

(2024) 02 PAT CK 0075

In the Patna High Court

Case No : Letters Patent Appeal No. 919 Of 2015 In Civil Writ Jurisdiction Case
No. 17160 Of 2010

Sohel Akhtar @ S. Akhtar

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 28-02-2024

Acts Referred:

Enemy Property Act, 1968 — Section 5, 24

Citation : (2024) 02 PAT CK 0075

Hon'ble Judges : K. Vinod Chandran, CJ; Harish Kumar, J

Bench : Division Bench

Advocate : Shashi Shekhar Dvivedi, Ranjan Kumar Dubey, Parth Gaurav,
Ashutosh Kumar Pandey, Dr. K.N. Singh, Kanak Verma, Shivaditya Dhari Sinha,
Devansh Shankar Singh, Kumar Alok, Prem Ranjan Raj

Final Decision : Dismissed

Judgement

Re: I.A. No. 01 of 2019

1. The present Interlocutory Application has been filed for substitution of heirs and legal representatives of Appellant No. 1 who died on 26.05.2019.
2. Having gone through the Interlocutory Application, we allow the same. Registry to carry out the substitution.

Re: LPA No. 919 of 2015

3. The appeal is filed against the judgment dated 24.09.2014 rejecting the prayer for quashing Annexure-16 order dated 18.06.2010 passed under Sections 5 and 24 of the Enemy Property Act, 1968, in so far as it relates to the original 1st petitioner; father of the appellants, claiming title over a property. The subject property on which the deceased first petitioner claimed title, was taken over by the Custodian of Enemy Property for India by the said order. The property was comprised in Plot Nos. 71, 71/342, 72/342, 139 and 148 situated in Chapra Lodi @ Maripur village.

4. Learned Senior Counsel for the appellants Shri Shashi Shekhar Dwivedi argued that the learned Single Judge laboured under a misapprehension that the title suit filed by the deceased first petitioner got rejected and failed to notice that in appeal, there was a compromise entered into where the rival claimant had accepted the title deed of the deceased first petitioner to be genuine and valid. The deceased first petitioner is asserted to have purchased the property on 14.07.1964 from one Md. Sharif Punjabi, who had migrated to Pakistan. The notification under the Defense of India Act, 1962, which for the first time spoke of vesting of property belonging to Pakistani nationals in the Custodian of Enemy Property for India came into effect only on 10.09.1965, after the sale deed. There was sufficient evidence to indicate that Md. Sharif Punjabi had returned to India and presented himself before the Registrar for registering the document executed by him; which was validated by the compromise entered into between the deceased first petitioner and the rival claimant before the Additional District Judge, in an appeal filed against the decree and judgment in the suit for specific performance, filed by the rival claimant.

5. Notification of 10.09.1965 was under the Defense of India Act, 1962 and the Defense of India Rules, 1962 which stood revoked on 10.07.1968. Though the Enemy Property Act, 1968 came into effect with retrospective effect on 10.09.1965, the vesting could occur only by the notification, which was after the sale deed. By the time the notification vesting the property had come into effect, the sale had fructified and the property was conveyed by the Pakistani national to the deceased first petitioner, an Indian national. When the notification came into existence, the property was in the possession of the Indian national, argues learned Senior Counsel.

6. Learned Additional Solicitor General Dr. K.N. Singh, assisted by Shri Prem Ranjan Raj resisted the contention raised on behalf of the appellants. It is submitted that there is absolutely no evidence led before the authority regarding the sale deed executed. In fact, two suits were filed, one by the deceased first petitioner, for eviction of the rival claimant and the other by the rival claimant, for specific performance. The deceased first petitioner's suit for eviction was rejected and the rival claimant's suit for specific performance was decreed; against which judgments, two appeals were preferred by the deceased first petitioner. The appeal from the dismissal of the suit of the deceased first petitioner was withdrawn, thus validating the decree, which in fact found that the sale deed was a fraudulently executed one. The compromise entered into in the appeal from the decree of specific performance is inconsequential in so far as the proceedings under the Enemy Property Act, which is the successor to the Defense of India Act.

7. We have gone through the records and especially Annexure-16 order, which puts the facts in the proper perspective. The proceedings were initiated on a letter received by the office of the Custodian, from the Anchal Adhikari, Mushari that the subject property situated in Chapra Lodi alias Maripore village belonged

to one Md. Sharif Punjabi who had migrated to Pakistan in the year 1962. It was also stated that Md. Sharif Punjabi never returned to India and one Najmul Hoda was claiming the property under a sale agreement allegedly executed in his favour by one Md. Ishak who styled himself as the Manager of Md. Sharif Punjabi. Noorul Hoda, the deceased first petitioner, also had raised a claim based on a sale deed executed in 1964. It was the categorical submission of the Anchal Adhikari that the said sale deed was not executed by Md. Sharif Punjabi. After investigation, the Additional Collector, Muzaffarpur also issued a letter dated 28.06.1977 with the opinion of the Additional Government Pleader, Muzaffarpur that the property is an evacuee property.

8. The Office of the Custodian received two representations with regard to the above property, one from the deceased first petitioner who claimed title by virtue of the registered sale deed dated 14.07.1964, allegedly executed by Md. Sharif Punjabi. The deceased first petitioner had produced photostat copies of the entry of Md. Sharif Punjabi into India, the statement of the police officer sent by the Police Commissioner, Calcutta. The first referred document was produced before the trial court and the officer, second referred was examined on oath. Despite this, the Sub-Judge-V before whom the title suit was pending rejected the prayer for eviction of the rival claimant, the defendant in the suit, on the finding that the sale deed is fraudulently created.

9. One other claimant, Shri Zafar Masood had also claimed the property and asserted that he was in possession of the property and was staying there for the last 40 years. It was the case of Shri Zafar Masood that he was staying in the property on an arrangement with Md. Sharif Punjabi and that the sale deed of the first petitioner, is a forged document. We are not concerned with the claim of Shri Zafar Masood in the present appeal.

10. As far as the deceased first petitioner is concerned; whose claim was sought to be agitated before the Custodian by the second appellant, his son, the Custodian found that the consent decree obtained by the deceased first petitioner is not binding on the Custodian; rightly so.

11. The admitted facts are that the property belonged to Md. Sharif Punjabi and he migrated to Pakistan in the year 1962. The property, if remaining in the name of that person, is an enemy property as provided under the notification of 10.09.1965. Under the Defense of India Act and the Rules framed thereunder, the notification of 10.09.1965 vested all immovable properties in India, belonging to or held by or managed on behalf of all Pakistani nationals, in the Custodian of Enemy Property for India with immediate effect. The only exception was in so far as property belonging to or held by or managed on behalf of the Pakistani nationals who are employed in the different missions of the Government of Pakistan, in India. Hence, the Custodian has the possession of the property unless the vesting as per the notification is unsettled by the sale deed allegedly executed on 14.07.1964.

12. Admittedly, there were two suits filed, one by the deceased first petitioner and the other, by the rival claimant for specific performance, based on a sale agreement of the subject property. While the rival claimant had filed a suit for specific performance based on a sale agreement executed purportedly by the Manager of Md. Sharif Punjabi, the deceased first petitioner's suit asserted title and sought for eviction of the rival claimant. The suit for specific performance by the rival claimant was decreed and the suit for eviction of the deceased first petitioner stood rejected.

13. The deceased first petitioner hence lost before the trial court and filed two appeals, one against the rejection of his claim for eviction and the other against the decree of specific performance. Admittedly, the appeal against the rejection of the deceased first petitioner's suit was withdrawn. In the appeal against the suit for specific performance, a compromise was entered into. The compromise was in so far as the rival claimant resiling from his claim over the agreement. The rival claimant entered into a compromise, photo copy of which is produced by the second appellant himself in the rejoinder filed in the appeal.

14. We find it appropriate to extract the entire compromise filed by the deceased first appellant and the rival claimant before the appellate court: -

"The humble compromise petition on behalf of the appellant and respondent 1st party is as FOLLOWS:

1. That the relatives and the well wishers of the parties having felt unnecessary harassment and expenses of the parties due to prolonged litigation between them tried to get the dispute among the parties settled amicably.

2. That the appellant and the respondents 1st party at the persuasion of the relatives and well wisher settled all the dispute amicably irrespective of the allegations and counter allegation made in their respective pleadings.

3. That on the further information gathered from the reliable sources the respondent learnt that the registered sale deed dated 14.07.64 executed by Md. Sharif Punjabi in favour of the appellant with respect of the land under dispute is genuine, legal, valid and for consideration.

4. That the respondents hereby admit right title and interest & possession of the appellant over the land under dispute acquired on the basis of registered sale deed dated 14.07.1964 executed by Md. Sharif Punjabi.

5. That the respondents hereby abandon their claim and forgive their right under deed of Mohada dated 21.7.1962 which is the basis of the suit and will have no right to make any claim on the basis of the said Mohada.

6. That in view of compromise between the applicant and the respondent the decree dated 26.6.1995 passed by Sub-Judge 5th Court Muzaffarpur in T.S. no. of 1964 will be seemed to be non existent and void and no party will have right to make any claim on the basis of said decree.

7. That both the parties bear their respective cost of litigation and no party will have right to make any claim on account of cost of litigation against other parties.

8. That the parties have read and got read the contents of the compromise petition and having understood and found that the terms of compromise and settlement arrived at have been mentioned in its full spirit and sense, have signed the compromise petition in token of acceptance of terms thereof.

9. That the respective lawyers of the parties have also signed the compromise petition. It is therefore prayed that the compromise be recorded and the appeal be disposed off on the basis of the compromise and the compromise petition be made part of the decree. And for which both the parties shall ever pray."

15. The compromise so entered into by the deceased first petitioner and the rival claimant are only binding on both of them. The rival claimant cannot raise any further claim over the property, but the decree cannot be held out against the entire world by the deceased first petitioner to assert his title over the property.

16. The common judgment dated 26.06.1995 in the title suits, by the trial court, is produced as Annexure-J in the counter affidavit filed on behalf of Respondent Nos. 1 to 3; the operative portion of which is extracted hereinbelow: -

"that Title Suit No. 117/64 is decreed on contest but without cost and the plaintiff of Title Suit No. 117/64 is hereby directed to deposit Rs. 40,000/- which is balance consideration amount by Challan within one month from the date of Judgment and the defendant 1st party of T.S. 117/64 are hereby directed to receive the consideration amount of Rs. 40,000/- as balance amount within three months and to execute kebala in favour of the plaintiff of Title Suit no. 117 of 1964 with respect to the suit properties failing which the sale deed will be executed with respect to the suit properties by the court in favour of the plaintiff. It is hereby also held that the plaintiff of Title Suit No. 117/64 has been residing in the suit premises on the strength of Ext.4 i.e. Mahada. It is also held that Ext. F has not been executed by Md. Sharif Punjabi on 14-7-64 the defendant no. 1 of Title Suit No. 117/64 as Md. Sharif Punjabi could not come to Muzaffarpur on 14-7-64 and Ext. F is held to be a fictitious document and the same is not legal, valid and operative."

17. While the suit for specific performance filed by the rival claimant was compromised in appeal, the appeal against the rejection of the suit for eviction was withdrawn. Hence, the deceased first petitioner who filed the suit for eviction and suffered a dismissal at the trial court, cannot wriggle out of the judgment of the trial court. The trial court had found the document of 14.07.1964 to be fictitious and hence not a legal, valid and operative document. Even if the sale deed was accepted by the trial court, it would not only have been one piece of strong evidence to establish the case of conveyance, prior to the date of vesting as per the notification. The Custodian would be empowered to conduct an independent inquiry in which the deceased first petitioner had to establish that

the agreement was genuine and executed by the Pakistani national.

18. The only evidence offered by the deceased first petitioner was the compromise of the suit for specific performance, which terms of compromise only applies inter parties and as held earlier, cannot be held out as against the whole world. The Custodian of Enemy Property was not a party to the said proceedings and hence is not bound by the same.

19. We have already referred to the notification which was issued under the Defense of India Act and the Rules framed thereunder. We have to also notice, as has been rightly noticed by the learned Single Judge, that the Defense of India Act was revoked six months after the proclamation of emergency was revoked on 10.01.1968. The Defense of India Act ceased to have effect from 10.07.1968, prior to which the Enemy Property Act was brought into force. By virtue of Section 5 of the Enemy Property Act; a non obstante clause, despite the expiration of the Defense of India Act and the Defense of India Rules every enemy property vested before such expiration on the Custodian of Enemy Property continues to vest in the Custodian; before the commencement of the Enemy Property Act and from such commencement.

20. The proceedings taken under the Enemy Property Act is perfectly in order. We find absolutely no reason to interfere with the judgment of the learned Single Judge.

21. The appeal stands dismissed.

22. Interlocutory Application(s), if any, shall stand closed.