

(1992) 07 PAT CK 0027

In the Patna High Court

Case No : Civil Revn. Nos. 1443 of 1985 and 1228 of 1987

Munni Sao and etc.

APPELLANT

Vs

K.D. Sharma and Others

RESPONDENT

Date of Decision : 03-07-1992

Acts Referred:

Citation : (1992) 07 PAT CK 0027

Final Decision : Dismissed

Judgement

Nagendra Rai, J.—As the common question of law arises in both the revision applications, with the consent of the parties, they are being heard together and disposed of by this common judgment.

2. Civil Revision No. 1443/85 is directed against the order dated 5-6-1985, passed by the Munsif II, Gaya, in T. S. No. 39/84, holding that the suit filed by the plaintiff-petitioner for grant of permanent injunction has abated u/s 4(c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as "the Act").

3. Civil Revision No. 1228/87 is directed against the order dated 8-6-1987, passed by the Munsif, Second Court, Samastipur, in T. S. No. 89/82, holding that the suit filed by the plaintiff-petitioner for permanent injunction was not maintainable under S. 4(b) of the Act.

4. Both the cases have been referred to a Division Bench of this Court for an authoritative pronouncement on the question as to whether the provisions of Section 4(b) and Section 4(c) of the Act are attracted or not in a suit for injunction.

5. At the time of argument, learned counsel appearing on behalf of the petitioners brought to our notice two judgments rendered by a learned single Judge of this Court in the case of Anwar Ali v. Amirul Haque, 1989 LJR (HC) 579 and Ram Naresh Thakur v. Kanhaiya Thakur, 1991 (1) LJR 514 in support of their cases wherein it has been held that the publication of notification u/s 3 of the Act

does not stand in the way of the institution of the suit for permanent injunction; whereas, learned counsel appearing for the opposite parties relied upon a judgment of another learned single Judge of this Court in the case of Vyas Singh v. Singal Mahto 1990 (2) LJR 192 (HC) wherein it has been held that whole pleadings have to be looked into to ascertain whether it was the suit to which the provisions of the Act were attracted and the same cannot be decided by merely referring to the relief prayed for. If the declaration of title is implicit in the suit and the court shall have to go into the question of title for granting relief, actually prayed for, the suit must be held to have abated. While deciding the question involved in controversy in the present case it has to be seen as to whether there is any conflict between the aforesaid decisions or not and in case of conflict which decision states the correct statement of law on the question in controversy.

6. To decide the said question, it is necessary to set out the facts of both the cases in brief.

7. The case of the plaintiff-petitioner in C. R. No. 1443/85 is that the mother of the plaintiff purchased 34 decimals of land bearing plot No. 95, khata No. 11 in village Bara Guraru Bazar by a registered sale deed dated 15-4-1946 executed by Sarju Prasad Mishra and came in possession thereof. After her death the land came in possession of her husband and three sons, namely, Munni Sao (plaintiff), Jawahar Sao (father of defendant No. 3) and Ram Chandra Sao (defendant No. 4). There was a private partition between them in which northern portion of plot No. 95 was allotted to the father of defendant No. 3, Southern portion to defendant No. 4 and the middle portion to the plaintiff. By virtue of the said partition each branch came in possession over 11 1/2 decimals out of 34 decimals of land. The land allotted to the share of the plaintiff has been described in Schedule of the plaint. After the partition he has been growing vegetables on the said piece of land. Defendant No. 1 with the help of defendant No. 2 started creating disturbance in peaceful possession of the plaintiff over the land. Subsequently, there was a proceeding u/s 144 of the Code of Criminal Procedure between them which was decided against the plaintiff on 21-4-1984 and emboldened by the said order defendants Nos. 1 and 2 threatened the plaintiff to dispossess him, hence the suit for permanent injunction restraining the defendants from interfering with the peaceful possession of the plaintiff over the suit land described in Schedule 1 of the plaint.

During the pendency of the suit the defendants-opposite parties Nos. 1 and 2 filed a petition u/s 4(c) of the Act on 17-12-1984 stating therein that a notification u/s 3(1) of the Act has been issued with regard to the village in question. They also claimed that the residential house of defendant No. 2 stands over the suit land and a portion of the same was vacant land which has been let out by defendant No. 2 to defendant No. 1 which is being used by him as cow-shed. As both the plaintiff and defendants Nos. 1 and 2 claim title and possession over the said land, the question of title and possession is involved in the suit and

accordingly, the suit will abate even though the relief has been prayed for injunction only.

A rejoinder was filed on behalf of the petitioner on 4-1-85, wherein it has been stated that the provision of Section 4(c) of the Act was not attracted in view of the relief prayed for in the plaint.

The learned Munsif, after hearing the parties, came to the conclusion that in the present case the court will have to adjudicate upon the right and interest of the plaintiff having regard to the claim of the principal defendants and, accordingly, held that the suit stands abated u/s 4(c) of the Act.

8. The case of the plaintiff-petitioner in C. R. No. 1228/87 is that the plaintiff, defendant first party and second party are descendants of Sukar Gope, who had a son Bechan Gope, Bechan Gope has three sons, namely, Ramji, Dhana and Mannu. Dhana has two sons, namely, Raghu and Siva-nandan. Branch of Ramji became extinct as he died issueless. Plaintiff is the son of Mannu. The defendant first party represents the branch of Raghu and defendant second party represents the branch of Shivnandan. Plots Nos. 1855, 1831, 1832, 1833 and a portion of survey plot No. 1834 from east in village Bishanpur. Hakimabad P. S. Malah Toll, belonged to the joint family, and the said plots were divided into four sub-blocks and two sub-blocks were allotted to the share of the plaintiff and the remaining two blocks to the share of defendants. One of the blocks allotted to the plaintiff comprises of entire survey plot No. 1855 and 1 katha and 4 dhurs of survey plot No. 1831 from west, and the said block is the subject-matter of dispute in the present suit and described in Schedule 1 of the plaint.

The plaintiff had grown sugar-cane in the said plots and the defendants have no concern with the said land after partition. The defendants 1st party forcibly wanted to uproot the sugar cane standing on the land and wanted to encroach upon the land of the plaintiff for making construction. The plaintiff resisted the attempt of the defendants first party which resulted in a proceeding u/s 144 of the Code of Criminal Procedure with regard to a small area of land from eastern portion of plot No. 1831 which fell in the share of the plaintiff. The said proceeding was decided against the plaintiff and being emboldened by the same the defendants wanted to encroach that portion of the land for making construction, and hence the suit for permanent injunction restraining the defendants first party from interfering with the possession of the plaintiff over the land mentioned in Schedule I of the plaint.

During the pendency of the suit, defendant No. 1 filed an application on 9-3-84 before the court below u/s 4(b) of the Act on the grounds, inter alia, that the Chakbandi proceeding is going on in the village from before the institution of the suit and the relief for injunction depends upon the decision of declaration of title and confirmation of possession as such the suit is not maintainable in the civil court in view of the bar created by Section 4(b) of the Act. The plaintiff filed a rejoinder to the said petition stating, inter alia, that the suit has been filed for

permanent injunction and such relief does not come under the purview of the Act and, accordingly, Section 4(b) is not attracted in the present case.

Learned Munsif allowed the prayer of the defendants and held that as the question of title is involved in the case the suit was not maintainable in view of the provision of Section 4(b) of the Act.

9. Learned counsel appearing on behalf of the petitioners of both the cases contended that there is no provision under the Act for grant of relief for permanent injunction and as such the suit for injunction is maintainable even after notification u/s 3(1) of the Act. He further contended that the suit for permanent injunction is not a suit for declaration of right, title and interest of declaration of any right for which the proceeding can or ought to be taken under the Act and in that view of the matter neither the entertainment of the suit is barred u/s 4(b) of the Act nor its continuance is prohibited by Section 4(c) of the Act.

10. Learned counsel for the opposite parties contended that in every such suit for permanent injunction determination of the question of title and possession is involved and unless there is a decision on the said question no relief for injunction can be granted and in that view of the matter a suit for permanent injunction concerning land in an area where the consolidation proceeding is going on is not maintainable after the notification u/s 3 of the Act for the simple reason that the court before the grant of permanent injunction has to determine the question of right, title and interest in the land which it cannot do in view of the provision of Sections 4(b) and 4(c) of the Act.

11. The Act has been enacted to provide for the Consolidation of Holdings and Prevention of Fragmentation. Section 3 of the Act authorises the State Government to issue a notification in the Official Gazette declaring its intention to make a scheme for the consolidation of holdings with the object of effecting consolidation of holding for the purpose of better cultivation of land in any area in the State. Section 4 provides for the effect of notification u/s 3(1) of the Act. For the purpose of present case, the relevant portions of Section 4(b) and (c) of the Act are quoted here below:--

"4(b) No suit or other legal proceeding in respect of any land in such areas shall be entertained in any court, and in calculating period of limitation applicable to such suits and proceedings such period shall not be counted;

(c) Every proceeding for the correction of records and every suit and proceedings in respect of declaration of rights or interest in any land lying in the area or for declaration of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any court, authority whether of the first instance or appeal, reference or revision, shall on an order being passed in that behalf by the court or authority before whom such suit or proceeding is pending stand abated."

From the date of notification u/s 3(1) of the Act till the close of the consolidation operation the consequences enumerated in the said section shall ensue. During the aforesaid period, according to Section 4(b) no suit or other legal proceeding in respect of any land in such area shall be entertained in any court and in calculating the period of limitation applicable to such suits and proceedings such period shall not be counted. Sub-section 4(c) provides that all proceedings and suits pending before any court or authority for declaration of rights or interest in any land lying in the area or for declaration or adjudication of any other right to which proceedings can or ought to be taken under the Act, whether of the first instance or of appeal, reference or revision shall stand abated.

12. The aforesaid provisions of Section 4(b) and (c) have been incorporated under the Act with dual objects. The first object is the consolidation of holdings and prevention of fragmentation. If a civil suit or proceeding before the civil court or other authority with regard to the matters which are enumerated in Section 4(b) and (c) is allowed to go on, naturally, it will take a longer time, the resultant effect of which would be to frustrate the very object of the Act. Second object is that the legislature wanted that all disputes after the issuance of the notification and before close of the consolidation operation should be decided by the consolidation authority and there should not be two forum for the determination of the right and interest or other rights, as enumerated under S. 4(c) of the Act as in that event there is a chance of inconsistent situation arising.

13. The civil court is a court of plannery jurisdiction and it has jurisdiction to try the suits of different nature, excepting the suits of which cognizance is either expressly on or impliedly barred. It is well settled that exclusion of the jurisdiction of the civil Court is not to be readily interfered unless its jurisdiction is expressly or impliedly barred.

14. While deciding the question as to whether after issuance of the notification u/s 3(1) of the Act and before close of consolidation operation, as provided u/s 26A of the Act, a suit for injunction is maintainable or not in view of the provision of Section 4(b) of the Act or a suit already pending on the date of notification will abate or not u/s 4(c) of the Act it has to be seen as to whether a suit of such nature is barred either expressly or impliedly under the provisions of the Act. At this place it is to be mentioned that Section 4(b) does not enumerate the nature of the suits which are not to be entertained after the issuance of the notification u/s 3(1) of the Act and it only says that all suits or legal proceeding in respect of any land shall not be entertained in any court. In my opinion, the suits which are not to be entertained u/s 4(b) are such type of suits which are enumerated u/s 4(c) of the Act. The suits which are not connected with the right, title and interest in the land or not for the declaration or adjudication of any other right in regard to which proceeding can or ought to be taken under the Act are not barred u/s 4(b) of the Act. In other words, the suits which are not to be entertained by the civil court during the notification u/s 3(1) are those types of suits which are enumerated u/s 4(c) of the Act. To hold that all types of suits

concerning the land even though they do not relate to declaration of right, title and interest in the land or declaration of other rights as enumerated in Sub-section (c) of Section 4 shall not be maintainable after the issuance of notification will make the aforesaid provision ultra vires.

15. From the reading of the provisions of the Act it is clear that no provision has been made under the Act for grant of permanent injunction by the consolidation authorities. Section 4(b) or 4(c) does not specifically bar the entertainment of suit for injunction by the civil court, even by necessary implication it cannot be inferred that such type of suit is barred.

16. An injunction is a judicial order by which a person is directed to do a particular act or thing or is restrained from doing a particular act or thing. Generally, it is directed against the parties. Section 37 of the Specific Relief Act, 1983, pertains to injunctions. Sub-section (1) contains provision for grant of temporary injunction and Sub-section (2) contains provision for perpetual injunction. According to Sub-section (2) perpetual injunction can only be granted by a decision made at a hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from a commission of an act, which would be contrary to the rights of the plaintiff. Section 38 prescribes when a perpetual injunction may be granted. It is not necessary in a suit for injunction to pray for declaration or consequential relief and plaintiff may pray for injunction as a substantive relief and the court may grant such relief even without declaration. In my opinion, there is no provision under the Act for entertainment of the claim for permanent injunction during the pendency of the consolidation proceeding and cognizance of the suit for injunction by the civil court is neither expressly nor impliedly barred by the provisions of the Act during the said period and in that view of the matter a suit for permanent injunction is maintainable in the civil court even after the notification u/s 3(1) of the Act.

17. The view taken by me finds support from the precedents. In the case of *Rahas Bewa Vs. Kanduri Charan Sutar and Others*, the provisions of sub-section (4) of Section. 4 of the Orissa Consolidation of Holdings and prevention of Fragmentation Act, 1972 came up for consideration before a Division Bench of Orissa High Court, which are in pari materia with the provisions of Section 4(c) of the Act. In that case it was held that the relief for injunction was an existing remedy at common law and no provision has been made in the Act empowering the authority to grant injunction and as such the suit for permanent injunction will not abate. The said view has been reiterated by a Full Bench of the same High Court in the case of *Duruju Mallik and etc. Vs. Krupasindhu Swain and Others etc.*, wherein it been held as followed (Para 6) :

"In view of what has been discussed above, we agree with the view expressed by the Division Bench of this Court in the case reported in *Rahas Bewa Vs. Kanduri Charan Sutar and Others*, that it becomes difficult to accept the submission that a suit for permanent injunction pending it common law shall stand abated as a result of the notification under the Orissa Act 21 of 1972 even though the relief

of injunction is not available under the Act."

18. Learned Single Judge of this Court in the case of Anwar Ali 1989 LJR 579 (HC) (supra) adopted the reasonings given in the aforesaid Full Bench judgment of the Orissa High Court and held that the publication of notification u/s 3 of the Act does not stand in the way of institution of a suit for permanent injunction.

Another single Judge of this Court in the case of Vyas Singh (1990 (2) LJR 192 (HC)) (supra), though did not specifically said that the suit for injunction will not abate u/s 4(c) of the Act but observed that the whole pleading shall have to be looked into to ascertain whether it was a suit to which the provisions of the Act were attracted and the same cannot be decided by merely referring to the relief prayed for.

19. Thus, considering the aforesaid question from different angles I have no difficulty in holding that the suit for permanent injunction in relation to land in an area is maintainable in the civil court even after the consolidation proceeding is going on in that particular area in pursuance of the notification u/s 3 of the Act. Neither Section 4(b) of the Act is a bar for entertainment of such suit nor such suit shall stand abated u/s 4(c) of the Act.

20. But, this will not solve the problem. The next question for consideration is how to determine as to whether a particular suit is a suit for permanent injunction only or a composite suit for declaration of right, title and interest in the land as well as for permanent injunction, the entertainment of which is barred under the provision of the Act. If the suit is composite one in the sense that a prayer for permanent injunction is made as a consequential relief to the main relief for declaration of right, title and interest in the land then the provisions of Section 4(b) and (c) will be attracted and the suit will be held to be non-maintainable in the civil court during the pendency of the consolidation operation. However, where the relief for injunction is an independent relief unconnected with the declaration of right, title and interest in the land or other rights for which the proceeding can or ought to be taken under the Act then the suit for injunction will be maintainable in the civil court even during the continuance of the consolidation operation in the area in pursuance of the notification u/s 3(1) of the Act. In the case of Ramkrit Singh and Others Vs. The State of Bihar and Others, a Full Bench of this Court held that where independent relief or reliefs unconnected with the declaration and determination of right, title and interest or other rights over the land is involved in the suit, the suit does not abate in relation to such controversy. Thus, it is clear that the suit for injunction unconnected with the declaration and determination of right, title and interest or other rights, as enumerated u/s 4(c) of the Act is maintainable in the civil court even after the issuance of notification u/s 3(1) of the Act.

21. To determine as to whether a particular suit is a suit for permanent injunction or not, the court has to look into the substance of the plaint and not its form. If from reading of whole of the plaint it appears that the suit is for

permanent injunction only then it is maintainable in the civil Court during the pendency of the consolidation proceeding. But if it appears that in substance the suit is for declaration of right, title and interest in the land and the relief prayed for in the plaint for injunction has been made only to frustrate the provision of the Act then the suit will be held to be not maintainable in the civil court. The relief prayed for in the plaint will not only decide the nature of the suit and the court has to look at the substance to find out the nature of the suit. Mere astuteness in drafting the plaint will not be allowed to stand in the way of the court looking at the substance of the relief asked for. In the case of Duruju Mallik and etc. Vs. Krupasindhu Swain and Others etc., the Full Bench of the Orissa High Court held that the substance of the pleading has to be looked into for deciding the question as to whether the suit is for injunction or not. It was observed therein as follows (at p. 206) :

"..... Thus where the grant of injunction depends upon the determination of the right or interest in any land situated within the consolidation area, the suit for permanent injunction may not be maintainable. In order to determine whether the suit for injunction simpliciter is maintainable or not, the substance of the pleadings has to be looked into and not merely the form of pleadings of the plaintiff alone or the prayer made by him. Each is to be decided in the facts of its own."

The learned single Judge of this Court in the case of Vyas Singh (1990 (2) LJR 192 (HC)) also took the same view in paragraph 8 of the judgment, which runs as follows: --

"In all cases the whole pleading shall have to be looked into to ascertain whether it was a suit to which the provisions of the Act were attracted, and the same cannot be decided by merely referring to the relief prayed for. If in a suit for declaration of title is implicit or where court shall have to go into the question of title for granting reliefs actually prayed for, the suit must be held to have abated. It is common knowledge that reliefs are drawn up in such a way so as to avoid the provisions of the Act. Each case, therefore, shall have to be decided on the basis of the pleadings. This case shall also have to be decided on the basis of the pleadings notwithstanding the fact that no prayer for declaration of the title has been made and the relief for permanent injunction may not be available before the consolidation authority."

I am in respectful agreement with the statements of law made in the aforesaid two cases and the observations made therein support the view I have taken in this case.

22. Thus, after taking into consideration the relevant provisions of the Act and submissions advanced at the bar, my conclusions on the question involved in the present case are these. The suit for permanent injunction in respect of land laying within an area is maintainable even after the issuance of notification in that area u/s 3 of the Act. For determining the question as to whether a suit in

question is a suit for injunction simpliciter or not, the substance of the pleadings had to be looked into and not the form of the pleadings. If the grant of injunction is dependent upon the declaration of right, title and interest in the land falling within the consolidation area then the suit is not maintainable after the issuance of notification u/s 3 of the Act in view of the provision of Section 4(b) of the Act. If suits of such nature are pending at the time of issuance of notification u/s 3 of the Act then the same will abate u/s 4(c) of the Act. However, if the substance of the pleading shows that the suit is for injunction simpliciter then the suit is maintainable in the civil court even after issuance of notification u/s 3 of the Act and the pending suits of such nature will not abate u/s 4(c) of the Act. Each case has to be decided on its own facts after looking into the substance of the pleading.

23. So far as the judgments rendered by the Hon"ble single Judges of this Court in the case of Anwal Ali (1989 LJR 579 (HC)) Ram Naresh Thakur (1991 (1) LJR 514 (HC)) (supra) and in the case of Vyas Singh (1990 (2) LJR 192 (HC)) (supra) are concerned, after closer scrutiny of the aforesaid decisions there appears to be no conflict between them. In the case of Anwar Ali (supra) the learned single Judge while holding that the suit for injunction is maintainable even after the notification u/s 3 of the Act has adopted the reasonings given by the Full Bench of Orissa High Court in the case of Duruju Mallik and etc. Vs. Krupasindhu Swain and Others etc., wherein it has been held that if the grant of injunction depends upon the determination of right or interest in any land situated within the consolidation area, the suit for permanent injunction is not maintainable. In order to determine whether the suit for injunction is maintainable or not the whole pleading has to be looked into and not merely the form of pleadings. The said reasonings will be deemed to be a part of the judgment in Anwar Ali's case (supra). In the case of Ram Naresh Thakur (supra) the learned single Judge followed the judgment of Anwar Ali's case (supra). So even according to the aforesaid two judgments the substance of the pleading has to be considered and not its form for deciding the nature of the suit. So far as the case of Vyas Singh (supra) is concerned, in that case his Lordship has held that the whole plaint has to be looked into before deciding as to whether it was a suit to which the provisions of the Act were attracted and the same cannot be decided by merely referring to the relief prayed for. Nowhere in the judgment his Lordship has said that the suit for injunction is not maintainable in the civil court after issuance of notification u/s 3 of the Act. Thus, there is no conflict between the aforesaid judgments on the question of law and the conclusions arrived at on the point of law are consistent with the view which I have taken in the present case.

24. Coming to the facts of the cases, firstly I will deal with the facts of the Civil Revision No. 1443/85. From the assertions made in the plaint, it is clear that the plaintiff has prayed for injunction on the basis that the suit land was allotted to him by a private partition and defendants No. 1 and 2 threatened to dispossess him from the suit land. Without determining the right, title, interest and possession of the plaintiff no decree for permanent injunction can be passed in

his favour. In other words, a declaration with regard to the right and title of the plaintiff in the suit land has to be made before grant of permanent injunction. No doubt, in relief portion, the plaintiff has made a prayer only for grant of permanent injunction, but after looking into the allegations made in the plaint as a whole it is clear that the plaintiff cannot get relief for injunction unless there is adjudication with regard to his right, title, interest and possession over the land. In substance, the suit is for declaration of right, title and interest in the land and for injunction and is not for injunction simpliciter. In my opinion, the court below has rightly held that the suit stands abated.

25. From perusal of the plaint of C. R. No. 1228/87, it appears that the plaintiff claimed that there was a partition between the plaintiff and the defendants and half of the suit land of the family has been allotted to the plaintiff in a private partition. The defendants have challenged the partition saying that the plaintiff is not entitled to half share and is only entitled to one third share in the property. From reading of the plaint as a whole, in my opinion, without determination of question of right, title and interest, no relief for injunction can be granted to the plaintiff. The suit is in substance for declaration of right, title and interest and not for injunction and as such the suit is not maintainable in view of the provision of Section 4(b) of the Act after the issuance of the notification u/s 3(1) of the Act and the court below rightly held so.

26. In the result, I do not find merits in both the civil revision applications and the same are dismissed. However, there will be no order as to costs.

B.N. Agrawal, J.

27. I agree.