

(1984) 10 PAT CK 0005

In the Patna High Court

Case No : Appellate Decree No. 572 of 1980

Mangninath Tiwary and Others

APPELLANT

Vs

Phool Mohammad Dhobi and Others

RESPONDENT

Date of Decision : 19-10-1984

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 35, 6(1)
Civil Procedure Code, 1908 (CPC) — Section 9
Specific Relief Act, 1963 — Section 42

Citation : AIR 1985 Patna 338

Hon'ble Judges : S. Ali Ahmad, J

Bench : Single Bench

Advocate : Thakur Prasad, for the Appellant; Sheo Kumar Singh, for the Respondent

Final Decision : Dismissed

Judgement

S. Ali Ahmad, J.—The plaintiff-respondents filed a suit for declaration of title with respect to Plot No. 3136, Khata No. 592 situate in village Balia with in Goriyakothi police station in the district of Saran. According to the plaintiffs' case, one Madar Dhobi was the raiyat of the suit land under the tenure holders. When their intermediary right vested in the State of Bihar, they filed returns under the Land Reforms Act showing it to be their Bakast land. Subsequently rent was settled in their favour. Thereafter, the plaintiffs, who are descendants of Madar Dhobi filed an application praying that rent should be fixed in their names. The Deputy Collector, Land Reforms, refused their prayer saying that the order passed in favour of the plaintiffs cannot be revised. The plaintiff-respondents, therefore, filed a suit for declaration that the disputed land is their raiyati land and the defendants have no right in the same. Another declaration that was prayed for was that the fixation of rent in favour of the defendants was illegal and the order to that effect passed by the Deputy Collector was against law.

2. The suit was contested by the defendants. Their case, inter alia, was that the

name of Madar Dhobi showing him as the raiyat of the land was wrongly recorded in the record of rights. According to them, the land was Bakast of the tenure holders and they were in its possession. According to them, therefore, on the vesting of their intermediary right in the State of Bihar, the land became their raiyati land u/s 6 of the Bihar Land Reforms Act.

3. The courts below were of the opinion that the survey entry showing Madar Dhobi as a raiyat of the land in question was correctly recorded. It was also held that the plaintiffs had title to the suit land and were in its possession. The courts below rejected the argument advanced on behalf of the defendant-appellants that the suit was hit by Section 42 of the Specific Relief Act. They, therefore, decreed the suit. Thereafter, this second appeal has been filed.

4. Mr. Thakur Prasad being aware of his limitation u/s 100 of the CPC did not very rightly challenge the findings of fact. He only attacked the decree on the ground of maintainability of the suit on two counts, namely, Section 42 of the Specific Relief Act and Section 35 of the Bihar Land Reforms Act propose to consider that.

5. According to Mr. Thakur Prasad, the plaintiffs had sought for only declaration of their title and had not prayed for any consequential relief, i.e. either for confirmation of possession or for recovery of possession. This, according to learned counsel, was fatal to their suit, which should be held to be not maintainable. Learned counsel in that connection referred to the decision in the case of Mt. Janki Kuer and Another Vs. Baldeo Choudhary and Others, . In that case the suit for partition was held to be not maintainable on the ground that the plaintiffs had not prayed for consequential relief in the shape of either confirmation of possession or for recovery of possession. It is significant to note that the suit was held to be not maintainable on the ground that the plaintiffs had earlier been held to be out of possession. In this case, on the other hand, the finding is that the plaintiffs are in possession of the suit property. In my opinion, Mr. Sheo Kumar Singh has rightly referred to the decision in the case of Pratap Narain Das and Another Vs. Sri Krishna Chandra and Others, wherein it has been held that if the plaintiff is in possession of the suit property then it is not necessary to seek any consequential relief in the form of either confirmation of possession or recovery of possession. I, therefore, see no merit in this argument.

6. The next argument of Mr. Thakur Prasad that the suit is barred u/s 35 of the Bihar Land Reforms Act has also no force. In the case of Gurucharan Singh Vs. Kamla Singh and Others, , it has been held that there is nothing in Section 35 of the Bihar Land Reforms Act depriving the civil courts of the jurisdiction to decide questions of declaration of title and consequential relief of possession. It has been further said that Section 35 of the Bihar Land Reforms Act deals with different types of suit. Section 6(1) of the Act also contains no inhibition against [he civil courts" power to decide the issue of title and right to possession of the plaintiffs and as a necessary corollary the claim of actual possession set up by

the defendants. This decision, therefore, completely negatives the argument of Mr. Prasad and it has to be held that notwithstanding Section 35 of the Act, Civil Courts have jurisdiction to entertain suits for declaration of title also. For these reasons, I do not see any merit in this appeal, which is dismissed but without costs.