
(1995) 04 PAT CK 0010
In the Patna High Court
Case No : Civil Revision No. 650 of 1993

Shrimati Shanti Devi

APPELLANT

Vs

Ram Chandra Ram and Others

RESPONDENT

Date of Decision : 27-04-1995

Acts Referred:

Citation : (1995) 04 PAT CK 0010

Final Decision : Dismissed

Judgement

R.N. Prasad, J.—This application in revision is directed against the part of the order dated 2.2.1993 passed by the Sub-ordinate Judge-VII, Patna in Title Suit No. 496 of 1990, whereby the petitions of defendant-opposite party No. 2 and the defendant-petitioner, questioning the maintainability of the suit, was rejected holding that the suit is maintainable.

2. The plaintiff-opposite party No. 1 filed the suit for declaration of his title and confirmation of possession over the land in dispute and also for a declaration that the eviction proceeding under the Bihar Regional Development Authority Act (hereinafter referred to as the Act) was not maintainable with regard to the suit property and the eviction order passed therein was void and did not affect his title.

3. The petitioner and the Opposite party No. 2 filed a petition in the suit stating inter alia, therein that the suit is not maintainable. The court below, after hearing the parties, rejected the aforesaid petition by the impugned order.

4. Learned Counsel for the petitioner contended that u/s 85 of the Act the officers of the Bihar Regional Development Authority (hereinafter referred to the Authority) have been empowered to pass an order of eviction against a person who is in unauthorised occupation of the land or house of the Authority and u/s 89 of the Act an appeal against such an order has been provided. According to the learned Counsel in view of Section 91 of the Act, the jurisdiction of a Civil Court has been ousted.

Section 91 of the Act reads as follows:

Bar to jurisdiction of Civil Courts.-Save as otherwise provided in this Act no suit shall be brought in any Civil Court to set aside or modify any order made under this Act and no injunction shall be granted by any Civil Court restraining the Authority or its officers or servants from doing any act or exercising any power of performing any duty purported to be done under this Act or rules or Regulations framed thereunder.

5. From a perusal of the aforesaid provisions, it is manifest that a Civil Court shall have no jurisdiction to set aside or modify any order made under the Act or to pass an injunction order in a suit restraining the Authority or its officers from doing any act or exercising any power or performing any duty purported to be done under the Act and the rules framed thereunder. In other words, the jurisdiction of a Civil Court has been ousted only in respect of the setting aside or modifying of any order made under the Act or to pass injunction order against the Authority or its officers restraining them from doing any act or exercising any power or performing any duty purported to be done under the Act and the rules framed thereunder. Thus, it is obvious that if it is found that even a suit for declaration of title and confirmation of possession has to be decided and dealt with under the provisions of the Act, then Section 91 of the Act will operate as a bar on the power of a Civil Court to entertain a suit.

6. Section 9 of the CPC is very much explicit and unambiguous which says that a Civil Court shall have jurisdiction to try all suits of civil nature, except the suit, of which cognizance is either expressly or impliedly barred. Learned Counsel for the petitioner, after going through the provisions of the Act and the rules framed thereunder, could not be able to lay his hands on any provision which empowers the authority or its officers to adjudicate the question of title, interest and possession of the parties. He also could not be able to show any provision which bars the jurisdiction of a Civil Court for adjudication of such a right and claim of parties. It is well established rule of law that if there is no provision under any statute, either expressly or impliedly, debarring taking cognizance by a Civil Court, the jurisdiction of a Civil Court cannot be held to have been ousted.

7. In the case of Shiv Kumar Chandra v. The Municipal Corporation of Delhi and Ors. (1993) S.C.C. 161 the Apex Court has held that where statutory enactments only create rights or liabilities without providing a forum of remedies, any person being aggrieved that he has been wronged or his right is being affected, can approach the ordinary Civil Court on the principle of law that where there is a right there is a remedy; and also where a particular Act creates a right and also provides a forum for enforcement of such right and bars the jurisdiction of a Civil Court, then ouster of the Civil Court's jurisdiction has to be upheld. But the situation will be different where the statute neither creates a right nor provides any remedy or having created any right or liability, no forum for adjudication of any dispute arising out of such right or liability is provided. In such a situation ouster of the Civil Court's jurisdiction is not to be easily inferred. The similar view

has also been expressed by the Supreme Court in *Saraswati and Others Vs. Lachanna (Dead)* through Lrs., .

8. In the instant case, it is an admitted position that the Act does not provide any remedy for adjudicating the right and title or possession of a person. Thus, Section 91 of the Act, which is in unambiguous term, cannot be held to have ousted the jurisdiction of a Civil Court for adjudication of such a dispute.

9. Learned Counsel for the petitioner, however, further contended that in the suit declaration has also been sought for that the eviction proceeding under the Act was not maintainable and the order of eviction assed in the aforesaid proceeding was void and did not affect his title and hence the suit is barred under the provisions of Section 91 of the Act.

10. In this regard, it is pertinent to mention herein that the main relief sought for in the suit was declaration of title and confirmation of possession, and the other relief as claimed by the plaintiff was consequential in nature. If the main relief is not granted, there is not question of granting the consequential relief. Furthermore, in the case of *Satyapramoda Thirthaswamulavaru Vs. Mula Gunnayya (deceased) and Others*, it has been held that where only a part of the relief claimed can be granted under the Act, the Civil Court has jurisdiction to entertain the suit, In the instant case, the Authority under the Act, no doubt, has power to pass an order of eviction which can be nullified in appeal, but there is no provision for adjudication of right, title and interest of a person in the property as has been claimed in the present suit, meaning thereby that the Authority under the Act cannot grant the entire relief as claimed in the suit and as such I do not find any substance in the submission of the learned Counsel for the petitioner.

11. In the result, this application is dismissed but without cost.