
(1986) 05 PAT CK 0026
In the Patna High Court
Case No : S.A. No. 115 of 1976

Rajo Mian and Others

APPELLANT

Vs

Puran Mian and Others

RESPONDENT

Date of Decision : 30-05-1986

Acts Referred:

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

Citation : (1987) 35 BLJR 91 : (1986) PLJR 1013

Hon'ble Judges : S.S. Sandhawalia, C.J;Ashwini Kumar Sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ashwini Kumar Sinha, J.—This second appeal is by the plaintiffs against judgment of reversal.

2. The substantial question of law to be determined is whether the compromise decree in T.S. No. 4/64 could be annulled by the Sub-Divisional Officer, Deoghar (Revenue Officer) in R.E. Case No. 36/64; in other words whether Section 20 of the Bihar Act 14 of 1949 authorised the Revenue Court to evict a person who had come on the land on the basis of a compromise decree of a competent Civil Court, if that compromise was collusive ?

3. The learned Counsel for the plaintiffs-appellants contended that the compromise decree in the aforesaid title suit could not be annulled by the Sub-Divisional Officer, Deoghar (Revenue Court) even though it contravened the provisions of Santhal Praganas Tenancy (Supplementary Provisions) Act, 1949 or was against public policy.

In order to appreciate the submission of the learned Counsel for the appellants, it is pertinent to state a few facts.

4. Plaintiffs-appellants brought a title suit (No. 130/54 of 1966/69) for declaration of their title and confirmation of possession over 47 decimals of plot

No. 371 and 15 decimals of plot No. 372, situate in village Nokhata, in the district of Santhal Praganas. The appellants-plaintiffs founded their claim on the basis of Exchange of the suit lands between Mahatha Mian (father of respondent third party) and plaintiff No. 4. Their case was that, according to this Exchange, the plaintiff (respondent No. 4) got the plots in question in the year 1353 Fs. and the plaintiff No. 4 gave his lands to the father of respondent third party (plot No. 214 6 decimals; plot No. 21419 decimals; and plot No. 373 43 decimals) (in village Manjhali Tikur). The plaintiff's-appellants case was that after this Exchange the parties to the Exchange took possession of their respective lands. The plaintiffs appellants' case was that some time later, there was a partition between the plaintiffs and plaintiffs No. 1 to 3 got 27 decimals of land in plot No. 371 from south and the remaining land of plot No. 371 and plot No. 372 were allotted to plaintiff No. 4 (Chhabeli Mian).

According to the plaintiffs-appellants' case, the defendant third party filed a title suit (No. 4 of 1964) in the court of Deputy Collector, Deoghar, against plaintiffs No. 1 to 3 for declaration of title and recovery of possession of the suit plots in question, i.e. plots No. 371 and 372 of village Nokhata. In the suit plaintiff No. 4 (Chhabeli Mian) also appeared and contested the suit which ended in a compromise between the parties. According to the compromise, the plaintiffs were allowed to remain in possession of the suit lands as before.

The plaintiffs' further case was that some time after, at the instance of the enemies of the plaintiff, defendant No. 1, filed an application in the Court of the Sub-Divisional Officer alleging illegal alienation of raiyati lands. This application before the Sub-Divisional Officer, Deoghar, by defendant No. 1 was numbered as R.E. Case No. 36 of 1964. The Sub-Divisional Officer ignored the compromise decree of the Civil Court passed in T.S. No. 4/64 and passed an order of eviction against the plaintiffs and defendant No. 3. The Sub-Divisional Officer further ordered settlement of suit lands with the deserving raiyats.

According to the plaintiffs-appellants, this order of the Sub-Divisional Officer cast a cloud over the plaintiffs' title and hence the suit for declaration of title a confirmation of possession over the suit lands, mainly contending that the order of the Sub-Divisional Officer in R.E. Case No. 36/64 (filed by defendant No. 1) was without jurisdiction and hence null and void.

5. Defendant No. 3 (Amin Mian) is the son of Mahatha Mian with Exchange took place according to the plaintiffs. This defendant No. 3 denied the story of Exchange as setup by the plaintiffs-appellants; on the other hand he asserted that the suit lands were given to the plaintiffs-appellants only on Batai system. He, however, supported the compromise arrived at in T.S. No. 4/64, and ultimately he did not contest the suit at the time of hearing.

6. The sixteen annas raiyats filed two sets of written statements. In the first set of written statement the story of Exchange, possession etc. made by the plaintiffs-appellants were admitted; whereas, in the second set of written

statement, filed later, the story of Exchange set up by the plaintiffs-appellants was denied and it was asserted that Mahatha Mian (father of defendant No. 3) had no right to Exchange any lards of the Jamabandi without the consent of other Jamabandi Raiyat and the village community. They further asserted that plaintiff No. 4 never came in possession of the suit lands in the year 1353 Fs. on the basis of the Exchange. Their case was that a little before the filing of R.E. Case No. 36/64, plaintiff No. 4, somehow or the other, started cultivating the plots in question which gave rise to the revenue case. They further asserted that there was no partition between the plaintiffs. According to them the plaintiffs No. 1 to 3 brought defendant No. 3 in their collusion and persuaded later to transfer the suit lands and it was in such collusive state of affairs that defendant No. 3 filed the Title Suit No. 4/64 in the Court of the Deputy Collector, Deoghar, as no sale deed could have been executed or registered and the filing of a collusive suit was only to get away with the illegal transfer. Thus, in short, in the second set of written statement filed by the sixteen annas raiyats of the village Nakhata, they denied the plaintiffs' case totally and, amongst others, as stated above, further stated that the compromise in the T.S. No. 4/64 was a collusive one to get an illegal transfer recognised by a court of law. They further pleaded that the transfer was in contravention of Section 20 of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949. They further pleaded, in the circumstances, that the compromise decree in the aforesaid title suit was illegal, fraudulent and collusive and hence in R.E. Case No. 36/64 the illegal alienation was set aside and the order passed by the Sub-Divisional Officer in R.E. Case No. 36/64 was well within his jurisdiction.

7. It is pertinent to mention here that one Puran Mian and Halima Bibi were added as intervenor-defendants in the present suit (T.S. No. 130/54 of 1966/69). These two intervenor-defendants also filed their written statement contending the plaintiffs' case and, in fact, it were these two intervenors-defendants who have really contested the present suit.

These intervenors-defendants, supporting the written statement filed by the sixteen annas raiyats of the village, contended that they were added as parties in R.E. Case No. 36/64 and that the order of eviction passed in that case was in their presence. But, with ulterior motive the plaintiffs deliberately had not impleaded them initially as party to the suit.

These intervenors-defendants (who have really contested the present suit), though accepted the possession over the suit land, have asserted that the plaintiffs came in possession of the suit lands only after the illegal compromise in the collusive T.S. No. 4/64. They pleaded that the eviction order passed by the Sub-Divisional Officer in R.E. Case was valid and binding, "hey further pleaded that the eviction order was validly passed by the Sub-Divisional Officer, in view of his power conferred u/s 20 of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949.

8. The trial Court held (i) that the plaintiffs had title over the suit lands and they

were entitled to a decree for confirmation of possession; (ii) that the order passed by the Sub-Divisional Officer in R.E. Case No. 36/64 was without jurisdiction and invalid; (iii) that the story of Exchange set up by the plaintiffs was correct; (iv) that the plaintiffs were in continuous possession of the suit plots and (v) that Section 20 of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 did not authorise the Revenue Court to evict a person who had come on the land on the basis of a compromise decree of a competent civil court even if the compromise was collusive.

With these findings the suit was decreed.

9. Aggrieved by the trial Court decree, the intervenors defendants filed an appeal in the Court below. This appeal was numbered as T.S. No. 76/38 of 1970/75.

The Court below held (i) that the plaintiffs had failed to prove the story of Exchange from Mahatha Mian in 1353 Fs. (ii) that the story of partition between the plaintiffs, a few years after the Exchange, was not proved by the plaintiffs; (iii) that defendant No. 3 initially entered into a transaction of sale with plaintiffs No. 1 to 3 against the provisions of law and later in collusion with the plaintiffs filed T.S. No. 4/64 and only when plaintiff No. 4 could get the agreement for Exchange (Ext. 1) prepared, he intervened and his intervention paid him rich dividend by getting some lands on the basis of compromise; (iv) that the plaintiffs neither acquired any title to the suit lands nor were they entitled to a decree for confirmation of possession; (v) that the possession of the plaintiffs over the suit lands had commenced only after coming into force of Santhal Parganas Tenancy (Supplementary Provisions Act, 1949 and the same had not ripened into indefeasible title; (vi) that the jurisdiction of the Revenue Court could have been ousted only if the plaintiff had perfected their title by adverse possession before coming into force of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949, but they had not done so. In that view of the matter, the Sub-Divisional Officer had full jurisdiction to decide R.E. Case No. 36/64 and the order passed herein was neither without jurisdiction nor invalid.

With these findings the appeal filed by the intervenors-defendants was allowed and the judgment and decree of the trial Court were set aside and the suit filed by the plaintiffs was dismissed.

Thus, the present appeal by the plaintiffs.

10. At the out set it has to be stated that the plaintiffs have neither pleaded prescriptive right nor any issue as such was framed by the trial Court nor has this been proved by the plaintiffs.

11. The plaintiffs founded their title on the basis of the Exchange of the year 1353 Fs- and claimed possession over since the date of Exchange and in order to strengthen their case they have also relied upon the compromise decree passed in T.S. No. 4/64.

12. The Court of appeal below (the final court of fact), after very carefully

appraising the evidences on the record, came to the finding that the story of Exchange set up by the plaintiffs was not correct. This being a pure question of fact and the same having been found against the plaintiffs, the very foundation of title, as set up by the plaintiffs, falls.

Then the plaintiffs could fall back upon their prescriptive right ripening into the perfect title. As already stated above, such a claim was neither pleaded nor proved nor was such an issue framed by trial Court.

Then remains the only other foundation of the plaintiffs i.e., the compromise decree of T.S. No. 4/64. The Court of appeal below, on a proper appreciation of the evidence on the record, has held that defendant No. 3 had initially entered into transaction of transfer (Exchange) with the plaintiffs 1 to 3 against the provisions of law i.e., against the provisions contained in Section 27 of Regulation 3 of 1872 and later in collusion with the plaintiffs filed T.S No. 4/64; in other words. Title Suit No. 4/64 was a collusive one, and it has further held that only when plaintiff No. 4 could get the agreement for Exchange (Ext. 1) prepared, he intervened and his intervention paid him a rich dividend by getting some lands on the basis of compromise decree. Such being the position, i.e., original transfer being in contravention of law, a vendee could not perfect his title by adverse possession after coming into force of 1949 Act and the Revenue Court could order eviction of a transferee who had not completed 12 years on the date of coming into force of 1949 Act. But, if 12 years possession had expired before coming into force of 1949 Act, then no eviction could be ordered by the Revenue Court. Such a position in law is well settled.

However, in the present case, it has been positively held by the Court of appeal below that the possession of the plaintiffs over the suit lands had commenced only after coming into force of Santhal Parganas (Supplementary Provisions) Act, 1949 (in short, 1949 Act) and thus the original transfer (Exchange) being in contravention of Section 27 of the Santhal Parganas Regulation, 1872, as held by the Court of appeal below, the plaintiffs could not perfect their title by adverse possession after coming into force of 1949 Act, even if they had pleaded as such.

13. The present contesting respondents, i.e., the intervenor-defendants (respondents 1 and 2 of the present appeal) were not parties in the aforesaid Title Suit No. 4/64, in which the compromise decree was passed.

14. It is well settled that a judgment/decree in a suit is binding upon the parties to the litigation, but the same cannot be binding upon a person who is not a party to the suit. In T.S. No. 4/64, the parties were only the plaintiffs and defendant No. 3. In the present suit also they are sailing, practically, on the same boat; as, except filing the written statement, defendant No. 3 did not contest the suit. None of the parties in the aforesaid title suit has tried to disregard the aforesaid compromise decree in the present suit. It is only the present contesting respondents, i.e., the intervenor-defendants, who have contested the suit on the ground that T.S. No. 4/64 and the compromise decree

therein were collusive one. As they were not parties in the aforesaid suit, they could, in law, very well attack the aforesaid compromise decree. The language of Section 27(1) of the Regulation is clear and unambiguous. It prohibits any transfer of a holding by a raiyat either by sale, gift, mortgage or lease or by any other contract or agreement. The Section is comprehensive enough to include a transfer of the holding by way of an exchange. Sub-section (2) of Section 27 in clear terms also enjoins upon the Courts not to recognise any such transfer. It is also well settled that though Section 27 of the Regulation does not in express terms mention an exchange, a transaction of exchange is not beyond the scope of that Section. A transfer of property in completion of an exchange as contemplated by Section 118, T. P. Act can be made only in the manner provided for the transfer of such property by sale. It is not, therefore, right to say that an exchange does not involve transfer of property, and therefore, does not fall within the scope of Section 27. The language of Section 27(1) is comprehensive enough to include any agreement or contract of exchange.

I have already stated above that the Court of appeal below, on a proper appraisal of the evidences on the record, has held that the original transfer (Exchange) was against the provisions of Section 27 of Santhal Parganas Regulation, 1872. The jurisdiction of the Revenue Court to evict a person under Santhal Parganas Regulation, 1872 (read with Bihar Act, 1949) is dependent upon whether the transfer of holding was in contravention of the provisions of Section 27 of the Santhal Parganas Regulation, 1872. It has already been held above that in the present case the original transfer (Exchange) was in contravention of the provisions of Santhal Parganas Regulation, 1872. It has also been held above that T.S. No. 4/64 and the compromise decree arrived at therein were collusive. In such a situation I hold that Section 20 of Bihar Act 14 of 1949 authorised the Revenue Court to evict the person who had come on the basis of an illegal transfer. In the present case, it has been held that the plaintiffs did not come in possession over the suit lands in 1353 Fs., as alleged by them but they had come in possession only sometime before filing of the suit, (the suit having been filed in 1966) which necessarily means that the plaintiffs had come in possession only after coming into force of Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 (Bihar Act 14 of 1949). In such a situation the plaintiffs could not have acquired title as the transaction was against the provisions of the Act. In such a view, I hold that the Sub-Divisional Officer, Deoghar (Revenue Court), was duly, authorised, in law, to disregard the compromise decree in the aforesaid T.S. No. 4/64.

15. Thus, I hold that the plaintiffs had failed to prove title. I further hold that the Court of appeal below has correctly held that the transfer (Exchange) was in contravention of the Santhal Parganas Regulation, 1872. I further hold that the plaintiffs never came in possession in 1353 Fs. on the basis of a transfer (Exchange), as alleged by them. They came in possession only after coming into force of the Bihar Act 14 of 1942 and only sometime before the filing of the suit. And thus they could not acquire title by adverse possession also (though I have

already held above that the plaintiffs never pleaded title by adverse possession). I further hold that, in the facts of the present case, i.e., the original transfer being against the provisions of Santhal Parganas Regulation, 1872 and the plaintiffs having not perfected their title by adverse possession before coming into force of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 (Bihar Act 14 of 1949); the Revenue Court was well within its jurisdiction to pass order of eviction against the plaintiffs u/s 20 of the Bihar Act 14 of 1949 and thus, in the facts of the present case, the Revenue Court committed no illegality in disregarding the collusive compromise decree passed in T.S. No. 4/64, in which the present contesting intervenor-defendants were not parties.

16. For the aforesaid reasons, I hold that there is no substance in the submission advanced by the learned Counsel for the appellants.

17. In the result, this appeal is dismissed. However, there will be no order as to costs.

S.S. Sandhawalia, C.J.

18. I agree.