
(1996) 03 PAT CK 0007

In the Patna High Court

Case No : Appeal from Original Decree No. 619 of 1979

Mithu Tanti and Others

APPELLANT

Vs

Raghunath Prasad Tanti and Others

RESPONDENT

Date of Decision : 13-03-1996

Acts Referred:

Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 — Section 20, 20(1), 20(2)

Citation : (1996) 2 PLJR 132

Hon'ble Judges : S.N. Mishra, J

Bench : Single Bench

Advocate : Nawai Kishore Sinha and Ajay Kumar Sinha, for the Appellant;
Prakash Rai and R.C. Sinha, for the Respondent

Final Decision : Allowed

Judgement

S.N. Mishra, J.—Defendants first party is the Appellant in this First Appeal which arises out of the judgment and decree dated 21 st May, 1979 passed by the erned Sub-Ordinate Judge, Sahebgunj the Plaintiff filed a suit for specific performance of contract with a prayer for direction to the Defendants 1st party to execute a (sic)-deed in favour of the Plaintiff. It is al-(sic) that the Defendant being the karta of (sic) family, has executed an agreement for the suit property for a consideration, 11,900/- out of which a sum of Rs. 1000/- was paid to the Defendants at the (sic) of execution of the agreement and (sic) Rs. 1,000/- on 14.12.1976. After execut- (sic) the said agreement the Defendant first (sic) refused to execute the sale deed with respect to the disputed property which gives the cause of action for the Plaintiff to file the suit, for the relief sought for which was registered as Title Suit No. 39 of 1976. The Court on consideration of the material both oral and documentary, has decreed the suit and directed the Defendants to execute the sale deed in favour of the Plaintiff within the time mentioned therein In terms of the prayer made in the plaint.

2. Aggrieved by the judgment and decree passed by the Court below the

Defendant first party have filed the instant appeal on various grounds but the learned Counsel for the Appellants has ultimately confined his argument to the maintainability of the suit itself and has not seriously challenged the findings arrived at by the Court below on different Issues framed in the suit. The learned Counsel has fairly conceded that the findings of the Court below are all based upon correct appraisal of the evidence both oral and documentary and as such the same cannot be challenged.

3. In support of the appeal the principal, and, infact, the only argument of the learned Counsel for the Appellants is that the instant suit, for the reliefs sought for is not maintainable in view of Section 20 of the Santal Parganas (Supplementary Provisions) Act, 1948 (hereinafter referred to as the Act). While developing his argument learned Counsel has relied upon various provisions of the Act in support of his contention. It is submitted that the Appellant being a raiyat of the land in question has acquired a raiyati interest thereon and as such the said, land cannot be transferred in any manner whatsoever in view of the bar created u/s 20 of the Act.

4. The learned Counsel for the Plaintiff Respondent, however, controverted the argument of the Appellant and firstly submitted that since the question of maintainability of the suit has neither been raised in the pleading nor has been raised in the Court below nor any issue has been framed and as such, the same cannot be allowed to raise in the first appeal. it is further submitted that the land in question is a "Khas-Mahal Land" which is situated in the town of Sahebgunj and, as such the provisions of the Act shall not apply in the instant case, in as much as, the Appellant is a lessee with respect to the land, in question, which is exclusively governed under the provisions of Khas Mahal Manual as well as the statutory rules framed thereunder. As regards the first contention of the learned Counsel for the Respondent regarding maintainability of the suit, it is true that no such issue has been framed as the Defendant and Appellant has neither pleaded nor raised the question at any point of time in the trial Court, but since the judicature of the Court has been challenged, this Court cannot ignore the same. Having regard to the order, I propose to pass in this appeal, it is not necessary to state the facts and deal with the rival contentions of the parties in detail. Suffice it to say that Section 20 of the Act, the transfer of the land in any manner whatsoever which comes within the Santal Parganas is absolutely barred. In order to appreciate the argument of the learned Counsel for the Appellant, it is better to quote Section 20 and relevant Sub-sections of the Act which read as follows:

20. Transfer of raiyat's rights.-(1) No transfer by a raiyat of his right in his holding or any portion thereof, by sale, gift, mortgage, will, lease or any other contract or agreement, express or implied shall be valid unless the right to transfer has been recorded in the record- of- rights, and then only to the extent to which such right is so recorded:

(3) No transfer in contravention of sub-Section (1) or (2) shall be registered or

shall be in any way recognised as valid by any Court, whether in exercise of Civil criminal or revenue jurisdiction.

(4) No decree or order shall be passed by any Court or Officer for the sale of the right of a raiyat in his holdiny or any portion thereof, nor shall any such right be sold in execution of any decree 5 or order unless the right of the raiyat to transfer has been recorded in the record- of-rights or provided in this Act and then only to the extent to which such right is so recorded or provided.

(5) If at any time it comes to the notice of the Deputy Commissioner that a transfer of land belonging to a raiyat who is a member of the Scheduled tribes as specified in part III of the Schedule to the Constitution (Scheduled Tribes) Order, 1950, has taken place in contravention of Sub-section (1) or (2) or by any fraudulent method (including decrees) obtained in suits by fraud collusion), he may, after giving reasonable opportunity to the transferees, who is proposed to be evicted, to show cause and after making necessary enquiry in the matter evict the transferee from such land without payment of pensation and restore it to the transferor or his heir, or in the case the transferor or heir is not available or is not willing to agree to such restoration, re-settle it with Anr. raiyat belonging to the Scheduled Tribes according to the village custom for the disposal of an abandoned holding.

5. After having gone through the materials on record and submissions of the learned Counsel for the parties, prima facie I am of the view that the suit, for the relief sought for is not maintainable in view of the bar created u/s 20 of the Act provided, of course, the conditions, in lerned of provisions of the Act are fulfilled, (sic)stated above, the issue regarding maintaxability of the suit has not been fram(sic) and, as such, the Court below had no (sic) casion to deal with the question in hand (sic) order to answer this question raised by learned Counsel, some facts have to be vestigated in the light of the prov(sic) quoted above as to whether the Appellants have acquired the raiyati interest over the land in question and other related question regarding the nature of the property in dispute etc. The necessary facts which require to answer the question raised have not been brought on the record by either of the parties, and, as such this Court is not in a position to decide this question of maintainability either way.

6. In that view of the matter, I remit the case back to the trial Court to decide the suit afresh in view of the submission raised and in the light of the observation made hereinabove. I may however, state that the findings of fact arrived at, by the Court below are based on correct appraisal of the evidence both oral and documentary which has been conceded by the learned Counsel for the Appellant as stated above, and, as such, I am not inclined to interfere with the same. Since the suit is of 1976, I hope and trust that the trial Court will dispose of the I same as early as possible preferably within six months from the receipt of the record.

7. This appeal is allowed to the extent indicated above but in the facts and

circumstances, there shall be no order as to costs.

8. Let the lower Court record be sent down forthwith.