

(2003) 08 JH CK 0016
In the Jharkhand High Court
Case No : LPA No. 176 of 1996 (R)

Mohan Lal Mahto

APPELLANT

Vs

Parsu Ram Mahto and Others

RESPONDENT

Date of Decision : 18-08-2003

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 35, 6, 8
Chotanagpur Tenancy Act, 1908 — Section 258

Citation : (2003) 3 BLJR 1889 : (2003) 4 JCR 176

Hon'ble Judges : P.K. Balasubramanyan, C.J.; R.K. Merathia, J

Bench : Division Bench

Advocate : V. Shivnath, for the Appellant; N.K. Prasad and Shamim Akhtar, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Balasubramanyan, C.J.—Defendant in Title Suit No. 147 of 1975/14 of 1978 on the file of the First Additional Subordinate Judge, Ranchi is the appellant in this appeal filed under Clause 10 of the Letters Patent. The suit was filed by the respondents herein, the plaintiffs, for declaration of their title over the plaint schedule property and for confirmation of their possession and, in the alternative, for recovery of possession on the strength of their title. The plaintiffs pleaded that the suit had been filed in the light of the proceedings initiated u/s 145 of the Code of Criminal Procedure and cloud cast on their title and possession. The defendant, the appellant herein, resisted the suit and in so far as it is relevant for the purpose of this appeal, contended that the suit was barred by Section 35 of the Bihar Land Reforms Act and also by Section 258 of the Chotanagpur Tenancy Act. The trial Court accepted the plea of the defendant that the suit was barred by Section 35 of the Bihar Land Reforms Act and dismissed the suit. The appeal filed by the plaintiffs before this Court was allowed by the learned Single Judge who held that the suit was not hit either by Section 35 of the Land Reforms Act or by Section 258 of the Chotanagpur Tenancy Act and that the suit required to be tried properly and afresh by the trial Court. The learned

Single Judge therefore allowed the appeal, set aside the judgment and decree of the trial Court and remanded the suit to the trial Court for deciding the suit afresh on the basis of the findings rendered and observations made in his judgment. It is this order of remand that is challenged in this appeal by the defendant.

2. We have not considered the question whether an order of remand passed by a learned Single Judge In an appeal can be appealed against under Clause 10 of the Letters Patent. This question was left open to be decided at the time of admission. In a way in the case on hand, there is a finding by the learned Single Judge that the suit is maintainable and to that extent, a final decision has been rendered against the defendants. May be, the defendant could appeal against that decision when the matter finally reaches the Supreme Court but otherwise it would become final as against him in view of Section 105(2) of the Code of Civil Procedure. The decision of the Supreme Court in *Shah Babulal Khimji Vs. Jayaben D. Kania and Another*, , may also have the relevance. We do not think it necessary to decide that question finally in this Appeal. We, proceed on the basis that this appeal is maintainable.

3. Though a plea based on a bar enacted by Section 258 of the Chotanagpur Tenancy Act was raised before the learned Single Judge and in the memorandum of appeal, learned counsel for the appellant did not pursue that contention or question the finding of the learned Single Judge in that behalf. He proceed, accepting that finding and urged before us on the question whether the suit was barred by Section 35 of the Bihar Land Reforms Act.

4. Learned counsel for the appellant contended that on the pleadings, particularly with reference to paragraphs 2 and 6 of the written statement, it could be seen that the defendant had applied u/s 6 of the Bihar Land Reforms Act and after publication of the notice as envisaged, an order had been made in favour of the defendant and no appeal had been filed by the plaintiffs in terms of Section 8 of the Act and that the attempt of the plaintiffs was really to question the recognition of the right of the defendant on the application made u/s 6 of the Act and as such, the suit was hit by Section 35 of the Act. The learned Single Judge essentially negatived this contention by relying on the decision of the Supreme Court in *Gurucharan Singh Vs. Kamla Singh and Others*, Counsel pleaded that in the light of the decision of the Supreme Court in *Annamreddi Bodayya and Another Vs. Lokanarapu Ramaswamy (Dead) by Lrs.*, , it must be held that the suit was barred since the question could be decided only by the Authority under the Act and the Authority had in fact done so. As against this, learned counsel for the plaintiffs-respondents pointed out that an order had been passed by the Authority under this Act, on an application by the plaintiffs, recognizing their right over the holding and that order had become final in view of the dismissal of the appeal filed by the defendant against it and consequently, it cannot be said that the suit was hit by Section 35 of the Act. Counsel further submitted that the suit had been filed for declaration of title and possession and in the alternative,

for recovery of possession, only in view of the proceedings u/s 145 of the Code of Criminal Procedure and the cloud that was cast on the right of the plaintiffs. Counsel submitted further that the scope of Section 35 of the Land Reforms Act has been clearly enunciated by the Supreme Court in paragraph 13 of the decision in Gurucharan Singh Vs. Kamla Singh and Others, , and the said decision was rightly followed by the learned Single Judge. He submitted that the trial Court was in error in holding that the suit was not maintainable.

5. Considering that the question is seen to be covered by the decision of the Supreme Court in Gurucharan Singh Vs. Kamla Singh and Others, , we do not think it proper or necessary to consider in detail the arguments of counsel for the appellant. But we may notice that this appears to be a case where both sides had approached the Authority under the Bihar Land Reforms Act and orders had been passed in their respective favour. It may be a question as to which order would prevail or a question of deciding who exactly has got the title to the property and the right to possession thereof. Therefore, on the materials, it appears to us that the finding of the trial Court that the suit was barred by Section 35 of the Bihar Land Reforms Act was not justified. In Gurucharan Singh Vs. Kamla Singh and Others, , in paragraph 13, the Supreme Court stated as follows :--

"Moreover, there is nothing in Section 35 of the Act, relied on by counsel to substantiate his submission, depriving the civil Court of its jurisdiction to decide questions of declaration of title and consequential relief of possession. Section 35 deals with different types of suits. Indeed Section 6(1) with which we are concerned, also contains no inhibition against the civil Court's power to decide the issue of title and right to possession of the plaintiff and, as a necessary corollary, the claim of actual possession set up by the defendants, first party. Nor can Section 6(2) inferentially interdict the plenary power of the civil Court. In short, the plea of bar of the restriction is specious and fails."

6. Here also, the defendant relies on his approach u/s 6 of the Act and the bar created by the order therein. In juxtaposition with Section 35 of the Act, the position is seen to be identical with the one dealt with by the Supreme Court above in the case. This is, of course, in addition to the other aspect of the rival claims based on orders under the Act referred to by us earlier. We are of the view that the ratio of the decision of the Supreme Court as quoted above, rendered by a Bench of 3-Judges on this very section is binding and governs the case on hand. Nothing, therefore, turns on the argument raised by counsel based on the decision of the Supreme Court in Annamreddi Bodayya and Another Vs. Lokanarapu Ramaswamy (Dead) by Lrs., , and the decision referred to therein. Of course, there is also the proposition that an ouster of jurisdiction of the civil Court is not to be readily inferred. In that view, we do not think it necessary to further discuss the elaborate submissions made by counsel for the defendant.

7. Suffice it to say that we are inclined to agree with the decision of the learned Single Judge in holding that the suit is not barred by Section 35 of the Bihar Land Reforms Act. We may also notice that the defendant had, taken away the

relevant documents during the pendency of the appeal in this Court and did not produce them inspite of notice in that behalf and inspite of grant of repeated opportunities. The learned Single Judge therefore also found that in the absence of the records relied on by the defendant, the plea of want of jurisdiction in the civil Court could not be upheld. Even now, the defendant has not produced those documents before this Court with the prayer to receive them inspite of the observations in the judgment under appeal, though it was asserted before us, that the documents have now been produced before the trial Court where the suit has to be tried afresh in the light of the order of remand passed by the learned Single Judge. This aspect also stands in the way of our accepting the plea raised on behalf of the defendant based on the aforesaid order on his application u/s 6 of the Act.

8. Thus, we find no reason to interfere with the decision of the learned Single Judge remanding the suit to the trial Court. We therefore confirm the decision of the learned Single Judge and dismiss this appeal. We make no order as to costs.

R.K. Merathia, J

9. I agree.