

(2013) 03 PAT CK 0033

In the Patna High Court

Case No : Second Appeal No. 346 of 2011

Kapildeo Chaudhary @ Kapildeo Chaudhury

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-03-2013

Acts Referred:

Bihar Tenancy Act, 1885 — Section 49(P)
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11
Specific Relief Act, 1963 — Section 34

Citation : (2013) 3 PLJR 238

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

**Advocate : Baxi S.R.P. Sinha and Anand Kishore Chaudhary, for the Appellant;
Vishwajeet Kumar Mishra and Sanjay Kumar Pandey, for the Respondent**

Final Decision : Dismissed

Judgement

Chakradhari Sharan Singh, J.—Heard learned senior counsel, Baxi S.R.P. Sinha, for the appellant. The plaintiff is the appellant in the present second appeal which has been posted before me for hearing under Order 41 Rule 11 of the CPC (hereinafter referred to as the Code). The appellant lost before both the courts below and has, thus, questioned the legality of the judgment and decree dated 21.5.2011 passed by learned Additional District Judge, Bagaha, West Champaran in Title Appeal No. 4/2009 whereby he affirmed the judgment and decree dated 16.12.2008 passed by learned Munsif, Civil Court, Bagaha, West Champaran in Title Suit No. 43/1987.

2. The suit was filed for a declaration that the order dated 3.5.1977 passed by learned Anchal Adhikari, Bagaha-2 cancelling the Jamabandi of the plaintiff in respect of the suit land and also the order dated 24.5.1997 passed by learned Sub-Divisional Officer, Bagaha whereby he was sought to be evicted from the suit land were illegal and void. The plaintiff also sought for a relief of permanent injunction against Smt. Sukhal Devi, Defendant 2nd set who has been impleaded

as respondent No. 5 in the present memo of appeal, from eviction from the suit land and from damaging the structures standing on the suit land.

3. The suit land as described in the Schedule-I to the plaint appertains to Khata No. 101, Khasra No. 413 measuring area 10 dhurs in P.S. No. 149 of Bagaha Anchal. According to plaintiff the suit land was originally Gairmazarua land of Bettiah Raj which was under the possession of the ancestors of the plaintiff prior to vesting of Jamindari. As would appear from the impugned judgments of the courts below, the plaintiff's claim that his ancestors and plaintiff himself had been coming in continuous possession over the suit land openly to the full knowledge of Bettiah Raj, authorities of the State Government, respondent No. 5 and the public at large for last 60 years. Further case is that after respondent No. 4, the Anchal Adhikari, Bagaha-2 found long continuous possession of the appellant over the suit land, he submitted a proposal for fixation of rent of the suit land and on such proposal, after due approval of the Deputy Collector, Land Reforms, Bagaha the rent of the suit land was fixed and Jamabandi No. 569 was created by the Anchal Adhikari in favour of the appellant. He relied upon rent roll signed by the Anchal Adhikari dated 4.12.1994 and asserted that since then Jamabandi was continuing in the name of the plaintiff and that he had been paying rent. It was contended that the respondent No. 5, the defendant 2nd party before the trial court, had no concern with the suit land and was never in possession over the same. It was further case of the plaintiff that the respondent No. 5 had purchased adjacent northern plot from one Rambali Choudhary in the year 1990 and recognized the plaintiff's possession over the suit land by mentioning his name to be on the southern boundary of the suit land. The plaintiff claimed that respondent No. 5 got her own Gharai land, her husband was alive and had three sons, two of whom were already married and her husband and three sons were earning members and they were quite substantial persons.

4. The plaintiff further claimed that behind his back, without any notice to him, the suit land is proposed to be settled to respondent No. 5 and the State Government respondents (respondent Nos. 1 to 4) were adamant to forcibly evict the appellant from the suit land.

5. Upon summons, both sets of defendants who are respondents herein appeared and contested the suit and filed their written statement. The State of Bihar in its written statement denied that the plaintiff had possession over the suit land and further pleaded that in connivance with the lower staff of the Anchal, he forcibly branded the Plot No. 414 as 413 and obtained a wrong report regarding his possession and settlement and upon detection of the fraud the settlement was cancelled and disciplinary action had been taken against the delinquent Karmchari. Respondent No. 5 in a separate written statement pleaded that one Rambali Choudhary was in occupation of R.S. Plot No. 412 admeasuring one Katha and seven dhurs as Kast land alongwith the suit land since the time immemorial and amalgamated both the plots making a complete block. The said Rambali Choudhary being in need of money sold the suit land alongwith R.S. Plot

No. 412. Rambali executed a registered sale deed with respect to R.S. Plot No. 412. According to respondent No. 5, though the sale deed was not executed regarding the suit land, it being a Gairmazarua land but the fact remained that entire area of Plot No. 412 (one Katha and 7 dhurs) and Plot No. 412 (10 dhurs) was purchased by respondent No. 5 and he amalgamated the boundary of R.S. Plot Nos. 412 and 413 which was mentioned in the sale deed: It was also pleaded that due to mistake of scribe in the sale deed dated 4.6.1990, in place of Khata No. 11 Plot No. 412, Khata No. 30 Plot No. 267 was wrongly mentioned which was subsequently corrected by a registered sale deed of rectification dated 25.10.1995 and since then respondent No. 5 was in possession over the suit land.

6. On the basis of rival pleadings of the parties, learned trial court framed altogether seven issues which are as follows:--

- (i) Whether the suit as framed is maintainable?
- (ii) Whether plaintiff has any cause of action to sue the defendants?
- (iii) Whether the suit is bad for non-joinder of necessary parties?
- (iv) Whether suit is hit by Section 34 of the Specific Relief Act?
- (v) Whether the court is without jurisdiction to grant the reliefs claimed by plaintiffs?
- (vi) Whether defendant No. 5 is liable to be injuncted regarding the suit land?
- (vii) Whether the plaintiff is entitled to reliefs as prayed for, or any other reliefs, if any?

7. Dealing with Issue No. (v), at the very beginning, the learned trial court came to the conclusion that Section 49(P) of the Bihar Tenancy Act, 1885 placed a bar against filing of suit to vary or set aside any order passed by any person in any proceeding under the Act except on the ground of fraud or want of jurisdiction. Learned trial court also held the suit to be not maintainable for non-joinder of necessary parties. Learned trial court further held that the suit was hit by Section 34 of the Specific Relief Act as the plaintiff did not pray for any relief with regard to his title. It further held that by virtue of the impugned orders dated 3.5.1997, 24.5.1997 and 31.1.1997 the plaintiff became title less persons without any rights regarding the suit land and, therefore, he was not entitled to seek injunction against defendant No. 5, who is respondent No. 5 in the present appeal. Learned trial court also held that the suit was not maintainable for non-joinder of the parties inasmuch as he did not implead his father, brothers and vendor of defendant No. 5 in view of the pleading that he inherited the suit land as his share from his father's family. Accordingly, vide judgment dated 16.12.2008 the learned trial court dismissed the suit.

8. The appellant thereafter preferred first appeal against the said judgment and decree which was registered as Title Appeal No. 4/2009 in the file of the learned first Additional District Judge, Bagaha, West Champaran. The learned first

appellate court concurred with the conclusion of the learned trial court that the suit was barred in view of Section 49(P) of the Bihar Tenancy Act, 1885. Dealing with the objection as regards maintainability of the suit in view of Section 34 of the Specific Relief Act, the learned first appellate court agreed with the conclusion of the learned trial court. The learned first appellate court took note of the fact that the plaintiff sought for perpetual and temporary injunction restraining defendant second party (respondent No. 5) from evicting the plaintiff from the suit land and from removing or damaging the structure of the appellant therefrom. Learned first appellate court took into account the pleadings on behalf of the plaintiff that the plaintiff sought relief against respondent No. 5 but in plaint the allegation was that the respondent first party, that is, the State of Bihar and its officials wanted to evict him. Further, there was no averment in the plaint that respondent No. 5 was threatening him or trying him to dispossess him from the suit land. As a matter of fact the order of SDO dated 31.1.1997 and order of eviction dated 24.5.97 have not been filed by the plaintiff, which were the basis for the suit, as would appear from the judgment of the first appellate court. In such circumstances, the learned first appellate court held that the suit was barred by provisions of Section 34 of Specific Relief Act.

9. The learned first appellate court thereafter, on the basis of materials on record, considered the plaintiff's claim of his possession over the suit land. The learned first appellate court, on the basis of evidence available on record, came to the conclusion that there were contradictions in the evidence of plaintiff's witnesses about the boundary of the suit land and further that the plaintiff failed to prove the identity of suit land over which he has sought relief of injunction. On the above basis, the learned first appellate court in paragraph 19 held thus:--

On the above discussion I come to this conclusion that the identity of the suit land has not been proved by the plaintiff and Section 32(sic) of Specific Relief Act bars the relief claimed by the plaintiff.

10. Accordingly, the learned first appellate court dismissed the first appeal vide its judgment and decree dated 21.5.2001 which is impugned in the present appeal.

11. The only substantial question of law which learned senior counsel, Mr. Baxi S.R.P. Sinha has raised in the present second appeal is that conclusion of both the courts below that the suit was barred by Section 49(P) of the Bihar Tenancy Act, 1885 is erroneous on the face of it as Chapter-VIIA of the said enactment has no application in the facts and circumstances of the case. Learned Senior Counsel has submitted that Section 49(P) bars suit in any civil court to vary or set aside any order passed by any officer in any proceeding under Chapter-VIIA except on the ground of fraud or want of jurisdiction. He has submitted that Chapter-VIIA deals with restriction on alienation of land by protected tenants which was not the issue involved in the present case.

12. From a perusal of the impugned judgments of learned trial court and first"

appellate court, it will appear that the courts below took into account all other issues framed by the trial court including the question of plaintiffs claim of possession over the suit land. There is a finding in the judgment of the first appellate court, after discussing the entire evidence available on record as will appear from paragraphs 9 to 12 of the impugned order, that the plaintiff could not prove his possession over the suit land. He even failed to prove the identity of that land over which he wanted relief of permanent injunction. It is not the case of the appellant before this court that such finding is perverse without evidence or contrary to evidence. No issue has been raised in the present appeal that the conclusion of the courts below regarding maintainability of the suit in view of Section 34 of the Specific Relief Act is contrary to law or is erroneous. The findings of the courts below on two counts are concurrent and unchallenged that the plaintiff could not prove the identity of the suit land and that the suit was barred by Section 34 of Specific Relief Act. So far as the plea that the suit was wrongly held to be barred u/s 49(P) of Bihar Tenancy Act, 1885 is concerned, I am in agreement with learned senior counsel appearing on behalf of the appellant but, in my opinion, in view of other concurrent findings of the courts below which have not been challenged in the present appeal, no tangible purpose will be served by admitting the present second appeal.

In such view of the matter, the appeal does not merit admission and is, accordingly, dismissed.