellate Court made a reference to this Court u/s 113 of the CPC for opinion on the question of vires of Section 49-C of the Bihar Tenancy Act. A Bench of this Court which heard the reference held that Section 49-C of the Bihar Tenancy Act was intra vires. On receiving the opinion of this Court, the lower appellate Court allowed the appeal holding that as the sale deed dated the 7th of September 1956 was not valid, it could not be registered. The plaintiffs also challenged the right of the intervenor defendants to appeal against the decree of the trial Court on the ground that the question of title was foreign to a suit u/s 77 of the Indian Registration Act. Rather they prayed that the order of the trial Court adding the intervenors as defendants to the suit itself should be set aside. The lower appellate Court has overruled them so far as this contention is concerned.

4. In *Bhageram Thakur v. Kewal Singh*. 1969 Pat LJR 30, a Full Bench of this Court has held that the provision of the Section 49-C of the Bihar Tenancy Act putting a restriction upon the sale of right of a tenure-holder, raiyat or under-raiyat of backward classes is invalid and must be struck down. In view of this decision, the ground on which the lower appellate Court has allowed the appeal and dismissed the suit no longer holds good and its decree has to be set aside.

5. It appears that in view of the fact that the appeal succeeded on the above point alone, the lower appellate Court has not gone into questions of fact which arose for decision in the appeal. A question arises what should be done ? Should the appeal be remanded to that Court for decision thereof on other points ? In our opinion, in a suit u/s 77 of the Indian Registration Act, the question of title cannot be gone into. It was so held in *Jhaman Mahton Vs. Amrit Mahton and Others*, . Once the intervenors were on the record the question of title had to be gone into. The trial Court, therefore, ought not to have added the intervenors as defendants to the suit. We accordingly, set aside that order of the trial Court by which the intervenors were added as defendants to the suit. As a result thereof the appeal before the lower appellate Court becomes non-existent in the eye of law, and as there was no appeal by defendant No. 1, the decree of the trial Court as against him must stand.

6. In the result the appeal is allowed to the extent indicated above. The judgment and decree of the lower appellate Court are set aside and the judgment and decree of the trial Court for registration of the sale deed dated the 7th of September, 1956 as against the defendant No. 1 only are restored. In the circumstances of the case, there will be no order as to costs.