

(1970) 11 PAT CK 0007

In the Patna High Court

Case No : Civil Writ Jurdn. Case No. 1220 of 1968

Mst. Chandrika Kuer

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-11-1970

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1971 Patna 300

Hon'ble Judges : S.N.P. Singh, J;Kanhaiyaji, J

Bench : Division Bench

Advocate : Nagendra Prasad Sinha, No. 2, for the Appellant; Tara Kant Jha, for the Respondent

Final Decision : Allowed

Judgement

Kanhaiyaji, J.—The petitioner claims to have taken raiyati settlement of survey plot No. 3704 of khata No. 155 from her husband through a rent receipt sometime in 1339 Fasli lying in village Bejha, police station Sakra, in the district of Muzaffarpur.

2. The case of the petitioner is that the land of khata No. 155 was recorded in the survey khatian in the name of Babu Kamla Prasad Singh as occupancy raiyat. Subsequently, there was a Collectorate partition, as a result of which survey plot No. 3704 fell in the patti of Most. Moti Kuer, the mother of Babu Brij Bihari Prasad Narain Singh. The recorded raiyat died, and his property including survey plot No. 3704 devolved upon his legal heir, Babu Bisheshwar Prasad Narain Singh. In 1923 he surrendered survey plot No. 3704 along with other plots in favour of Babu Brij Bihari Prasad Narain Singh the then landlord and husband of the petitioner, through a registered deed of surrender dated the 8th December, 1923. As a result of this surrender, survey plot No. 3704 became bakasht malik land. Thereafter, the petitioner took settlement of survey plot No. 3704 from her husband through a rent receipt in 1339 Fs. After the settlement, the petitioner established a hat thereon. The petitioner has been in physical possession of the

said land as her kast land by paying rent to the then landlord and. after the vesting, to the State of Bihar and she has been setting rent receipts for the same from the ex-landlords as well as from the State of Bihar. There was a proceeding u/s 144 of the Code of Criminal Procedure in respect of the aforesaid plot No. 3704 which was subsequently converted into a proceeding u/s 145 of the Code of Criminal Procedure in which the State of Bihar was also a party. On the 2nd December, 1957, the possession of the petitioner was declared over the land in question, and a copy of the order is Annexure "1" of the application. The said order of the learned Magistrate has become final, as no title suit has been filed.

3. It appears that there was a title suit by Babu Brijendra Prasad Narain Singh in which a proceeding under Order 39, Rule 2(3) of the CPC was started for disobedience of court's order, against the Block Development Officer. Thereafter, on the 16th August. 1962, the Deputy Collector In-charge Land Reforms, Sadar, Muzaffar-pur, by his order of the said date annulled the settlement of the plot u/s 4(h) of the Bihar Land Reforms Act. On appeal the order was set aside by the Collector. Muzaffarpur, and the case was remanded back for fresh decision. The learned Collector observed in his judgment as under:

"The other argument advanced on behalf of the appellant is that while as many as five witnesses have supported her case that the settlement was made prior to 1-1-1946, no evidence has been adduced on behalf of the State to show that the settlement was made subsequent to 1-1-46. The appellant had also received rent receipts from the State for the period 1956 to 1961, which indirectly showed that the State had accepted the settlement as genuine. There is some strength in this argument. The burden of proof to show that the settlement was made prior to 1-1-46 is on the State and the learned Land Reforms Deputy Collector should not, therefore, have accepted the B.D.O.'s report in toto without examining witnesses or taking over evidence to support the B.D.O.'s report. The appellant should also have been asked to produce evidence to show that she had been actually realising tolls from the Hat in question even before the date of vesting."

4. The learned Deputy Collector Incharge Land Reforms again annulled the settlement of the petitioner in respect of survey plot No. 3704. A copy_ of his order is Annexure "2" of the application. On appeal, the appeal of the petitioner against the said order was dismissed by the learned Collector; a copy whereof is Annexure "3". The petitioner then moved the Commissioner of Tirhut Division in revision which was also dismissed on the 15th July, 1968. A copy of the order is Annexure "4" of the application. The petitioner has challenged those orders on the ground that the title of the petitioner has become perfect after a lapse of three years from the date of the final order passed in the proceeding u/s 145 of the Code of Criminal Procedure, and the impugned orders have been passed ignoring the ex parte evidence adduced on behalf of the petitioner that the hat in question was started by her over the plot in question after taking settlement of the same. It was also contended on behalf of the petitioner that the aforesaid impugned orders were based only on suspicion and that they were passed

ignoring consideration of the rent receipts granted by the ex-landlords and the State of Bihar to the petitioner and the directions given in the remand order of the learned Collector.

5. The petitioner in this writ application under Articles 226 and 227 of the Constitution has prayed for quashing the orders contained in Annexures 2, 3 and 4 of the writ application.

6. There is a counter-affidavit on behalf of the State of Bihar. The case on its behalf is that the settlement made in the regular course of zamindari management, as alleged, is false and that the impugned settlement is nothing but a farzi transaction brought about after 1946 in order to defeat the provisions of the Bihar Land Reforms Act, 1950.

7. From the order of the Land Reforms Deputy Collector, it appears that he has come to the conclusion that the settlement was not a genuine one and that it was sought to be made with the object of defeating the provisions of the Bihar Land Reforms Act. He agreed with the State lawyer when he said that the rent receipts issued were marked without prejudice and the settlement made in favour of the petitioner was a farzi transaction. He came to this conclusion on a consideration of two factors, namely, that the settlement in favour of the petitioner was through rent receipt and that the relationship between the settlor and the settlee was that of husband and wife. The learned Land Reforms Deputy Collector has not even referred to the evidence of the witnesses examined on behalf of the petitioner. He has not considered the points raised by the Collector in his remand order which has been set forth above. The learned Land Reforms Deputy Collector has annulled the settlement basing his findings only on suspicion and not on materials on record.

8. Mr. Nagendra Prasad Sinha, appearing for the petitioner, has pressed an argument that the findings arrived at by the learned Land Reforms Deputy Collector are wrong being against the weight of evidence or materials on the record,

9. The learned Collector on appeal against the order passed by the Land Reforms Deputy Collector affirmed the order passed by the latter. The learned Collector has observed in his order that "the learned D. C. L. R. has gone into the merits of rent receipts and has come to the conclusion that they are antedated and manufactured for this case." But there is no such finding in the order of the learned Land Reforms Deputy Collector as mentioned in the order of the learned Collector, a copy whereof is Annexure "2". It appears that the order of the learned Land Reforms Deputy Collector is based on mere suspicion because of the relationship between the settlor and the settlee. The learned Commissioner, in his turn, while dismissing the revision filed against the order of the learned Collector, has held in his order that the settlement with the petitioner was definitely mala fide and intended to defeat the provisions of the Land Reforms Act. This finding is also based on suspicion as the petitioner happened to be a member of the joint family, of which her husband was also a member.

10. According to the Hindu Law, gift by husband to his wife is not prohibited. Property given or bequeathed to a Hindu female, whether during maidenhood, coverture, or widowhood by her parents and their relations, or by her husband and his relations, is stridhana according to all the schools, except that of Dayabhaga School of Hindu Law. It is a notorious fact that it was common with the ex-landlords to settle land with their relations including minors and female members of their family for their exclusive enjoyment of the income of such properties. It has been submitted that the case should not have been decided on mere suspicion, rather the authority should have considered the materials on record before holding against the petitioner. It has been submitted that the materials on the record do not justify the reasons for holding that the settlement was farzi or that it was made after the first day of January, 1946. Ordinarily, the High Court in its writ jurisdiction does not interfere with the findings of fact of the subordinate authority, nor does it enter into the question of disputed facts; but if the error of law is apparent on record or consists of misconstruction of law on which assumption of jurisdiction is made which otherwise does not exist, the High Court has power in its writ jurisdiction to interfere. For the reasons given above, I am of the opinion that the case of the petitioner has not been properly considered by the authorities concerned.

11. It has been contended that Babu Brij Bihari Prasad Narain Singh had died before the 1st of January, 1946, and, therefore, the several rent receipts alleged to have been granted by him before the year 1946 could not have been held to be forged. In view of the fact that the case is going on remand. I do not want to express any opinion on the disputed questions of fact, raised on behalf of the connecting parties. This case has got to be sent back to the court below as I find that in this case there has been a failure of justice; and, as such, the orders passed; by the authorities concerned are unsustainable.

12. For the reasons given above, acting in exercise of the jurisdiction vested in this court under Article 226 of the Constitution, I set aside the order of the learned Commissioner, Tirhut Division, Muzaffarpur dated the 15th July, 1968 (Annexure "4" to the application), the order of the learned Collector, Muzaffarpur, dated the 12th October, 1965 (Annexure "3") and the order of the learned Deputy Collector Incharge Land Reforms, Sadar, Muzaffarpur, dated the 4th January, 1965 (Annexure "2"), and remand the case to the Deputy Collector In charge Land Reforms. Sadar, Muzaffarpur, for determination in accordance with law.

13. In the result, the application is allowed; but, in the circumstances, there will be no order as to costs.

S.N.P. Singh, J.

14. I agree.