
(1993) 12 PAT CK 0025

In the Patna High Court

Case No : Appeal from Appellate Decree No. 86 of 1986 (R)

Maheshwar Mahto and Others

APPELLANT

Vs

Bati Mahatain and Another

RESPONDENT

Date of Decision : 12-12-1993

Acts Referred:

Citation : (1993) 12 PAT CK 0025

Final Decision : Dismissed

Judgement

R.N. Sahay, J.—This appeal is by the defendants against the Judgment and decree dated 26-4-1986 of the 1st Additional Subordinate Judge. Chaibasa which affirmed the judgment and decree dated 26-5-1982 of the Munsif, Saraikela, in T.S. No. 8 of 1979 by which plaintiffs suit was decreed in terms of the relief claimed in the plaint.

2. The plaintiff brought the suit out of which this appeal arises for declaration of their right, title and possession over the land described in Schedule of the plaint. The suit land appertains to several plots of Khata No. 75. In Mauja, Chunidih, in the district of Singhbhum, the total area being 5.67 acres. The plaintiff has further sought declaration that the order passed by the Sub-Divisional Officer, Saraikela in Ceiling Case No. 5 of 1970 and the order passed in Misc. Appeal No. 77 of 1971 by the Deputy Commissioner, Singhbhum were illegal, void and without jurisdiction.

3 . The brief facts leading to the institution of the suit are these. The recorded raiyat of the suit land was Narayan Mahto who died leaving his widow Sulochana Mahatain who was original plaintiff in the suit and two married daughters namely Rupa and Bati Mahatain. By means of a sale deed (Ext. 1) dated 16-7-1970 the plaintiff Sulochna Mahatain, the widow of the recorded tenant transferred the suit land in favour of her two daughters for consideration.

4. The original defendants filed a pre-emption application purporting to be u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus

Land) Act. The application was rejected by the Sub-Divisional Officer, Saraikela vide L.C. Case No. 5/70-71 by order dated 22-12-1970. The learned Sub-Divisional Officer held that the application was not maintainable as Sulochana Mahatain has transferred the land to her own daughters.

5. The defendant-appellant preferred Revision Appeal No. 77/77 before the Deputy Commissioner, Singhbhum who by his order dated 4-7-1972 allowed the appeal. The Deputy Commissioner overlooked the order of the Sub-Divisional Officer, Saraikela who has held that as the land was transferred in favour of daughters, the defendants though, co-sharers of the recorded tenant had no right of pre-emption, the Deputy Commissioner allowed the appeal on the footing the defendants were the co-sharers of the recorded tenant, they were entitled to an order of pre-emption.

6. The plaintiff then filed a petition by way of review before the Sub-Divisional Officer, Saraikela that the application of the defendant for pre-emption although allowed by the Deputy Commissioner as stated earlier was not maintainable for the reasons that it was premature as registration was not complete on the date of filing of the application u/s 16(3) of the Act. The Sub-Divisional Officer, Saraikela rejected the application of the plaintiff in the face of the order of the Deputy Commissioner. The plaintiff was directed to execute the sale deed. This order was passed on 27-8-1977.

7. The plaintiff challenged the order of the Sub-Divisional Officer, aforesaid before the Collector as also the Board of Revenue but could not succeed.

8. The appellant in the written statement pleaded that the order of the Revenue authorities challenged in the suit was in accordance with law and not without jurisdiction as contended by the plaintiff. The order of the Deputy Commissioner in Revenue Case No. 77/80 and become final and could not be challenge in Civil Court. The jurisdiction of the Civil Court was barred u/s 43 of the Bihar Land Ceiling Act.

9. The learned Munsif, Saraikela held that the pre-emption application filed by the defendant was premature on account of the fact that the registration of the sale-deed was completed on 28-1-1971 along after filing of the petition u/s 16(3) of the Act. The sale deed was executed on 16-7-1970 and the defendant Nos. 1 to 7 had filed an application u/s 16 (3) of the Act, 1962 before the Sub-divisional Officer, Saraikela on 28-8-1970. The registration of the sale deed was admittedly completed on 21-8-1971. According to Section 60 of the Indian Registration Act, the registration is completed only when the requirements prescribed in the said section are complied. Section 61 of the Indian Registration Act provides that when endorsement and the certificate referred to and mentioned in Sections 59-60 has been copied in the margin of the register book then registration of the document shall be deemed to complete. In *Sharnappa v. Pathru*, Sahab AIR 1963 Mys 35, it was held that the compliance of the requirement of Sections 60-61 of the Act is in conformity with public policy because registration is merely required

for giving notoriety to the deeds. These requirements cannot be regarded as merely ministerial acts but essential requirements. The defect could not be cured by virtue of Section 87 of the Act and that, therefore, the document is not duly registered document, in absence of compliance of Sections 60 & 61 of the Registration Acts.

10. The learned Munsif held that as the order of the Revenue authority granting pre-emption was null and void. The suit for declaration of title and consequential relief was not barred u/s 43 of the Bihar Land Ceiling Act, 1962. The learned Munsif further held that the suit was not barred by limitation. According to the learned Munsif, the limitation will run from November, 1978 when the defendant threatened to take forcible possession of the suit land.

11. The additional District Judge, Singhbhum. on appeal, affirmed the finding of the learned Munsif that the order was void ab initio, hence the jurisdiction of the Civil Court was not barred by Section 43 of the Act. The learned Additional District Judge and the learned Munsif both based their findings on the decision reported in Nand Kishore Singh and Another Vs. Satya Narain Singh and Another, .

12. The only substantial question of law which arises in this appeal is as to whether the suit filed by the respondent was not maintainable in view of Section 43 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961. The learned Counsel for the appellant was permitted to argue on the question of limitation although the appeal was not admitted on the question of limitation.

13. In Hiralal Agrawal etc. Vs. Rampadarath Singh and Others, etc., the question for consideration was as to whether the application for pre-emption filed four days prior to actual completion of the registration was premature. It was held by the Supreme Court following Radhakisan Laxminarayan Toshniwal Vs. Shridhar Ramchandra Alshi and Others, that where a statute provides right of pre-emption, the right accrue only after registration is complete. A suit filed before the sale-deed is registered is premature as the right of pre-emption under the statute does not accrue unless the transfer becomes effective through a registered deed. But the Supreme Court further held in the above case, although the application was filed before the actual registration of the sale-deed but since the Collector took cognizance of it, when the registration was complete, the application for pre-emption was properly entertained and disposed of in the instant case, the order sheet dated 31-7-1974 of L.C. Case No. 5/70-71 (Ext. 3/A) shows that the sale-deed was duly registered on 18-9-1974. The application for preemption was entertained prior to 22-12-1970, when the Sub-Divisional Officer (Collector under the Act) passed the order rejecting the claim of the defendant. The application was, therefore, obviously premature and the order of pre-emption passed in appeal was void. This being the position, the suit was not barred u/s 43 of the Act.

14. The learned Counsel for the appellants has argued that the suit not having been instituted within 3 years from the date of the order for preemption which was passed in 1974, the suit was barred by limitation under Article 58 of the Indian Limitation Act. Article 58 provides three years limitation in respect of suit, to obtain any other declaration and the limitation commences when the right to sue first accrues. The words "right to sue" ordinarily means right to seek relief by means of legal proceeding. Generally right to sue accrues only when the cause of action arises i.e. right to prosecute obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or there is clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. *Mt. Bolo v. Mt. Koklan and Ors.* 1930 PC 270 and *Gannon Dunkerley and Co., Ltd. Vs. Union of India (UOI)*, . The decision have been followed by the Supreme Court in the *State of Punjab and Ors. v. Gurdev Singh* 1991 BBCJ 182 . In this case right to sue accrued to the plaintiffs when he was dispossessed of his property by a void order of pre-emption passed on 4-7-1972. As the suit was instituted within 12 years of the dispossession, the suit was will within the time. This Article (Article 58) only to a suit for declaration simpliciter and not to a suit for declaration of title in which a declaration of the kind and envisaged under Article 58 also appended as one of the relief. In *Gouranga Sahu and Others Vs. Bhaga Sahu and Another*, , it was held that Article 58 of the New Limitation Act would be attracted in case of the suit for declaratory reliefs only and not to a suit for partition. The learned Counsel for the appellants has submitted that unless the order of the pre-emption was declared to be invalid and as a matter of fact such declaration was claimed in the suit, the plaintiff was not entitled to get a declaration with regard to his title. In other words, the contention is that the question of title was linked in the question of illegality of the order of pre-emption. This contention is unacceptable In *Babadaya Singh v. Karan Singh* 1985 PLR 953 , there was mutation in favour of the party, sanctioned on 6th May, 1960 and the suit was filed on 12th October, 1971 i.e. within 12 years of sanctioning of the mutation. It was held that Article 58 of the Limitation Act is not applicable as even if it is taken from the back date of the sanctioning of mutation the possession of the defendant was not proved to be for more than 12 years. In *Velayudhan Sukumaran and Others Vs. Narayana Pillai and Others*, . It was held that the suit to recover property comprised in order u/s 45 of the Cr.P.C. falls within scope of Article 65 of the Indian Limitation Act.

15. In the *State of Punjab and Ors. v. Gurdev Singh* 1991 BBCJ 182 (supra), it has been held that if an Act is void or ultra vires, it is enough for the Court to declare it so and it collapses automatically. It need not be set aside. The aggrieved party can simply seek a declaration that it is void and not binding upon him.

16. In *Smit v. East Elloe Rural District Council* 1956 AC 736. Lord Radcliffe observed:

An order even if not made in good faith, is still an act capable of legal

consequences. It bears no brand of invalid upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalid and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeachable of orders.

Prof. Wade in Administrative Law 6th Ed. page 352 states :

Principle stated by Law Lord Radcliffe in 1956 AC 736

must be equally true even where the "brand of invalidity" is plainly visible, for their also the order can effectively be resisted in law only by obtaining the decision of the Court. The Supreme Court in State of Punjab and Ors. v. Gurdev Singh 1991 BBCJ 182 (supra) after referring to the observations of Lord Radcliffe and Proff Wade observed .

it will be clear from these principles the party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time limit expires, the Court cannot give the declaration sought for.

But the Supreme Court made above these observations in the case of dismissal of Civil Surgeon in violation of Article 311 of the Constitution of India and hence principle laid down therein is not applicable in the case of relief declaration of title and recovery of possession.

17. For the reasons stated above, both the contention of the learned Counsel for the appellants fails. This appeal is accordingly dismissed and the decree of the Court below is affirmed. There shall be no order as to costs.