
(1985) 09 PAT CK 0020
In the Patna High Court
Case No : C.W.J.C. No. 333 of 1967

State of Bihar

APPELLANT

Vs

Pandit Shree Lakshmikant Jha

RESPONDENT

Date of Decision : 05-09-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1986) 34 BLJR 576 : (1986) PLJR 881

Hon'ble Judges : Prabha Shanker Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prabha Shanker Mishra, J.—The defendant State of Bihar has appealed against the judgment and decree of the court of the 1st Additional Subordinate Judge, Bhagalpur, in Title Suit No. 14/1964 / 4/1967.

2. Khawash Pur Kothi of Darbhanga Raj bearing Tauzi No. 1309 in Mauza Khowash Pur, P.S. Pirpaiti, described in Schedule "A" of the plaint was in possession of the estate of Raj Darbhanga until the notification vesting the said estate in the State Government was issued u/s 3 of the Bihar Land Reforms Act, 1950 (hereinafter referred to as "the Act"). Shree Kameshwar Singh Bahadur, proprietor and owner of the estate, died on 1-10-1962 leaving his last will dated 5-7-1961, appointing Pandit Shree Lakshmi Kant Jha (since deceased) as the sole executor for all purposes and for all his properties. In the plaint presented to the court by the sole executor, it is stated that Maharajadhiraj Shree Rameshwar Singh Bahadur of Darbhanga father of Maharajadhiraj Shree Kameshwar Singh Bahadur purchased several indigo factories by a registered sale deed dated 3-11-1900 from one Mr. William Loyed Thomas of Calcutta and came in possession of the same including the property described in Schedule "A" of the plaint. The property at Mauza Khawashpur known as Khawash Pur Kothi comprised of Bungalow-house; horse stable, out-offices, godowns, gardens, compound and other kinds of land. Maharajadhiraj Kameshwar Singh Bahadur

after succeeding to the estate when his father died, developed the property at Khawash Pur and also planted indigo for several years. In due course, however, indigo factory was given up but the Kothi and Sahan remained in use, having an area of about 30 Bighas. The Kothi was used for housing the superior officers of Raj including the Tahshildar and the members of his family. The Raj had more than 2,000 Bighas of Diara land in Mauza Khawash Pur under its cultivation by tractors, ploughs drawn by bullocks and such extensive labour operation was maintained by Bighar by established labourers. The substantial portions under cultivation were in due course either settled with the tenants or disposed of by the Raj. In 1952-53 some local Amlas of State of Bihar, however, took possession of the Kothi. A complaint was lodged in this behalf before the then Additional Collector who deputed the Additional Sub-divisional Officer, Bhagalpur, to enquire into the allegations. After the report of the Additional Sub-divisional Officer on 27-7-1954 the Kothi was restored to the Raj but soon thereafter on 29-7-1954 it was again re-locked by the officers of the defendant-appellant. In July, 1963 the properties including furnitures lying in the Kothi were appropriated by the officers and the agents of the defendant-appellant (such properties are described in Schedule "B" of the plaint). A Diyara survey operation was taken up round about the same time and Khawash Pur Kothi and its compound described in Schedule "A" was recorded in the name of the State of Bihar. A dispute arose on the order of the Assistant Settlement Officer approving the entries in the survey operation in favour of the State Government and several applications were filed by the original plaintiff, but no final decision was made by any officer of the State Government or the Government itself. Although according to plaintiff, Raj continued in possession of the Schedule "A" properties, a suit became necessary to remove the cloud on the title created by the entries during the Diyara survey operation.

3. The plaintiff has asserted that the Kothi and its compound is the homestead of the proprietor. Notwithstanding the notification u/s 3 of the Act, the homestead is protected u/s 5 of the Act and in terms of the provision contained therein from the date of vesting, the Raj is the owner of the Kothi as a tenant under the State, subject to the terms and conditions as envisaged under the said provision.

4. The defendant-State, however, has maintained that although the Kothi is a building with a compound around it and other appertainings thereto. Yet it is not protected u/s 5 of the Act because it was all along used as Katchaheri by the Raj for collection of rents from the tenants. According to defendant-State bigger rooms of the Kutchaheri were used as record rooms, Malkhana and Nazarat and smaller rooms were used as rest rooms of the peons who used to perform guard duties as also for Patwaris and Tahsildars.

5. Technical objection as to the notice u/s 80 of the CPC and other contentions as to the maintainability were also raised by the defence. Such questions have been answered by the learned Subordinate Judge against the appellant and no challenge has been raised before me to any such finding. Mr. Kamalapati Singh,

learned Counsel for the State has contended before me that the properties described in Schedule "A" are not covered by the definition of homestead u/s 2(j) of the Act and since they are not covered by the said definition, they are not protected u/s 5 of the Act. He has developed his contention by submitting that it is admitted that the proprietor never himself resided as also his family in Khawash Pur Kothi. Residence of Tahsildars in one or the other portions of the building, when the building was primarily used as Kutchaheeri, cannot alter the character of the property and make it homestead of the proprietor. In support of his contention he has taken me through the evidence of the witnesses of the plaintiff and submitted that they have not proved that the Kothi was the homestead of the proprietor before the vesting of the estate in the State Government. He has submitted that the survey settlement proceedings were taken with due care and diligence and the entry in favour of the State Government should be upheld.

6. Before I advert to the evidence to test the correctness or otherwise of the contention of the learned Counsel for the appellant, I may refer to some provisions of law and the pronouncements of this Court and the Supreme Court. Homestead has been defined u/s 2(j) of the Act. It says:

"homestead" means a dwelling house used by the proprietor or tenure-holder for the purposes of his own residence or for the purpose of letting out on rent together with any courtyard, compound, attached garden, orchard and out-buildings and includes any out-buildings used for purposes connected with agriculture or horticulture and any tank, library and place of worship appertaining to such dwelling house:

Explanation.--In this clause, the expression "dwelling house" or "out-building" shall include any land on which there stood such dwelling house or out-building at any time before the date of vesting.

In *Jugeshwar Prasad Agarwal and Anr. v. Shrimati Satyabala Devi and Ors.* Appeal from Original Decree No. 259 of 1956, a Division Bench of this Court has said that only homesteads as distinguished from homestead land in possession of an intermediary were saved to him by Section 5 of the Act. Section 5 of the Act says:

Homesteads of intermediaries to be retained by them as tenants--

(1) With effect from the date of vesting, all homesteads comprised in an estate or tenure and being in the possession of (an intermediary) on the date of such vesting shall, (subject to the provisions of Section 7-A and 7-B) 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.

One cannot fail to notice that according to Section 2(j), homestead means a building as well as the site or land on which it stood at any time before the date of vesting. Section 5 of the Act has not qualified homestead either by Khas possession or actual possession. It only says-"being in the possession of an intermediary on the date of vesting." In *Brij Kishore Prasad Singh and Others Vs. Jaleshwar Prasad Singh and Others*, , 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. In *Sabitri Devi Thirani Vs. Satya Narain Mandal*, , it has been held:

Under Section 5 it is only the "homestead" which is in the possession of an intermediary on the date of vesting of which the intermediary is entitled to retain possession. Although the respondent did not have any legal title and has been found to be a trespasser but the entire estate of the appellant including the disputed land had vested in the State under the Act and therefore the suit for possession was" not maintainable unless the appellant could take advantage of Section 5 read with Section 2(j) of the Act.

In *Sabitri Devi's* case the court was considering a point raised on behalf of the respondent that the interest of the appellant in the suit land was that of an intermediary and it has vested in the State under the Act. It was proved in the said case that the defendant-appellant dispossessed the plaintiff in the year 1953 and built a house upon it. The land was put by the defendant in use as a building but it could not be proved that it was a dwelling house used by a proprietor or tenure holder either for the purpose of his own residence or for the purpose of letting out on rent for tenants within the meaning of definition clause. Considering a contention as to whether a homestead land belonging to the intermediary let out on rent to a tenant and in his possession, on the date of vesting, would be saved by Section 5 of the Act or not in *Sheo Shankar Prasad Singh and Ors. v. Ganga Prasad and Ors.* 1984 P.L.J.R. 391. I have said:

If a tenant is in possession, that is 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.

7. From a discussion of law that I have made I reach to the conclusion that an

intermediary can be constructively in possession of a homestead and such constructive possession also will be enough if proved, to protect the homestead from vesting.

8. Learned Subordinate Judge has taken into consideration the evidence of P.W.s 1, 3, 5 and 8. They have denied the suggestion that the Kothi was used as office or Kutchaheeri for collection of rent. The certified copy of Kebala (Ext. 15) discloses the purposes of the building when purchased by the father of the last intermediary, Maharajadhiraj Rameshwar Singh Bahadur. The Kebala recites that the building was used by the Indigo-factories for cultivation and residential purposes. The witnesses examined on behalf of the plaintiff have deposed that the Tahsildars and other Amlas resided in the Kothi and looked after the agricultural operations of the Raj. They were permitted to occupy the Kothi in parts for their separate residence as servants and although no rent was realised from them but they could live only until they served. A service tenancy of this kind has always been acknowledged as a mode of inducing tenants in homestead and/or even Raiyati holdings in the State of Bihar. The Raj exercised constructive possession through such employees and used the building for residence only. Learned Counsel for the State despite his endeavour has not been able to draw my attention to any evidence worth reliance to hold in agreement with the appellant's case that the Kothi was used as Kutchaheeri of the Raj. It will only be a formality if I reiterate after quoting the evidence of each witness and referring to documents relied upon by one or the other party and reproduce the reasonings assigned by the learned Subordinate Judge for coming to the conclusion that the Kothi was in possession of the intermediary (Darbhanga Raj) on the date of vesting. Once it is concluded that the Kothi was in possession of the intermediary on the date of vesting it has to be held that it shall be protected u/s 5 of the Act. Mr. Singh has not disputed before me that once the Kothi is found to be in possession of the landlord its compound having orchard, out-buildings, courtyard and even such areas within its compound which are used for agriculture or horticulture shall be protected u/s 5 of the Act. No error either of fact or law has been brought to my notice besides what I have noticed and considered above, by either party.

9. Before I part with this judgment I may point out that the original defendant, respondent has died and the trustees under the will in his place have already been substituted.

10. There is no merit in this appeal. It is accordingly, dismissed. There shall, however, be no order as to costs. The decree of the court below shall be executed in accordance with law.