
(1970) 12 PAT CK 0008
In the Patna High Court
Case No : S.A. No. 356 of 1968

Sidhi Binayak Nath Mishra and Others	APPELLANT
Vs	
Ganga Ram Hazam and Others	RESPONDENT

Date of Decision : 21-12-1970

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 2(k), 6, 6(1)
Specific Relief Act, 1963 — Section 9

Citation : (1973) 6 PLJR 210

Hon'ble Judges : Shambhu Prasad Singh, J;A.N. Mukharji, J

Bench : Division Bench

Advocate : J.C. Sinha, L.M. Sharma and Bhupendra Narain Sinha, for the Appellant;

Final Decision : Allowed

Judgement

Shambhu Prasad Singh, J.—This second appeal by defendants 1 to 4 is directed against the concurrents Judgment and decrees of the courts below granting to the plaintiff-respondent (hereinafter referred to as the respondents) relief for recovery of possession over the suit land, 15 decimals in area, in plot No. 1799, khata no 83, khewat No. 5/12, village Tati, district Ranchi. The trial court also granted to the respondents relief for declaration of title to the suit land, but the lower appellate court has not confirmed that part of the decree. It has, however, taken the view that though on vesting of the Zamindari in the State of Bihar, the appellants acquired occupancy right in the suit land as its real owner and title holder, the respondents were entitled to the relief for recovery of possession as they were illegally dispossessed. The case of the respondents was that the suit plot No. 1799 and another plot No. 1302 were recorded in the name of Andu Hazam, their grand-father, as Naukrana for doing the work of shaving of the appellants and their ancestors and the respondents went on doing the work, remained in possession of the suit land and were in possession thereof on the date of vesting of the Zamindari interest of the appellants in the State of Bihar.

Thereafter they got the rent of the suit land fixed, paid rent thereof to the State of Bihar and obtained receipts. According to them, thus they acquired occupancy right in the two plots. The State of Bihar acquired the other plot 1302 and they received compensation for it. In January, 1965, however, the father of the appellants wanted to dispossess the respondents from plot No. 1799. There was a proceeding u/s 144 of the Code of Criminal Procedure. The appellants in that proceeding alleged that they had got the disputed plot in exchange from the respondents by an unregistered deed dated the 2nd of March, 1964. The Magistrate accepted that case and decided the proceeding against the respondents. They averred that in view of Section 46 of the Chotanagpur Tenancy Act, there could be no exchange and that the said deed of exchange was fabricated and manufactured document.

2. The case of the appellants was that the respondents were given the suit land by their ancestors for doing personal service and they were to cultivate that and to take its usufruct only. On the vesting of their Zamindari interest in the State of Bihar, the appellants became the occupancy raiyats of the suit land. The fixation of rent in favour of the appellants was illegal and not binding on the appellants as no notice of the proceeding was given to them. Compensation for the other plot also should not have been paid to the respondents. Respondents left rendering service to the appellants and gave up possession of the suit land in favour of their father in exchange for plot No. 1656, khata No. 66 measuring 19 decimals and from that time the appellants were in khas possession of the suit land.

3. One of the questions in controversy between the parties was as to whether it was a case of service tenure burdened with no service or it was a case of a service tenure in which the produce was to be appropriated in lieu of wages. The trial court held that it was not a case of service tenure in which the produce was to be appropriated in lieu of wages but a case of service tenure burdened with no service and that the respondents having remained in possession over 20 years acquired status of occupancy raiyats in the suit land. It further held that on vesting of the Zamindari the rights of the appellants in the suit land vested in the State of Bihar and that the alleged exchange could not be treated as surrender and, therefore, not valid u/s 46 of the Chotanagpur Tenancy Act. The lower appellate court has held that it was not a case of service tenure burdened with no service, rather, the appellants' ancestor gave the suit land to the ancestor of the respondents to cultivate and appropriate its produce by way of wages for doing the work of shaving. It further held that on the vesting of the Zamindari the ancestor of the appellants acquired occupancy right in the suit land as its real owner and title holder and that the respondents had left doing the work of shaving before the institution of the suit. According to it, however, the appellant could not acquire the right of the respondents in the suit land by the alleged exchange, and they illegally and forcibly dispossessed them.

4. Unfortunately, no one has appeared before the respondents at the time of the

hearing of the appeal and it has been heard *ex parte*. Mr. J C. Sinha, Learned Counsel for the appellants, has contended that the suit was not one u/s 9 of the Specific Relief Act, and, therefore, the lower appellate court after having held that the appellants had acquired title to the suit land as raiyats and the respondents had left doing the work of shaving ought not have decreed the suit. Mr. Sinha appears right in his contention that the suit was not a suit u/s 9 of the Specific Relief Act. The respondents sought a declaration of their title to the suit land. Once a relief for declaration of title is sought, the suit cannot be treated as one u/s 9 of the Specific Relief Act. A decision in a suit u/s 9 of the Specific Relief Act is subject to a decision in a subsequent suit relating to title of the disputed property and does not operate as *res judicata* on the question of title. A decision in a suit in which a declaration as to title is sought will operate as *res judicata* in subsequent suit on the question of title as well. Further the respondents did not admit that they had been dispossessed. They claimed to be in possession of the suit land and claimed confirmation of possession. They claimed recovery of possession only in the alternative. Of course, the courts below have disbelieved their case that they were in possession on the date of the institution of the suit. In a suit which was really not one u/s 9 of the Specific Relief Act or could be treated to be one under that Section, the court of appeal below could not have granted a decree for recovery of possession in favour of the respondents after having held on the question of title in favour of the appellants. It was not right in observing that the appellants were entitled to bring a suit properly framed in a competent court for declaration of their title and to recovery of possession and for the purposes of this suit the respondents were entitled to a declaration of their title.

5. But another question, namely, whether the court of appeal below is right in holding that on the vesting of the Zamindari the appellants acquired occupancy right in the suit land also does arise for decision in the appeal. Without the aid or the assistance of any counsel on behalf of the respondents, we have also examined the question whether the finding of the court of appeal below that it was not a case of service tenure burdened with no service, rather the ancestor of the appellants had given the suit land to the ancestor of the respondents to cultivate and appropriate its produce by way of wages for doing the work of shaving is correct, and in my opinion, the finding has been correctly recorded. The evidence oral and documentary referred to by the lower appellate court does support that finding. The question, therefore, on which now we have to address ourselves in the appeal is whether in case of lands which were given by intermediaries before the vesting to others for cultivating and appropriating their produce by way of wages for rendering to them service of the nature with which we are concerned in this case, they acquired statutory raiyati right u/s 6 of the Bihar Land Reforms Act (hereinafter referred to as "the Act"). According to the case of the appellants, as made out in their written statement, the respondents were mere licensees. Therefore, they are neither lessees nor mortgagees and Clauses (a) (b), or (c) of Section 6 (1) of the Act are not applicable to their case.

But the question still remains whether an intermediary can be said to be in khas possession of such lands which on the date of the vesting were under cultivation of his licensee in lieu of wages for rendering service as to confer upon him the rights of a statutory raiyat under that Section and prevent the vesting of that land in the State of Bihar. "Khas possession" has been defined in Section 2 (k) of the Act which reads as follows :--

"khas possession" used with reference to the possession of a proprietor or tenure-holder of any land used for agricultural or horticultural purpose) means the possession of such proprietor or tenure-holder by cultivating such land or carrying on horticultural operations thereon himself with his own stock or by his own servants or by hired labour or with hired stock."

Mr. J. C. Sinha has contended that in cases where a person is given some land to cultivate and appropriate its produce by way of wages for rendering some service to the owner of the land, the cultivation of such land by that person is "by his own servant" of the intermediary and, therefore, the land is in khas possession of the intermediary. In support of this contention he has placed reliance on two decisions of learned Single Judge of this Court, viz. (1) Ghasi Naik V. Kalikrishna Singh Deo and another 1962 B. L. J. R. 698 and (2) Rashmi Kuer and others V. Mosst. Hiyawati Kuer and another (Second Appeal No. 383 of 1966 "unreported" Judgment dated 16th July, 1958). The case of (1) Ghasi Naik was a case of Paikali Chakran and it was held that Paikali Chakran was Jagir Khidmati and in such lands the intermediary did acquire statutory raiyati right u/s 6 of the Act even though he was not in possession thereof on the date of the vesting. The case was, however, decided before the decision of the Supreme Court in (3) Suraj Ahir and others V. Prithinath Singh and others 1963 B.L.J.R. 1. In (2) Rashmi Kuer's case, Mahapatra, J. held that licensees possession would not be any the worse than a co-sharer's possession as against the licensor vis-a-vis other co-sharers and relying on the Full Bench decision of this Court in (4) Ramrudhar Singh Vs. Dileshwar Singh and Others, (the decision has since been affirmed by the Supreme Court) which was a case of co-sharers, held, that a land in possession of a licensee was in khas possession of the licensor for the purpose of the Act. It was not a case of Khidmati Jagir. In my opinion, Mr. J. C. Sinha is right in his contention that lands given in Khidmati Jagir, except those specifically referred to in Proviso to Sub-section (1) of Section 6 of the Act, for cultivation and appropriation of their produce by way of wages for rendering some kind of service are to be held in khas possession of the intermediary for the purposes of the Act and he does acquire raiyati interest therein u/s 6 of the Act. Has it not been the intention of the framers of the Act, they would not have made exception in cases of Chaukidari Chakran, Goraiti Jagir or Mafi Goraiti only under the proviso. It could have easily been laid down in the proviso that the Sub-section was not applicable to all cases of Khidmati Jagirs irrespective of the fact whether occupancy right had already accrued to the person in possession thereof or not. Holders of Khidmati Jagirs in lieu of wages for rendering service are servants of the grantor and cultivation by them, in my opinion, is cultivation "by

his own servants" of the intermediary. Therefore, such lands though cultivated by the holders of the Khidmati Jagir on the date of the vesting are in khas possession of the intermediary and he does acquire raiyati interest in such lands u/s 6 of the Act. The ratio-decidenti in (3) Suraj Abir's case has got no application to such cases. The court of appeal below, therefore, rightly held that when the Zamindari vested in the State of Bihar, the appellants acquired raiyati right in the suit land.

6. The trial court appears to have placed much reliance on the fact that the appellants themselves pleaded a case of exchange with the respondents which took place after the vesting. According to it, therefore, the appellants admitted the title of the respondents to the suit land. It was not the case of the appellants that the respondents had acquired raiyati right in the suit land and that they got that right in exchange. Rather, their case appears to be that as the suit land was better situated, they wanted the land, persuaded the respondents to agree to give up the service regarding shaving and the suit land and instead by way of compensation gave them other land of inferior quality as it was less advantageously situated. The case of exchange having been disbelieved by both the courts below, the respondent cannot be given any advantage of the aforesaid pleading of the appellants which really was not an admission of the title of the respondents to the suit land. According to the own case of the respondents, there was no exchange and they had stopped doing the work of shaving of the appellants. In the circumstances, when they had no title to the suit land they could not get a decree as passed by the courts below in their favour. In the result, the appeal is allowed, the judgments and decree of the courts below are set aside and the suit dismissed. As the respondents have not contested the appeal, there will be no order as to costs.