

(1917) 03 PAT CK 0014

In the Patna High Court

Kumar Satya Narayan Chakravarty and Others

APPELLANT

Vs

Dwarka Nath Sadhu and Others

RESPONDENT

Date of Decision : 16-03-1917

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : 40 Ind. Cas. 174

Hon'ble Judges : Mullick, J;Atkinson, J

Bench : Division Bench

Judgement

Mullick, J.—The plaintiffs are proprietors of certain mouzas of which the principal defendants are lessees or mukarraridars under the plaintiffs, and the present suit is brought for the following reliefs:

(1) That it may be adjudicated that the plaintiffs have a zemmdari interest to the extent of 14 annas, 12 gandas in the mouzas mentioned in the Schedule appertaining to Taluks Jam Juri, Nagari and Chota Bara asna and that the plaintiffs are in possession of the same.

(2) That it may be declared that the plaintiffs are entitled and are in possession of the sub soil of the said taluks and that the principal defendants have no right thereto.

2. In their written statement the defendants denied the rights of the plaintiffs to the sub-soil. They further contended that they were put in possession of the land by an order u/s 145 of the Code of Criminal Procedure made by the Sub-Divisional Magistrate of Jamtara on the 9th of May 1909.

3. The present suit was instituted before a Deputy Magistrate exercising the powers of a Subordinate Judge in that Sub-Division, but the plaint was returned to the plaintiffs on the ground that the suit was not maintainable because it had been laid u/s 42 of the Specific Relief Act, which was not in force in the Sub Division. Thereupon the plaintiffs preferred the present second appeal on the ground that the order of the learned Subordinate Judge directing the plaint to be

returned was wrong.

4. It is admitted by the plaintiffs that the suit is one for a mere declaration and that it falls within the four corners of Section 42 of the Specific Relief Act of 1877. It is also admitted that the Act is one of those Acts which, by the terms of the Scheduled Districts Act of 1874, has been excluded from the District of Sonthal Parganas, of which the Sub-Division of Jamtara is a part. Therefore, it would seem that by Section 3, Clause 3, of Regulation III of 1872, rights created by the Specific Relief Act cannot be enforced in the Sub-Division of Jamtara. But then the learned Vakil for the appellants turns to Act XXXVII of 1855, Section 2, of which enacts that for the trial and determination of suits exceeding Rs. 1,000 in value the General Laws and Regulations shall apply. He contends that the Specific Relief Act, being one of the general laws, applicable to India, and the present suit being valued at Rs. 8,000 he is by virtue of Section 2 of Act XXXVII of 1855, read with Section 3 of Regulation III of 1872, entitled to ask the Court to hold that Section 42 of the Specific Relief Act does apply to the suit in question. The argument is a very ingenious one, but I am satisfied that it has no foundation. All that Regulation III of 1872 read with Act XXXVII of 1855 means is that in suits exceeding Rs. 1,000 in value those laws will apply which are proprio vigore in force in the whole of the British India. But on turning to the Specific Relief Act we find that it extends to the whole of the British India except to the Scheduled Districts as defined in Act XIV of 1874, The Sonthal Parganas being a Scheduled District within the meaning of Act XIV of 1874, it is clear that the Specific Relief Act does not proprio vigore extend to the Sonthal Parganas. I am, of opinion, therefore, that the Specific Relief Act does not apply to the case before us.

5. Then the learned Vakil for the appellant falls back upon justice, equity" and good conscience, and he relies upon a decision by a Divisional Bench of the Calcutta High Court in Janardan Mahato v. Bhairab Chandra Mondal 30 Ind. Cas. 365 where their Lordships Chitty and Richardson, JJ. held that although the Specific Relief Act was not applicable to the Sonthal Parganas a prayer for specific performance of a contract could be granted upon the principles of justice, equity and good conscience Whatever the merits of the case before their Lordships may have been, I am clearly of opinion that the principles of justice, equity and good conscience cannot require the declaration which the plaintiffs want here. The relief contemplated by Section 42 of the Specific Relief Act is a highly technical form of relief which was introduced into this country in 1877. Previous to that declaratory reliefs could only be granted under the provisions of the Procedure Code of 1859 subject to a condition precedent that there were circumstances which might justify the grant of consequential relief. The law of 1877 has certainly given the Courts a new power but in my opinion the exercise of that power which is specially declared by the Statute to be discretionary ought to be jealously watched. It cannot, in my opinion, be in accordance with justice, equity and good conscience that we should apply principles which are the basis of a highly technical part of the Act to a locality which the Government of the

country has expressly declared to be unfit for the operation of the Act. In my opinion the principles of justice, equity and good conscience do not require that we should make the declaration which the plaintiffs seek.

6. The learned Vakil for the appellants finally asks us for leave to amend the plaint so as to make it a suit for consequential relief. In other words he desires to convert the present suit into a suit for recovery of; possession and for injunction. I think that this case is one covered by the decision in *Jhari Singh v. Pirthi Nath Sahu* 38 Ind. Cas. 191 : 1 P.L.W. 85 : 2 P.L.J. 69 and that we ought not, at this stage, to allow an amendment of the plaint, firstly, on the ground that no substantial injustice will be done by directing the plaintiffs to bring a fresh suit and, secondly, on the ground that having regard to the pleadings in this particular case the change sought to be made is a change of an unprecedented description within the rule in *Newby v. Sharpe* (1878) 8 Ch. D. 39 : 47 L.J. Ch. 617 : 88 L.T. 583 : 26 W.R. 685. The appeal accordingly fails and is dismissed with costs.