

(2014) 02 PAT CK 0040

In the Patna High Court

Case No : Letters Patent Appeal No. 85 of 1993 in First Appeal No. 170 of 1974

Maharani Durgeshwari Sahi and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 24-02-2014

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 3, 4, 4(a), 5, 7A

Citation : AIR 2014 Patna 103

Hon'ble Judges : Rekha M. Doshit, C.J.; Ashwani Kumar Singh, J

Bench : Division Bench

Advocate : Mrigendra Kumar, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Rekha Manharlal Doshit, C.J.—This Appeal under Clause 10 of the Letters Patent preferred by the appellants arises from the judgment and order dated 12th August, 1993 passed by the learned single Judge in Appeal from Original Decree No. 170 of 1974. The appellants-wife, son and daughter of late Maharaja Bahadur Gopeshwar Prasad Sahi of Hathwa Estate, District-Gopalganj instituted title suit No. 43 of 1965 against the State of Bihar in the Court of Sub-Judge, Saran at Chapra for declaration of title and recovery of possession of the suit property. The suit property is a piece of land admeasuring 13 acres of Municipal Survey No. 5254, Holding No. 275, Circle No. 19, Ward No. 3 of Chapra Municipality with several constructions made thereon. According to the plaintiffs, the suit property was a dwelling house where the plaintiff No. 1 used to reside. A small portion of the suit property was being used by the Late Maharaja for collection of rent. However, the rest of the estate being the homestead property could not have been vested in the State Government by operation of the provisions contained in Bihar Land Reforms Act, 1950 (hereinafter referred to as "the Act").

2. The suit was contested by the defendant State of Bihar. The defendant denied that the suit property was a big residential house and that the house in question

was being used by Hathwa Raj for residence. Before vesting, the house was being used as a Kutchery and since vesting also, the house was being used as Kutchery. It was the specific case of the defendant that no portion of the building in the suit property was ever used by the plaintiffs or their ancestors for residential purpose.

3. On the aforesaid pleadings, the trial court framed the issues, inter alia, whether the suit was barred by law of special limitation under the provisions of the Bihar Tenancy Act and whether the property in suit vested in the State of Bihar. The Civil Court has, under its judgment and order dated 30th November, 1973, held that the suit was barred by limitation and that the suit property had vested in the State of Bihar. The Civil Court held that the plaintiffs had failed to prove that the plaintiffs or their ancestors had ever resided in the suit property. Consequently, the Civil Court dismissed the suit.

4. Feeling aggrieved, the plaintiffs preferred above-referred appeal from Original Decree No. 170 of 1974 before this Court. This Court under the judgment and order dated 12 August, 1993 confirmed the decree passed by the Civil Court and dismissed the appeal. Although, the court held that the suit was filed within the period of limitation, on facts, the learned single Judge held that the suit property had vested in the State of Bihar under Notification dated 19 May, 1952 issued u/s 3 of the Act. The learned single Judge has confirmed the finding that the house in the suit property was being used as Kutchery and that the suit property was not a homestead property. Feeling aggrieved, the plaintiffs have preferred this Appeal.

5. Learned advocate Mr. Mrigendra Kumar has appeared for the appellants. He has relied upon Section 4(a) read with Section 5 of the Act. Mr. Mrigendra Kumar has strenuously urged that any estate primarily used as dwelling house or homestead cannot vest in the State Government by operation of Section 4 of the Act.

6. Section 3 of the Act provides for vesting of an estate or tenure in the State. Section 4 of the Act provides for consequences of the vesting of an estate or tenure. Section 5 of the Act provides for the effect of vesting of homesteads comprised in an estate or a tenure. Section 5 of the Act reads as under:

5. Homesteads of intermediaries to be retained by them as tenants.- (1) With effect from the date of vesting all homesteads comprised in an estate or tenure and being in the possession of an intermediary on the date of such vesting shall, subject to the provisions of sections 7A and 7B be deemed to be settled by the State with such intermediary and he shall be entitled to retain possession of the land comprised in such homesteads and to hold it as a tenant under the State free of rent:

Provided that such homesteads as are used by the intermediary for purposes of letting out on rent shall be subject to the payment of such fair and equitable ground rent as may be determined by the Collector in the prescribed manner.

(2) If the claim of an intermediary as to his possession over such homestead or as to the extent of such homesteads is disputed by any person within three months from the date of such vesting, the Collector shall, on application, make such inquiry into the matter as he deems fit and pass such order as may appear to him to be just and proper.

7. The plain reading of the above-referred provisions will make the above submission unacceptable. The contention that the homestead land cannot vest in the State Government is totally misconceived. On the contrary, Section 5 of the Act refers to the "date of vesting of homesteads". This necessarily implies that homestead estate or tenure will vest in the State Government as envisaged by Sections 3 & 4 of the Act. The section, however, protects the possession of the persons in possession on the date of vesting. It provides that the persons in possession on the date of vesting would continue to be in possession and retain possession of such homesteads and hold it as a tenant under the State free of rent. Sub-section (2) of Section 5 provides for raising dispute by making an application to the Collector within three months from the date of such vesting. Thus, absence of application by the intermediary against the vesting within three months of the vesting will lead to inference of no dispute in respect of the vesting the property in question.

8. In the present case, the plaintiffs failed to prove that on the date of vesting they were in possession of the suit property or that the suit property was used by the plaintiffs or their ancestors for their residence. In absence of the proof of possession on the date of vesting, the plaintiffs cannot succeed in recovery of possession. The plaintiffs have failed before the Civil Court as well as before the learned single Judge to prove that on the date of vesting the plaintiffs or the plaintiff No. 1 used the suit property as a dwelling house. Before us also, the plaintiffs have failed to prove their possession or the possession of their ancestors of the suit property as dwelling house. On the contrary, as recorded hereinabove, all evidence on record suggest that the suit property was always used as a Kutchery by the erstwhile Hathwa Raj and is still used as Kutchery. In absence of any evidence to the contrary, the learned single Judge has rightly dismissed the appeal. The present Letters Patent Appeal is devoid of any merit. Letters Patent Appeal is dismissed with cost throughout.