
(1999) 12 PAT CK 0028

In the Patna High Court

Case No : Appeal From Appellate Decree No. 485 of 1985

Nand Lal Oraon and Others

APPELLANT

Vs

Sri Suresh Jha and Others

RESPONDENT

Date of Decision : 01-12-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 9

Citation : (2000) 1 PLJR 617

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Advocate : R.N. Rai, H.S. Himkar and Basant Kumar Singh, for the Appellant; Chittaranjan Sinha, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Deb, J.—This appeal has been preferred against the judgment and decree dated 16.8.1985 passed by the then 3rd Additional District Judge, Purnea in Title Appeal No. 1/81 whereby and whereunder the judgment and decree dated 13.10.80 passed by the 3rd Additional Subordinate Judge, Purnea in Title Suit No. 171/75 has been reversed. The plaintiff-respondents filed the above mentioned suit for declaration of their title and for confirmation of their khas cultivating possession over the suit lands described in the Schedule A of the plaint and also for declaration that the defendant first set have got no title and interest or possession over the lands and there is no relationship of landlord and tenant between the plaintiffs and the defendant first party and that the order passed in case No. 44 of 1974-75 in a proceeding u/s 69 of the B.T. Act on 22.12.1974 is illegal, without jurisdiction and not binding on the plaintiff with a further claim that a decree for recovery for a sum of Rs. 1,710/- on the defendant be passed as detailed in Schedule B of the plaint. There was also an alternative prayer for recovery of possession of the suit land if it is found that the plaintiff has been illegally dispossessed from the suit land during the pendency of the suit. The subject matter of the suit is 5.71 acres of agricultural land

appertaining to R.S. Khata No. 883 of Mauja (village) Dibra Ghani P.S. Dhamdaha in the district of Purnea. The plot numbers and the break up of the areas plotwise have been given in the schedule A of the plaint. One Saini Uraon was the defendant in the suit as defendant first party but he died during the pendency of the suit and his heirs have been substituted who remained as defendant first party in the suit. The defendant second party are the Collector, Purnea, B.D.O. Barhara Kothi, Panchayat Sevak Dibra Panchayat and the then Co-operative Extension Officer, Barhara Kothi Block. The admitted position remains that the plaintiff is the recorded occupancy raiyat of the suit land alongwith the others, during the time of his forefather. The original defendant Saini Uraon at the instigation of a group to grab the land of land owners in the locality filed a petition before the B.D.O. Barahara Kothi u/s 69 of the B.T. Act on the allegation for division of Agahani paddy crop standing over the land in suit claiming that he was in possession over the land in dispute as a Sikmidar since the life time of Chakradhar Jha the father of the plaintiff and that also he moved for claiming of the tenancy u/s 48E of the B.T. Act and while the same was pending the plaintiff was not allowing to take share of the produce as a bataidar and hence the said petition was filed. It was numbered as case No. 44 of 1974-75. The plaintiff also appeared in that case on 11.12.1974 and filed a petition for adjournment for filing objection. B.D.O. told him that a report has been called for from Panchayat Sevak and after getting the report he would be informed when he would file objection. According to the plaintiff Saini Uraon was never his bataidar and he had never grown paddy over the land in the year 1974. On 18.12.1974 Saini Uraon, filed a petition for withdrawal of the case and his claim of bataidar. The prayer of Saini Uraon was allowed and the B.D.O directed Panchayat Sevak to deliver the entire paddy crop to the plaintiff. Then the plaintiff got the paddy harvested from the labourers and left the same for being dried up. But on 22.12.1974 in the absence of the plaintiff, the D.S.P., Dhamdaha, B.D.O., Barhara Kothi and some members of the land grabbing group visited the spot and the B.D.O. asked the Area Magistrate, Dibra Camp to remove the harvested paddy lying in the field. It is said that Saini Uraon filed a petition for revival of the proceeding u/s 69 of the B.T. Act before the Collector, Purnea and the Collector asked the B.D.O. Dhamdaha to make division of the crop. It is the case of the plaintiff that proceeding u/s 69 of the B.T. Act was a total illegal one and any order passed by Collector or B.D.O. were behind the back of the plaintiff and, as such, such order is not only illegal but without jurisdiction and the so-called action taken by the defendants second set are contrary to law and hence the plaintiff is entitled to get recovery of the price of the crop. It has been stoutly denied that Saini Uraon or his heirs had ever taken the land in question as a Sikmidar from the father of the plaintiff. Hence the suit.

2. The defendant first set contested the suit by filing written statement contending inter alia that the suit is barred under the provisions of Section 48E, Section 69 and Section 70 of the B.T. Act, that the Civil Court has got no jurisdiction to entertain the suit when the relationship has already been decided

under the provisions of the B.T. Act. It was further contended that Saini Uraon took the land as bataidar during the life time of Chakradhar Jha and although his name was not mentioned in the revenue records but he was assured by Chakradhar Jha to get his name mentioned in the revenue records and the Khatian as sikmidar. And so Saini Uraon did not take any steps for getting his name included in the revenue records as a bataidar. He filed a petition u/s 48E of the B.T. Act. But when the same was pending the plaintiff had tried to oust him from the tenanted land and deprive him of his share of crop then he had to file a petition u/s 69 of the B.T. Act which was ultimately allowed by the Collector and the crop was divided between him and the plaintiff. On the basis of the pleadings of the parties various issues were framed including the bar as claimed from the side of the defendant as per provisions of Sections 48E and Section 70 (6) of the B.T. Act. The trial Court after considering the evidence and documents filed by both the parties came to the finding that the plaintiff's suit is barred to some extent (emphasis supplied by me) because of the decision being arrived at u/s 69 of the B.T. Act. It was further held by the trial Court by considering the oral evidence of both the parties that the plaintiff could not be able to prove his cultivating khas possession over the suit land and, as such, the plaintiff is not entitled to get the relief as claimed for by referring some evidence of the defendants he came to the finding that at some point of time defendant's predecessor, namely, Saini Uraon was in possession. Regarding the proceeding u/s 48E of the B.T. Act as claimed from the defendants side has been annulled by the trial court holding that such proceeding was never filed by the defendant and the documents produced, namely the certified copy of the alleged petition u/s 48E of the B.T. Act was found to be forged and fabricated one. When the plaintiff's suit was dismissed as a whole then he preferred appeal being Title Appeal No. 1 of 1981. The learned appellate Court reversed all the findings of the Court below. It was held by the appellate Court that the proceeding u/s 69 of the B.T. Act had never been proceeded legally and as such, any order passed in that proceeding (no copy of the order of the Collector in that proceeding was ever filed from the side of the defendant) has got no binding effect on the plaintiff as the plaintiff was never informed about that proceeding nor he was given any opportunity of being heard or filing of his objection and in that way it was held that no bar can be created in the jurisdiction of the civil suit as contemplated u/s 70 (6) of the B.T. Act. On factual aspect also the learned appellate Court held that as per admission of the D.W.1 i.e. one of the defendants and as per the evidence of the plaintiff and his witnesses it was established that the plaintiff is the owner of the suit land having occupancy raiyati over it and that the legal presumption remains that the land was in his possession as neither in the revenue records nor in the Khatian there was any mention about Sikmidar as Saini Uraon in respect of the suit land although in other lands of the plaintiff where really the Sikmidar is there their names had been recorded in the Khatian and the revenue records. He has further held that the burden was on the defendant to establish their tenancy right over the suit land and they have miserably failed and, as such, the suit has been decreed as a whole by reversing

the judgment of the original Court. It should be mentioned here that the first appellate Court took much pain in appraisal of both the documentary and oral evidence independently and then came to his finding and the reasonings given by the trial Court has also been turned down by giving legal reasons in the judgment. Against this appellate judgment the present appeal has been filed.

3. While admitting the appeal vide order dated 2.5.1991 a Bench of this Court has formulated the following substantial questions of law as contemplated u/s 100 of the C.P.C.:?

I. For that the learned appellate Court has given no finding as to what mandatory proceeding have not been followed in section 69 of the B.T. Act proceeding (Ext. 7 and 8 series) making the Section 69 order illegal and unjustified and thereby negating Section 70(6) of the B.T. Act ousting the Civil Court's jurisdiction.

II. Whether the appellate judgment is vitiated because of non consideration of the evidence of D.Ws. 1, 2, 3, 5 and 6 and non consideration of Exts. 7 and 8?

III. Whether the suit is barred u/s 70(6) of the B.T. Act?

Although the substantial questions of law have been formulated touching the merit and factual aspect of the case but peculiarly enough no lower court records had been called for and, as such, the appeal was heard without the lower court records. But this Court did not feel any difficulty as the certified copies of plaint, written statement, evidence of all the parties and the exhibits had been produced from the side of the respondents before this Court for perusal during the course of hearing of the appeal.

4. The main point urged by the learned counsel appearing for and on behalf of the appellants is that in view of the proceeding u/s 69 of the B.T. Act and the conclusive and finality of that proceeding before the Collector, the Civil suit has got no jurisdiction to try the present suit. This point has been elaborately discussed by the learned appellate Court in his appellate judgment. Let me take the position that there was a legal proceeding u/s 69 of the B.T. Act before the Collector and there was final order passed in that proceeding then also whether the Civil Court jurisdiction is ousted or not is a matter to be considered in the light of the provisions of the B.T. Act and that of Section 69 of the Civil Procedure Code. On plain reading of Section 69 of the B.T. Act reveals that the Collector has been given the jurisdiction to make proper order regarding the division of produce if the rent between the landlord and tenant was fixed on kind and not on cash. Such jurisdiction u/s 69 of the B.T. Act comes in when there is admitted position of the landlord and the tenant between the parties and that the landlord neglects to make division of the produce or that there was any dispute regarding the quantum of division of the produce. Thus the jurisdiction of the Collector comes in when there is admitted position of the relationship of the landlord and tenant between the parties and that the rent was to be paid in terms of crops. The procedure as to how the proceeding u/s 69 of the B.T. Act is to be conducted had been mentioned u/s 70 of the B.T. Act. The procedure as enumerated under

Sections 70(a) to 75(b) are mandatory provisions and if those provisions are not being followed then the proceeding definitely becomes illegal one. The bar created or the ouster of the Civil Court jurisdiction had been mentioned in Subsection (6) of Section 70 of the B.T. Act which runs as follows:?

(6) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Civil Court, but, subject as aforesaid his order shall be final and shall, on application to a Civil Court by the landlord or tenant, be enforceable as a decree.

5. On a plain reading of that subsection it is clear that the division of crop between the landlord and the tenant as decided by the Collector shall be a final one and the same cannot be questioned in the Civil Court. Definitely under these two provisions of Section 69 and Section 70 of the Act there is no scope of the Collector to decide the status of the parties as landlord and tenant. There is provisions under the B.T. Act for having recording of the name of the tenant under the provisions of Section 48E of the B.T. Act but in the present suit it had already been held to be not there any existence. Only bar has been claimed u/s 70(6) of the B.T. Act. The jurisdiction of the Civil Court as contemplated u/s 9 of the C.P.C. is a vast one. Such jurisdiction cannot be curtailed by any special Act unless that special Act has got self contained procedure or that there is specific bar being created regarding the jurisdiction of the Civil Court. Here u/s 7(b) bar is created regarding the division of crop being made by the Collector between the landlord and the tenant to be questioned in the Civil Court. But the frame of the present suit is definitely not challenging the division being made by the Collector rather challenge has been made to the effect that there is no relationship of landlord and tenant between the parties and that the proceeding as taken up u/s 69 of the B.T. Act was totally an illegal, inoperative and not binding on the plaintiff. Thus, I find that the learned Appellate Court has rightly held that no bar is there in entertaining the civil suit itself on consideration of Exhibits 7 and 8 i.e. the documents regarding proceeding u/s 69 of the B.T. Act. It has further been held by the learned appellate Court that the procedure as contemplated u/s 70 of the B.T. Act had not been followed in disposing of the petition u/s 69 of the B.T. Act. On the very facts and on consideration of exhibits 7 and 8 it could be found that no-where the plaintiff had been given an opportunity to place his case even the final order passed by the Collector has not been brought on record for the reasons best known to the defendant. At the very first instance when the petition was filed by Saini Uraon notices were sent to the plaintiff. He appeared and sought time for filing written statement but then Saini Uraon had withdrawn the proceeding and the proceeding was dismissed on withdrawal. But it is stated by the defendant that such withdrawal was illegal as that was on instigation and influence by the plaintiff and, as such, he made a petition before the Collector but it could not be proved by any scrap of paper and has also not been stated from the side of the defendant that before the Collector the plaintiff was summoned and he had been heard rather it appears that in arbitrary fashion the Collector had asked the B.D.O. and others to make division of the produce. All

procedures as contemplated u/s 70 sub-section (1) to subsection (5) had been totally flouted in the proceeding u/s 69 of the B.T. Act and it has rightly been held by the learned appellate Court that the said proceeding is illegal and without jurisdiction as no procedure had been followed. When no procedure had been followed it was not necessary for the appellate Court to mention about the respective sections which were not followed. But still then on going through the appellate judgment I find that the appellate court had considered each and every stage of the proceeding u/s 69 of the Act and held that at every stage there was non-observance of the prescribed procedure and hence the same was held to be illegal and inoperative in the eye of law. There is nothing to be interfered in the finding of the appellate judgment. Thus I find that there is no scope to hold that the judgment of the appellate Court on that score has got any illegality and attracts interference by this court in the second appeal.

6. On the factual aspect regarding the relationship of landlord and tenant it has rightly been contended by the learned counsel for the plaintiff-respondents that the trial Court had approached the matter wrongly and shifted the burden on the plaintiff to prove that he has got cultivating possession and that the defendants are not his tenant. It has rightly been held by the appellate Court that when the plaintiff has occupancy right and his status as landlord being admitted from the side of the defendants and also the documentary evidence supports the plaintiff's title over the suit property then the only presumption of law is that the plaintiff is in possession of the suit land as the title follows possession unless being controverted. Thus the plaintiff's title being admitted by D.W.1 i.e. one of the defendants and also in the written statement and when the plaintiff by his evidence and also by evidence of different witnesses could prove his possession then there was no scope for the learned Sub-Judge i.e. the trial Court to find fault with the witnesses of the plaintiff here and there regarding proof of exclusive possession of the plaintiff. When the presumption of law is in his favour then definitely the burden shifts on the defendant to prove his tenancy. The defendant claimed in the written statement that he is tenant/bataidar under the plaintiff since the days of his forefather. In the written statement no-where it has been stated as to when the settlement was taken, and it has also not been stated as to what was the terms and conditions of the tenancy so much so it has also not been stated that the tenancy was created and rent was to be paid in terms of produce not to speak of quantum of the produce. So on vague statement that Saini Uraon was a tenant of the plaintiff's father Chakradhar Jha there is no detailed statement in the written statement as to how and when the tenancy was created nor regarding the terms and conditions of the tenancy. An attempt was made by adducing evidence of different witnesses, namely, D.Ws. 2, 3, 5 and 6 to prove the tenancy. D.W.2 stated that in his presence the tenancy was created but he did not state about the year. From the age of D.W.2 it could not be believable that he was present at the time of so called tenancy. There is vague statement by D.Ws. 3, 5 and 6 that at one point of time they have seen the defendant to pay produce of the land to the plaintiff and his father. But no

specified year has been stated nor it was stated as to what quantum was paid by the defendant. Moreover such evidence given from the side of the defendant are not required to be looked into as those evidence are outside the scope of consideration when the written statement or the pleadings of the defendants is totally silent about those points, Thus I find that the defendants have miserably failed to prove their status as a bataidar in the suit. They were relying on the so-called order by the Collector which has also not been produced and it could be found as per the discussion above that the procedure adopted by the Collector was totally unknown and foreign to the mandatory procedure as provided u/s 70 of the B.T. Act, in that way the judgment of the trial Court has rightly been reversed by the appellate Court and there is nothing to be interfered by this Court in the second appeal. Hence the second appeal is dismissed with costs.