
(1973) 04 PAT CK 0008
In the Patna High Court
Case No : A.F.O.O. No. 65 of 1970

State of Bihar

APPELLANT

Vs

Raghunath Mahto

RESPONDENT

Date of Decision : 05-04-1973

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 139(6), 139A

Citation : AIR 1973 Patna 425 : (1973) 6 PLJR 530

Hon'ble Judges : N.L. Untwalia, C.J.; S. Sarwar Ali, J

Bench : Division Bench

Advocate : Birendra Prasad Sinha, for the Appellant; L.K. Chaudhury, for the Respondent

Final Decision : Dismissed

Judgement

1. The learned Additional Subordinate Judge of Chaibassa, by his order dated 9-12-1969 passed in Title Suit No. 44 of 1968, has held that the suit in question is not cognizable by the Civil Court in view of the provision of law contained in Sections 139(6) and 139-A of the Chota Nagpur Tenancy Act, 1908 (hereinafter called the Act). He has directed the return of the plaint to be presented in proper Court in accordance with Order 7, Rule 10 of the Code of Civil Procedure. Hence, this miscellaneous (first) appeal under Order 43, Rule 1 (a) of the Code by the State of Bihar the plaintiff.

2. In short, the plaintiff's suit is for declaration of title, recovery of possession and correction of any entry in the record of rights. The total area of the land is 27.38 acres. The declaration of title and recovery of possession sought for is in respect of the land measuring 19.61 acres. The correction of entry is sought for in respect of 7.77 acres of land. The case of the appellant is that the respondent was a Village Headman within the meaning of the Act but he was dismissed from his office in the year 1955. In spite of his removal from the office, he has not given up possession over the land which he was occupying as a Village Headman. A portion of the land measuring 7-77 acres was acquired for construction of a

road and yet a wrong entry has been made in the record of rights showing the defendant's name over that area. The balance of the land was not surrendered and possession was not given up Hence the suit.

3. The defence set up by the defendant, inter alia, is that he could not be dismissed from his office which was hereditary, he still continued to be the Village Headman and was not liable to be evicted from the land.

4. The point of jurisdiction was taken up as a preliminary issue. The learned Additional Subordinate Judge has held that the suit is of a kind which is covered by the provision of law contained in Section 139 (6) of the Act. Hence, in view of the law engrafted in Section 139-A the Civil Court has no jurisdiction to try the suit; it is triable only by a revenue Court.

5. Learned Government Pleader No. 2 submitted that the suit is triable by a Civil Court and for two reasons, namely, (i) that the suit is for declaration of title and recovery of possession not from a Village Headman but from a person who has been removed from the office; the suit which is cognizable by revenue Court u/s 139 (6) is one which is against a Village Headman and (ii) that the suit is also for correction of an entry in the record of rights. In support of his contention, learned Government Pleader relied upon decisions of this Court in *Nandu Mahton Vs. Bholu Mathton and Another*, and *Telanga Marandi Majhi Vs. Chandra Mohan Singh*, .

6. Mr. L. K. Chaudhury, learned Counsel for the respondent, submitted, on the authority of decisions of this Court in *Lachman Mahton Vs. Lalu Mahton and Others*, and *Jagdish Chandra Deo Dhabal Deb Vs. Shankarshan Bhumij and Others*, that the suit was not cognizable by a Civil Court either for the relief of declaration of title, recovery of possession or even in regard to correction of the entry in the record of rights.

7. For correction of the entry in the record of rights. Section 87 of the Act provides for institution of suits before a Revenue Officer. For that relief, it is obvious, a suit could not be instituted in a Civil Court and entertained by that Court. The difficulty presented in the present appeal is whether the suit filed by the State after removal of the defendant from the office of Village Headman was a suit which comes within the ambit of Section 139 (6) of the Act or is it a suit outside the said provision. None of the cases cited on behalf of the parties is a direct authority on the point. The two cases relied upon on behalf of the State in the Court below as also here are cases u/s 139 (4) of the Act. The expression which occurs in Sub-section (6), to wit. "whether based or not on an allegation of the existence or non-existence of the relationship of landlord and tenant" is not to be found in Sub-section (4). It seems to us that it is because of that that a suit filed by the landlord, after the alleged termination of tenancy, for eviction of the person whose tenancy has been terminated was held to be cognizable by a Civil Court. Section 139 (6), however, reads as follows--

"The following suits and applications shall be cognizable by the Deputy

Commissioner, and shall be instituted and tried or heard under the provisions of this Act, and shall not be cognizable in any other Court except as otherwise provided in this Act, namely:

XX XX XX XX (6) subject to provisions of Sub-section (5) of Section 74-A, all suits by or against a village-headman for a declaration of title in, possession of ejectment from or recovery of his office or land comprised in his village Headman's tenancy, whether based or not on an allegation of the existence or non-existence of the relationship of landlord and tenant and whether brought or not by or against the landlord of such land."

Apart from the fact that the defendant disputes the claim of the plaintiff in regard to his removal from the office of village Headman, it seems to us that the later Phrase in Sub-section (6) shows that even though the suit by the State is on the ground of non-existence of the relationship of landlord and tenant because of the alleged removal of the defendant from the office of the village Headman, it is cognizable by a revenue Court. In view of the later phrase the first part of Sub-section (6) must mean, by applying the correct rule of construction, that a suit of this nature against a village Headman whether he continued in the office or not is cognizable by a revenue Court and therefore, in view of the law engrafted in Section 139-A of the Act, is not cognizable by a Civil Court. The facts of the two cases cited on behalf of the respondent are so distinct and different that none of them can be pressed into service by the respondent as an authority for the proposition with which we are faced in this case. Even the observations of Khwaja Muhammad Noor at pages 207 and 208 (columns 2 and 1 respectively) do not help us much in deciding rather the ticklish question which falls for our decision in this appeal. On a careful consideration of the matter however we have arrived at the conclusion that the suit of the appellant is not triable in a Civil Court; it is maintainable in, and cognizable by, a revenue Court.

8. In the result, this appeal falls and is dismissed but in the circumstances there would be no order as to cost.