

(1983) 12 PAT CK 0004

In the Patna High Court

Case No : Appeal from Appellate Decree No's. 173 and 174 of 1968

Sheo Shankar Pd. Singh and Others

APPELLANT

Vs

Ganga Prasad and Others

RESPONDENT

Date of Decision : 01-12-1983

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 2(j), 5, 5(1)

Citation : (1984) PLJR 391

Hon'ble Judges : Prabha Shanker Mishra, J

Bench : Single Bench

Advocate : Lakahman Sharan Sinha and Guru Sharan Sharma, for the Appellant; J.P. Shukla (G.P. II) and B.K. Singh "Chauhan" (J.C. to G.P. II), for the Respondent

Judgement

Prabha Shanker Mishra, J.—The plaintiff, respondents have moved this Court in appeal against the judgment of the 5th Additional Subordinate Judge, Patna, in one case modifying the decree for arrears of rent and in the other case setting aside the judgment and decree of the Munsif 1st Court, Patna. These appeals arise out of a common judgment and involve common questions of law. Accordingly, they have been heard together and are being disposed of by a common judgment. The plaintiff-appellants claim to be the owners of holding No. 88/89, Circle No. 93, Ward No. 20 plot No. 6-4 and holding No. 26, Circle No. 91, Ward No. 19 plot No. 458 situated in Mohalla Maharajganj alias Bajuganj in the town of Patna. According to their case, upon the said holdings, there were houses. The original owners were Mosmat Ghansi and Kunda. Later the houses fell down and lands were sold by them to Dallu Singh. Appellants inherited the property from him through their father. Holding No. 88/89 was given in settlement by the ancestors of the appellants to Chhedi Sah grand-father of defendants 1 and 2 under registered sarkhat dated 14.2.1897 on a monthly motarfa rental of Rs. 2/12 annas and annual Mahabiri Jhanda charges of Rs. 2/-. Similarly, the other holding, that is to say, holding No. 26 was given in settlement under registered Sarkhat dated 2.1.1911 to Sohrai Sah father of

defendants 1 and 2 on motarfa rental of Rs. 9/8/9/- pie per month. Defendants occupied the two holdings and paid rent to the ancestors of the appellants as also to them continuously in the past. But when they claimed rent from them for the period Magh 1361, Fasli to Bhado 1366 Fasli, they disclosed that ground rent had been paid to the defendant No. 3, the State of Bihar and the appellants (plaintiffs) were not entitled to claim any rent from them. The plaintiffs thereafter filed the suit, being money suit No. 463 of 1959. On 10th July, 1961 the suit was decreed in part by the learned Munsif granting a money decree for the arrears of rent against the defendants 1 and 2 for Rs. 151/- and a decree for Rs. 89/- against defendant No. 3 the State of Bihar, as it was found that State of Bihar had realised rent from the defendants 1 and 2. Both the State of Bihar (defendant No. 3) and defendants 1 and 2 went in appeal against the judgment and decree of the learned Munsif. The appeal filed on behalf of the State of Bihar was numbered as miscellaneous appeal No. 47 of 1961. The appeal filed on behalf of the defendants 1 and 2 was numbered as Miscellaneous Appeal No. 51 of 1961. These appeals were allowed and the case was remitted back on 3.7.1966 for a redetermination in accordance with law. The trial Court after the remand again decreed the suit in favour of the plain, tiff-appellants. This time also the State of Bihar and the defendants 1 and 2 filed their respective appeals. Appeal filed on behalf of the State was numbered as Miscellaneous appeal No. 9/6 of 1967 and the appeal filed on behalf of the defendants 1 and 2 was numbered as Miscellaneous appeal No. 10/5 of 1967. Those appeals have been allowed by the learned Additional Subordinate Judge, inasmuch as the plaintiff appellants have been found to be entitled to realise rent from the defendants 1 and 2 only until the date of vesting of the intermediary estates in the State of Bihar and for the periods thereafter the State of Bihar has been found to be entitled to realise rent from the defendants 1 and 2.

2. Mr. Lakshman Sharan Sinha learned counsel appearing for the appellants has contended that the lands in question satisfy the definition of a homestead of a proprietor or a tenure-holder under the Bihar Land Reforms Act, 1950 (hereinafter referred to as the "Act"), and as such it is protected from vesting u/s 5 thereof. Mr. Sinha has placed reliance on a judgment of the Supreme Court in case of Brij Kishore Prasad Singh and Others Vs. Jaleshwar Prasad Singh and Others, wherein it has been held that an intermediary, who permits a tenant to be in physical possession of homestead property under a hukumnama is in constructive possession of such property. He has submitted that once it is so found, that defendants 1 and 2 were in possession of homestead property under a Sarkhat which is in a nature of hukumnama, which fact is not in controversy, there is no escape from the conclusion that the appellants were in constructive possession on the date of vesting and the lands did not vest in the State.

3. Mr. Sinha is right in contending that a homestead of a proprietor or a tenure-holder in possession of a tenant under a hukumnama shall not vest, but two facts are necessary to be established before any such conclusion is arrived at. The land should be a homestead as defined u/s 2(j) of the Act and it should be in

possession of the proprietor or the tenure-holder or his tenant under a hukumnama on the date of vesting. On somewhat similar facts, a question like one raised by Mr. Sinha had fallen for consideration before a Division Bench of this Court in Appeal from Original Decree No. 259 of 1956 (Jugesawar Pd. Agrawal and another v. Shrimati Satyabala Devi and others). The Bench noticed from the language of section 5 of the Act that only homesteads as distinguished from homestead land in possession of an intermediary were saved to him. The Court further observed "of course, according to section 2(j), a "homestead" means a building as well as the site or land on which it stood at any time before the date of vesting; but section 5 does not contemplate a homestead which was in possession of any person other than the intermediary. Mr. Chatterji referred to the words being in the possession of an intermediary, occurring in sub section (1) of section 5, and submitted that, inasmuch as the word "actual" or "khas" does not occur before the word "possession", all homesteads, irrespective of the fact whether they were in the actual possession of the intermediary or any other person, were saved to the intermediary, under this section. But this contention is inconsistent with the provision contained in sub-section (1) and the proviso thereto. The substantive provision provides that the intermediary shall be entitled to retain possession of the homestead in his possession as a tenant under the State free of rent, while the proviso lays down that the intermediary shall be liable to pay ground-rent to the State for any homestead owned by the intermediary for the purpose of letting out on rent. In other words, even though the building may belong to an intermediary and he lets it out on rent, he will be liable to pay ground-rent; and no ground rent shall be payable by him for a building which is in his possession. It is manifest from the distinction so made that the substantive portion of sub-section(1) of section 5 refers to a homestead or building in actual possession of the intermediary. It follows, therefore, that any building, other than a homestead constructed by the intermediary, either for his own use or for the purpose of letting out on rent, is not covered by section 5." Mr. Sinha has contended that these observations in the judgment of Ramratna Singh, J. in F.A. 259 of 1956 must be deemed to be inconsistent with the law laid down by the Supreme Court in Brij Kishore Prasad Singh and Others Vs. Jaleshwar Prasad Singh and Others, . At a first glance one is tempted to accept the argument of Mr. Sinha, Ramratna Singh, J. has imported in his judgment the idea of khas possession as distinguished from the possession of a tenant under a hukumnama, as if constructive possession of the intermediary shall not be deemed to be his possession upon the homestead for the purpose of vesting under the Act. I would have considered referring this matter for consideration to a Division Bench desirable had I not found another aspect of the matter duly noticed by Ramratna Singh, J. in his judgment and a judgment of the Supreme Court, namely, Sabitri Devi Thirani Vs. Satya Narain Mandal, . Ramratna Singh, J has emphasised on the distinction between a homestead as defined under the Act and a homestead land. It is well known that a homestead can change its character and when it comes to a tenant it can be used by him for any of the purposes envisaged under the Bihar Tenancy Act. In the instant case it

is admitted that there was no house in existence when the tenants were admitted upon it. Defendants 1 and 2 (or their ancestors), it is admitted by the appellants, built their own houses after they got the land settled with them. What was settled with the tenants was the land and not a house given to them on rent. While admitting the defendants 1 and 2 (or their ancestors) as tenants the appellants or their ancestors admitted them as tenants upon a homestead land and not upon a homestead as defined under the Act. Therefore, a piece of land belonging to ex-intermediary, which was settled to the defendants 1 and 2 (or their ancestors) upon which they built a house was used by them for building purposes. A house built by them, by no stretch of imagination, can be deemed a dwelling house of the appellants or the appellant. A distinction to this effect has been noticed by the Supreme Court in the case of Sabitri Devi Thirani Vs. Satya Narain Mandal,

4. There is yet another aspect of the matter. Section 5 of the Act reads as follows:--

5. Homesteads of intermediaries to be retained by them as tenants:--

(1) With effect from the date of vesting, all homesteads comprised in an estate of tenure and being in the possession of an intermediary on the date of such vesting shall subject to the provisions of section 7A and 7B be deemed to be settled by the State with such intermediary and he shall be entitled to retain possession of the land comprised in such homesteads and to hold it as a tenant under the State free of rent:

Provided that such homesteads as are used by the intermediary for purposes of letting out on rent shall be subject to the payment of such fair and equitable ground-rent as may be determined by the Collector in the prescribed manner.

(2) If the claim of an intermediary as to his possession over such homestead or as to the extent of such homesteads is disputed by any person within three months from the date of such vesting, the Collector shall, on application, make such inquiry into the matter as he deems fit and pass such order as may appear to him to be just and proper.

The words in the proviso are "for purposes of letting out on rent." Intermediary's possession upon his homestead shall exempt him from any rent payable to the State. If, however, a tenant is in possession that it to say if a homestead belonging to the intermediary is let out on rent to a tenant, there shall be an obligation upon the intermediary to pay fair and equitable ground rent as determined by the Collector in the prescribed manner. It follows from the scheme of this law that a settlement of permanent nature is not protected from vesting. It is only a house given on rent in which a constructive possession of the intermediary can still be taken to be in existence which can be said to have been protected from vesting. I am supported in my view by the authority of a bench decision of this Court reported in Pir Mohammad and Another Vs. Abdul Majid and Others, and after him Fazal Imams and others.

5. In view of my discussion above, I find no force in the contention of Mr. Sinha, No other point has been raised and no other argument has been advanced. In the result, both the appeals being second appeals are dismissed, but on the facts and in the circumstances of the case there shall be no order as to costs.