

(1983) 09 PAT CK 0023
In the Patna High Court
Case No : A.F.A.D. No. 7 of 1975

Lawang Chand Sah and Others

APPELLANT

Vs

Kedar Ram and Others

RESPONDENT

Date of Decision : 21-09-1983

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 4
Bihar Tenancy Act, 1885 — Section 103A, 21(1)
Evidence Act, 1872 — Section 116

Citation : AIR 1984 Patna 116 : (1984) PLJR 250

Hon'ble Judges : S.K. Jha, J; Ashwini Kumar Sinha, J

Bench : Division Bench

Advocate : Prem Lal and A.B. Mathur, for the Appellant; R.S. Chatterjee, Manilal, Standing Counsel No. 4 and Kisto Kumar Gupta, Jr. Counsel to Standing Counsel No. 4 and Abhajit Sinha, for the Respondent

Final Decision : Allowed

Judgement

Ashwini Kumar Sinha, J.—This appeal is by the plaintiffs and is against the judgment of reversal.

2. The plaintiffs filed a suit for ejectment of defendants and also for a decree for Rs. 450/- for arrears of rent since August, 1960 to October 1961. The plaintiffs also prayed for damages for a sum of Rs. 90/- at the rate of Rs. 2/-per day since the 1st November, 1961, to the 15th December, 1961. They also prayed for future damages.

3. The suit relates to area 70" x 18" of survey plot No. 1644 of khata No. 1403 under Touzi No. 1258 in village, Braham-pur over which shops exist.

4. Briefly stated, the plaintiffs' case was that they had buildings over an area of 70" x 18" over the said plot and those buildings were used as shops. The full description of the land and the structures thereon were given in Schedule I of the plaint. In April, 1940, the plaintiffs let out some structures over the plot standing

over an area of 28"x18" to Bhagwan Ram and Bharat Ram, the ancestors of defendants, on a monthly rent of Rs. 15/-. The description of this area of land with structures thereon was given in Schedule II of the plaint. According to the plaintiffs, Bhagwan Ram (since deceased) had executed Kiraynama on 4-4-1940 in favour of the plaintiffs in token of having taken the premises on rent (as given in Schedule II of the plaint). According to the plaintiffs, some more area with structures thereon (as mentioned in Schedule I of the plaint) were given to Bhagwan Ram and others in April, 1958, and, as such monthly rent was enhanced from Rs. 15 to Rs. 30. According to the plaintiffs, Bhagwan Ram and others remained in possession of the premises and went on paying rent till July, 1960, but they stopped paying rent from August, 1960. The plaintiffs thereafter sent several notices, the last being dated the 28th September, 1961, to Bhagwan Ram and Bharat Ram to vacate the suit premises by the 31st October, 1961. The plaintiffs required the suit premises for themselves for carrying on confectionery shops. As Bhagwan Ram and Bharat Ram, in spite of notices, refused to vacate the suit premises, the plaintiffs filed the present suit against them for eviction from the suit premises and for realisation of arrears of rent amounting to Rs. 450/- for the months of August, 1960 to October, 1961. and for damages amounting to Rs. 90/- from 1-11-1961 to 15/12/1961 at the rate of Rs. 2/- per day.

5. The defendants contested the suit and their case was that plot No. 1644, was recorded in Cadestral Survey Khatian in possession of Kaishre Hind and over it stood thana building. The thana building subsequently was removed from the plot in question and the plot was returned to the proprietor of the Touzi. According to the defendants, thereafter, there was a partition of the plot between the plaintiffs and their ancestors and other proprietors of the touzi. According to the defendants, by that partition the suit land along with other lands fell to the share of the plaintiffs. (Lines have been underlined by me for emphasis). Defendants' case was that thereafter Jai Bahadur Ram settled some parti land of the plot in question with Bhagwan Ram and Bharat Ram on a monthly rent of Rs. 15/- in 1940 and thereafter Bhagwan Ram and Bharat Ram constructed structures with corrugated sheets over the said settled land and started carrying on their confectionary shops. The defendants' case was that the portion of the plot in question adjacent west of the area settled with Bhagwan Ram and Bharat Ram was a ditch and they filled that up in due course and on the 1st of Ashwin 1977 sambat Jai-Bahadur Ram settled the filled up area with Bhagwan Ram and Bharat Ram and thereby an area of 66" x 23" came in possession of Bhagwan Ram and Bharat Ram and the monthly rent was raised from Rs. 15 to Rs. 18. According to the defendants, Bhagwan Ram and Bharat Ram kept some area of the aforesaid filled up land open for their customers and over its western part they had constructed rooms with pucca walls and tiled roofs for being used as store room. According to the defendants, Bhagwan Ram and Bharat Ram also paid choukidari tax.

6. The defendants also contested the suit on the plea that plot No. 1644 fell

within Mela area. According to the defendants, the plaintiffs had originally an interest of 1 anna 3 pies in the touzi in question and they had subsequently obtained some lands of khata No. 1403 by Mokarri settlement from other co-proprietors and, thus, according to the defendants, the proprietary and Mokarri-interests of the plaintiffs came to be 8 annas but they were never Kastkars of these lands and Kastkari was not the object of the said Mokarri settlement. According to the defendants, the plaintiffs always remained proprietors and tenure holders and they were never raiyats of the lands of khata No 1403. Accordingly, according to the defendants, the land in suit vested in the State of Bihar in 1956 and the State Karamchari started demanding rent from Bhagwan Ram and Bharat Ram, and hence, pay ment of rent to the plaintiffs was stopped (Lines underlined by me for emphasis). Thus, according to the defendants, the plaintiffs had no right to eject the defendants and realise rent as whatever interest the plaintiffs had in the suit land had vested in the State of Bihar. The defendants, on the above facts, also denied the relationship of landlord and tenant and also took a plea that the notices sent by the plaintiffs were not in accordance with law and, thus, invalid.

7. The trial Court decreed the suit in part. It held that the plaintiffs had title and possession over the suit lands and shops and they were entitled to get, a decree of eviction, against the defendants (who are the legal heirs of Bhagwan Ram and Bharat Ram who died during the pendency of the suit). It also held that the plaintiffs were entitled to get a decree of Rs. 450/- as arrears of rent but the trial Court did not allow the plaintiffs' claim for damages.

8. The defendants went in appeal and the plaintiffs also filed a cross-appeal. The Court of appeal below held that the lands in suit vested in the State with the vesting of the plaintiffs' zamindari in January, 1956 and, as such, there did not exist any relationship of landlord and tenant between the parties. It was further held that the raiyati interest of the plaintiffs in the suit plot acquired by patta and kabuliyat merged in their superior interest, i.e., proprietary interest. It was also held that the lands of the share of other co-sharers landlords acquired by Braj Bhukhan Ram, plaintiffs' ancestor by settlement by Kabu-liyat and pattas merged in their proprietary interest. The appellate Court also disbelieved the plaintiffs' case that Bhagwan Ram had been inducted in the structures constructed by the plaintiffs and their ancestors in 1940 and held that what was settled with the defendants was only the land without any structures thereon and the tin structures on the area of 28" x 18" belonged to and had been put by Bhagwan Ram and Bharat Ram. So far as the remaining area of the suit land adjacent west of the area aforesaid (28" x 18") is concerned, the Court of appeal below disbelieved the defendants' case regarding the construction of structures by them over that area. On these findings, the appellate Court allowed the defendants' appeal and the judgment and decree of the trial Court were set aside and the suit was dismissed.

The cross-appeal filed by the plaintiffs also was dismissed.

9. Learned counsel for the appellants has submitted that (i) there has been no ouster of the plaintiffs by the State of Bihar. (ii) the order of the D. C. L. R. (Ext. j.), being subject to the decision by a Civil Court in view of the order of the Additional Collector (Ext. 16/c), it conferred no right upon the defendants; (iii) if the defendants wanted to defeat the paramount title of the plaintiffs, a notice, in law, was a must and, in the absence of the notice on the part of the defendants, the plaintiffs' paramount title cannot be defeated; and lastly (iv) on the admitted facts of this case, there was no question of any merger of their raiyati interest in their superior proprietary interest and the lower appellate Court has in law, wrongly held that the plaintiffs' raiyati interest in the suit plot had merged in their superior proprietary interest.

On the other hand Mr. R. S. Chatterjee, learned counsel for the defendants-respondents has submitted that by settlement from co-sharer landlords the plaintiffs-appellants did not acquire any raiyati interest and their so-called raiyati interest merged in their superior proprietary interest. According to the learned counsel for the defendants, the plaintiffs not being in khas possession of the land, the land in question vested in the State with the vesting of the zamindari in the State in January, 1956. Hence, the plaintiffs had no light whatsoever. According to the learned counsel for the defendants-respondents, the plaintiffs were originally raiyat in respect of only a portion and they subsequently became the tenure holder by purchase from other proprietors and, hence, in law, two interests, i. e., the interest of raiyat and the interest of tenure holder, were not permissible to go together and the learned counsel relied upon Section 21 (1) of the Bihar Tenancy Act.

In effect, the main submission by the learned Counsel on behalf of the respondents is that raiyati interest of the plaintiffs acquired by Patta and Kabuliat merged in their superior interest, i. e., proprietary interest and, hence, according to the learned counsel for the defendants-respondents, the plaintiffs had no right, whatsoever, as the land vested in the State of Bihar. Learned counsel for the defendants-respondents, also relied upon Section 4 (f) of the Bihar Land Reforms Act, 1950, in support of his submission.

The learned counsel for the State submitted that, as the defendants-respondents have not put up independent title of their own, they are estopped from taking the plea that they have taken under the Rule of Estoppel.

10. Before I deal with the submissions advanced by the learned counsel for the parties, it is desirable that some of the relevant facts, which are admitted, be mentioned. The plaintiffs and their ancestors had originally 1 anna and odd share in touzi No. 1258 Plaintiffs' ancestor Braj Bhukhan Ram acquired some interest of other co-sharer proprietors by virtue of settlement and purchase (by pattas, kabuliat and registered sale-deed) and thereafter the share of the plaintiffs and their ancestors came to something more than 8 annas in the touzi.

11. The other relevant fact and admitted by the defendants is that the plaintiffs'

ancestors had filed a Title Suit No. 63 of 1937 for partition of their 8 annas and odd share. In this suit, the defendants 1 to 11 were ancestors of the present defendants. The certified copy of the judgment of that title suit was marked as Ext. 17/A and the certified copy of decree of that title suit was marked Ext. 21 in the suit. A copy of judgment of this Title Suit No. 63 of 1937 has been put on the paper book of the instant appeal. It shows that the plaintiffs' ancestors had also sought for partition of the plot in question (plot number 1644) as well along with three other plots (1642, 1643 and 2470). The defendants 1 to 11 (ancestors of the present defendants) of that suit had contested the plaintiffs' claim for partition of the plot in question (1644) and the other three plots (with which we are not concerned). Some other defendants had contested the suit on other grounds. Title Suit No. 63 of 1937, referred to above, was decreed and it was ordered as follows:--

".... the plaintiffs are entitled to have the temporary huts of defendants 1 (one) to 11 in the lands in suit (Schedule A of the plaint) dismantled and those defendants are hereby ordered to remove the same from these lands within two months from today, or it shall be done through the Court (at their costs) on plaintiff's petition and, thereafter, the whole area in suit (Schedule A) shall be partitioned by metes and bounds by a commissioner appointed for the purpose and a separate Takhta of 8 annas and odd (as claimed in the plaint) shall be aliened to the plaintiff.""

The suit was decreed and admittedly separate Takhta in favour of the plaintiffs and their ancestors was carved out in respect of 8 annas and odd share in the touzi. Admittedly, possession was delivered over the same on 4-3-1940 (the words have been underlined by me for emphasis). Thus, it is clear that the ancestors of the present plaintiffs had obtained decree against the ancestors of the present defendants.

12. Thus, from the judgment and decree of that Title Suit No. 63 of 1937, it is clear that the plot in question (1644) fell to the share of the ancestors of the present plaintiffs, and possession was also given to the ancestors of the present plaintiffs after removing all the temporary structure put up by defendants 1 to 11 of that suit (who were ancestor of the present defendants) and only shortly thereafter the ancestors of the present defendants accepted the paramount title of the plaintiffs and executed Rirayanama on 4-4-1940 In this suit (Title Suit No. 63 of 1937). it was also held that lands in suit were not Mela grounds.

13. It is also admitted by the defendants that the plaintiffs and their ancestors inducted Bhagwan Ram and Bharat Ram (Defendants' ancestors) over the plot in question (though the defendants dispute the area--according to defendants, area settled was lesser than what is claimed by the plaintiffs). It is further admitted that the defendants were paying rent to the plaintiffs till before they stopped paying rent.

The only dispute is that, according to the plaintiffs, the structures were

constructed by them and their ancestors whereas, according to defendants, those structures were constructed by them.

14. It is desirable to mention another relevant fact that survey parcha was issued in favour of the plaintiffs with respect to the suit land. This was contested by the defendants u/s 103 (A) of the Bihar Tenancy Act and the order (Ext. 17/C) shows that it was decided in favour of the plaintiffs and. thus, the defendants had lost in the proceeding u/s 103 (A) of the Bihar Tenancy Act on 24-10-1962,

15. Another important fact to be noticed in this case is that the plaintiffs had filed rent receipts granted by the State of Bihar and they related to the plot in suit as well and, thus, the plaintiffs were claiming to be in possession of the suit land as raiyat and not as tenure holder. (Lines have been underlined by me for emphasis).

16. It is desirable to mention here that the defendants have relied upon the order of the Deputy Collector, Land Reforms (Ext. J.) dated 31-3-1967 and Exts. I and I/1, rent receipts granted by the State of Bihar in their favour. According to the defendants the order of the Deputy Collector, Land Reforms (Ext. J) and rent receipts, just referred to above, show that the State had recognised the Defendants as tenants of the suit land. It is relevant to state here that the plaintiffs filed the order of the Additional Collector dated 5-7-1969 (Ext. 16 (c) to show that the operation of the order of the Deputy Collector, Land Reforms (Ext. J.), dated 31-3-1967 was subjected to a decision of the suit (the words have been underlined by me for emphasis).

17. The present suit was pending at the relevant time. Thus, in view of the fact that the instant suit was pending, there was no finality of the order of the Deputy Collector, Land Reforms (Ext. J), and the defendants cannot be allowed to take the advantage thereof which was subject to the decision of the suit and, in this view of the matter, in my opinion, it cannot be held that the defendants were recognised as tenant of the suit land.

18. The State of Bihar has never taken any step for enforcing its right, if any, over the plot in suit, although the estate vested in 1956.

19. Even though the defendants had lost in proceeding u/s 103 (A) of the Bihar Tenancy Act, as already stated above, the State of Bihar never thought it proper to pursue the matter.

20. I have mentioned the aforesaid facts which, in my opinion, are very relevant for the purpose of deciding the points involved in the present appeal.

21. By order dated 18-9-1981 passed by this Court, the State of Bihar was made a party respondent u/s 4 (ee) of the Bihar Land Reforms Act.

22. The present appeal was placed before the learned single Judge for hearing and the learned single Judge referred the case before a Division Bench for hearing by Ms order dated 13-10-1982.

23. The main question that arises to be decided in this appeal is whether the raiyati interest of the plaintiffs-appellants merged in their superior proprietary interest.

24. It is well settled that the inferior raiyati interest will vest in the superior proprietary interest only if the entire (sixteen annas) interest, i. e., raiyati and proprietary, vests in one person at the same time and in the same right. Unless the entire sixteen annas interest of the landlord and the tenant vests in one person at the same time and in the same right, the question of merger of inferior right into superior one does not arise.

25. Here, in the instant case, it is admitted that the plaintiffs were not the sixteen annas proprietors. It is further admitted that, when survey purchases were issued in favour of the plaintiffs with respect to the suit lands the defendants-respondents contested the same in a proceeding u/s 103 (A) of the Bihar Tenancy Act and the order in that proceeding (Ext. 17/C) shows that it was decided in favour of the plaintiffs. Thus, the defendants had lost in the proceeding u/s 103 (A) of the Bihar Tenancy Act and the plaintiffs were recorded as raiyats with respect to the suit lands. Not only this, the State of Bihar as well issued rent receipts in favour of the plaintiffs-appellants with respect to the suit lands and accepted the plaintiffs-appellants to be in possession of the suit lands as raiyats and not as tenure holders.

26. Learned counsel appearing for the defendants-respondents in support of his submission to the effect that there was a merger of the inferior raiyati interest into the superior proprietary interest, drew my attention to the order of the Deputy Collector, Land Reforms (Ext. J) dated 31-3-1967. In my opinion. this order of the Deputy Collector, Land Reforms (Ext. J) does not support the contention put forth by the learned counsel for the defendant-respondents, as the order of the Additional Collector dated 5-7-1969 (Ext. 16/C) clearly mentions that the operation of the order of the Deputy Collector, Land Reforms (Ext. J) dated 31-3-1967 was subject to a decision of the suit. Though it will bear repetition, it is desirable to say that on the relevant date, i. e., 31-3-1967, when the Deputy Collector. Land Reforms, passed the order as well as on 5-7-1969, when the Additional Collector passed the order, the present suit was pending. Hence I hold that there was no finality of the order of the Deputy Collector, Land Reforms (Ext. J) dated 31-3-1967 on which the learned counsel for the defendants-respondents has placed much reliance and in this view of the matter, in my opinion, it cannot be held that the defendants were recognised as tenants of the suit lands by the order of the Deputy Collector, Land Reforms (Ext. J) dated 31-3-1967. Even, the State of Bihar has never taken any step for enforcing its right, if any, over the plot in suit, although the estate vested in 1956 and even though the defendants had lost in the proceeding u/s 103 (A) of the Bihar Tenancy Act, as already stated above, the State of Bihar never thought it proper to pursue the matter, rather the State of Bihar in issuing rent receipts in favour of the plaintiffs with respect to the plot in suit had recognised the plaintiffs as

raiyaats of the plot in question. Learned counsel for the defendants has relied upon the case of Hriday Narain Singh and Others Vs. Kali Charan Singh and Others, . This case, in fact, on the facts of that case, does not help the defendants. In that case, the sixteen annas proprietor had purchased the entire right of the lessee. In that view of the matter, it was held that the inferior interest merged in the superior interest. In my opinion, this case relied upon by the learned counsel for the defendants is clearly distinguishable.

27. Plaintiffs-appellants, not being the sixteen annas proprietors and the entire sixteen annas interest of landlord and tenant having not vested in them. I hold that the question of merger of the inferior raiyati interest into that of the superior proprietary interest does not arise. I further hold that, on the admitted facts of this case, as mentioned above, the raiyati interest of the plaintiffs-appellants never vested in the State of Bihar. Rather, the State of Bihar recognised the plaintiff-appellants as raiyaats of the plot in question. In this view of the matter. I hold that the reliance placed by the learned counsel for the defendant-respondents on the provisions of Section 21 (1) of the Bihar Tenancy Act is wholly misconceived. I further hold that, on the facts and in the circumstances of this case, there has been no ouster of the plaintiffs by the State of Bihar.

28. Learned counsel appearing for the defendants-respondents also relied on a decision of the Supreme Court in the case of Suraj Nath Ahir and Others Vs. Prithinath Singh and Others, . In my opinion, this case is not at all applicable in the facts of the present case. In the case of Suraj Ahir v. Prithinath Singh (supra), the appellants of that case were not in possession of the lands as mortgagees, as the mortgage had already been redeemed and it was held that their position may be that of a trespasser or in other capacity and in that view of the matter, it was held that the land in suit did not come within Clause (e) of Section 6 of the Bihar Land Reforms Act. as it stood then. It was further held in that case that mere subsisting title to possession over certain land on the date of vesting could not make the land under his khas possession. In the present case, the plaintiffs-appellants were recognised as raiyaats of the plot in suit by the State of Bihar. The State of Bihar issued rent receipts also in their favour and the plaintiffs-appellants were also recorded as raiyaats after having won in the proceeding u/s 103 (A) of the Bihar Tenancy Act. In that view of the matter, in my opinion, the case of Suraj Ahir v. Prithinath Singh, (supra) relied upon by the learned counsel for the defendants is clearly distinguishable. I hold that the raiyati interest of the plaintiffs never vested in the State of Bihar and in that view of the matter Section 4 (f) of the Bihar Land Reforms Act, 1950, has been wrongly relied upon by the learned counsel for the defendants-respondents.

29. There is yet another important aspect of the case which has to be considered, Could the defendants-respondents, who were admittedly inducted over the plot in question by the plaintiffs and their ancestors and who, admittedly, accepted the paramount title of the plaintiffs-appellants and executed Kirayanama and paid rent to the plaintiffs (till before they stopped), now turn

round and defeat the plaintiffs--appellants" paramount title on the plea that the plaintiff-landlord's title had since after commencement of the tenancy, terminated by the operation of law by virtue of the provisions of the Bihar Land Reforms Act, 1950, whereby the entire proprietary interest of the estate vested in the State of Bihar? In other words, could the defendants-respondents contend that the title of the plaintiffs-appellants had since come to an end after the commencement and during the continuance of the tenancy and, hence, the doctrine of Estoppel was not attracted?

30. It is well settled that a tenant who has been put into possession cannot deny his landlord's title, however, defective it may be, so long he has not openly restored possession by surrender. The well established principles of Estoppel between the landlord and the tenant, based upon the principles of equity and good-conscience have always been held to be applicable even in India. In the instant case, on the defendants' own case, the defendants had not put up any title of their own and did not claim to be entitled to the premises in their own right. It is also well settled that the principle of Estoppel arising from the contract of tenancy is based upon a healthy and salutary principle of law and justice that a tenant who could not have got possession but for his contract of tenancy admitting right of the landlord should not be allowed to launch his landlord in inequitable situation taking undue advantage of the possession that he of and any probable defect in the title of his landlord. It is on account of such contract of tenancy and as a result of the tenant's entry into possession on the admission of the landlord's title that the principle of Estoppel is attracted. As stated earlier, the learned counsel for the State has also not supported the land taken by the defendants-respondents. The principles of Estoppel, in my opinion, is also applicable in cases not strictly covered by Section 116 of the Evidence Act.

31. In the present case, as already stated above, the defendants-respondents admit their induction in the plot in question by the plaintiffs-appellants. The defendants-respondents also admit that they have been paying rent to the plaintiff-appellants till before they stopped payment of rent. In this view of the matter and in view of the settled position in law, as mentioned above, the defendants-respondents could not be permitted to deny the plaintiffs-appellants' title before a notice on their part to the plaintiffs-appellants and before surrendering or solemnly renouncing the possession. The consensus of judicial opinion has been that possession must be surrendered before any defect in the landlord's title is allowed to be proved. However, the aforesaid principle of surrendering and solemnly renouncing possession is subject to certain exceptions. Exceptions to this rule, by and large, are (i) where the plaintiff or the defendant does not seek either to evict or to defend his title as a landlord on the strength of a tenancy but on the strength of his title and the erstwhile tenant having acquired an indefeasible right in himself is opposing the stand on the strength of a title in himself, say, for instance, as a vendee; (ii) where the tenant has been evicted by a person holding a title paramount; (iii) where under a treatment or compulsion of being evicted by the true owner or by a person

claiming better title than the landlord, the lessee attorns to such third person with notice to his original lessor. In either of these cases, the actual physical possession need not be given up for the possession in such circumstances, under the lease, will be deemed to have been surrendered and a new title created either as a owner or as a new lessee under the true owner or the paramount title holder. Reference for the aforesaid principles of law be made to the case of Jaikaran Singh Vs. Sita Ram Agarwalla and Others, . Thus, on the facts of this case, as mentioned above, the defendants-respondents (tenants) who inducted on the plot in question and put into possession and having paid rent to the plaintiffs appellants cannot deny the plaintiffs-appellants (landlord"s) title so long as they did not openly restore possession by surrender and they are estopped from denying the plaintiffs-landlords" title on the principles of Estoppel, as mentioned above. Thus, in view of what I have held above, there is no substance in the submissions advanced by the learned counsel for the defendants-respondents.

32. In the result, the plaintiffs" appeal must succeed and is allowed with costs throughout. The judgment and decree of the lower appellate court are set aside and that of the trial court restored.

S.K. Jha, J.

I agree.