
(1992) 08 PAT CK 0018

In the Patna High Court

Case No : Appeal from Appellate Decree No. 303 of 1974

Shyam Nandan Prasad Singh and Others

APPELLANT

Vs

Sita Ram Singh and Others

RESPONDENT

Date of Decision : 07-08-1992

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 28, 46, 9

Citation : (1993) 1 BLJR 613 : (1992) 2 PLJR 755

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Judgement

S.N. Jha, J.—This appeal by defendant No. 4 arises out of a judgment of affirmance. The plaintiffs filed suit claiming inter alia, declaration of their title with respect to suit property and its recovery. It is not necessary to set out the pleadings of the parties for decision of the questions which have been raised in this appeal. Suffice it to say that the plaintiffs' claim is based on purchase from the auction purchaser, defendant No. 9 in the suit, of a property which was declared to be evacuee property under the Administration of the Evacuee Property Act, 1950 (in short "the Act"). The defendant inter alia on the defence that the suit property is not evacuee property. A plea was also taken as to bar the suit u/s 46 of the Act. The trial Court negatived the defence and decreed the suit as against the appellants which has been upheld by the lower appellate court.

2. Mr. Kalika Nandan reiterated the plea as to bar of the suit u/s 46 of the Act and submitted that the suit being maintainable as seeking adjudication upon a question as to the nature of the property the court should have dismissed the suit as against the appellants as well. Section 46 of the Act reads as follows

46. Jurisdiction of Civil Courts barred in certain matters.--Save as otherwise expressly provided in this Act, no Civil or Revenue Court shall have jurisdiction--

(a) to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not evacuee property; or

(b) xx xx xx xx (c) to question the legality of any auction taken by the Custodian General or the Custodian under this Act; or

(d) in respect of any matter which the Custodian-General or the Custodian is empowered by or under this Act to determine.

From a bare reading of the said provisions it is obvious that unless otherwise specifically provided in the Act the Civil Court has no jurisdiction to decide any question as to whether any property or any right to or interest in any property is or is not evacuee property. It is well settled principle that the nature of the suit is determined on the basis of the plaint and not on the basis of the defence taken in the written statement. In that view of the matter, I have gone through the plaint. From a reading thereof it becomes clear that the plaintiffs have nowhere raised any question or sought any adjudication of the question as to the nature of the property whether it is evacuee property or not. As a matter of fact, the plaintiffs have merely relied upon the adjudication made by the competent authorities under the Act and the findings recorded by them to the effect that the property is evacuee property. It is the appellants, who raised the question as to the nature of the property contending that it was not evacuee property. In my opinion, whatever be said of the merits of the defendants' case, so far as the question of bar of jurisdiction u/s 46 is concerned, the same cannot be said to be applicable by reason of the defence taken by the appellants in the written statement. So far as the merits of his case are concerned, he has lost in both the courts and this Court cannot be behind the concurrent findings of fact. In this connection the provisions of Section 28 of the Act upon which reliance was placed by the counsel for this plaintiffs may also be noticed. That Section gives finality to the order passed by the competent authorities under the Act which are not to be called in question in any court by way of appeal or revision or in original suit application or execution proceeding. What the appellants really wanted was reopening of the orders passed by the competent authorities which is expressly prohibited u/s 28 of the Act.

3. learned Counsel for the appellants next contended that the Act being a complete Code in itself the plaintiffs should have sought itself for possession before the competent authority under that Act and not in the Civil Court. Reference in this connection was made to Section 9 of the Act. That Section reads as follows :

9. Power of Custodian to take possession of evacuee property vested in him.--If any person in possession of any evacuee property refuses or fails on demand to surrender possession thereof to the Custodian or to any person duly authorised by him in this behalf, the Custodian may use or cause to be used such force as may be necessary for taking possession of such property and may, for this purpose, after giving reasonable warning and facility to any woman not appearing in public to withdraw, remove or break open any lock bolt or any door or to any act necessary for the said purpose.

The provisions confer power upon the Custodian to take possession of evacuee property and to do certain acts if the person in possession of such property refuses or fails on demand to surrender possession thereof to the Custodian or to any person duly authorised by him in that behalf. It is true that in a given case if the purchaser of an evacuee property is not able to secure possession he can apply to the Custodian for getting possession. However, there is nothing in Section 9 to create a bar against claiming such a relief in the Civil Court. The bar as to its jurisdiction is contained in Section 46 of the Act which has been noticed above. In the absence of any bar either express or implied the jurisdiction of the Civil Court in granting the relief of possession cannot be said to have been ousted. It is a well known principle that any provision which seeks to take away the rights of a person including the right to institute a suit in the Civil Court and to get the relief has to be strictly construed. In my view, the Civil Court was not debarred from granting the relief of possession which had been claimed in the suit.

4. In my concluded opinion, therefore, there is no error of law in the impugned judgment and decree. This appeal, accordingly, fails and is dismissed with cost.