
(2000) 05 PAT CK 0052

In the Patna High Court

Case No : Appeal from Appellate Decree No. 424 of 1984

Sundarpati Kuer and Others

APPELLANT

Vs

Smt. Shanti Devi and Others

RESPONDENT

Date of Decision : 04-05-2000

Acts Referred:

Bihar Tenancy Act, 1885 — Section 48E, 48E(1), 48E(13)
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (2000) 3 PLJR 486

Hon'ble Judges : Gurusharan Sharma, J

Bench : Single Bench

Advocate : Suman Kumar, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Gurusharan Sharma, J.—Original Plaintiff, Nageshwar Prasad filed Title Suit No. 10 of 1976 against the Defendant for declaration that the suit lands, described in Schedule I to the plaint were his Kast land under direct cultivation and Defendants first party were not Bataidars over it and they were not entitled to dispossess him.

2. In respect of the suit land (plot No. 84, area 12 Kathas 11 dhurs), one Kali Prasad Pandey stood recorded as tenant in the Khatiyan. His son, Uma Shankar Pandey sold it to Plaintiff's father, Raghubar Ram by registered sale deed dated 28.2.1939. One Prithwinath Mishra ancestor of Defendants 1 to 8 was recorded Sikmidar for the said land under Sikmi Khata No. 2.

3. There was a proceeding u/s 145 of the Code of Criminal Procedure between the parties in respect of land in question, wherein possession of Defendant 1 to 8 was declared.

4. Trial court on the basis of materials on record decreed the suit in part holding that no doubt Plaintiff had title over the suit land, but ancestor of Defendants 1

to 8 was in possession over it as Sikmidar and after him they were in cultivating possession thereof. Hence, there was no occasion for Plaintiff's dispossession by them. Sikmidars have already acquired occupancy right and they were liable to divide the produce of the suit land with the Plaintiff in accordance with law.

5. Plaintiff thereafter filed Title Appeal No. 31 of 1982, which was allowed. Finding of the trial court regarding cultivating possession of Defendants 1 to 8 over the suit land was set aside and the cross objection filed by Defendants failed. Defendants first party, therefore, preferred the present appeal, which was admitted to be heard on the following substantial question of law: "As to whether the suit was fit to be dismissed on account of bar of the provisions of Section 48E of the Act?"

6. It appears that on 6.7.1976, Sikmidars filed an application u/s 48E of the Bihar Tenancy Act, 1885 (hereinafter referred to as "the Act") before the Deputy Collector Land Reforms, Bettiah, which was allowed on 2.8.1977 and on appeal u/s 48E of the Act the appellate authority, on 3.9.1979 set aside the said order and remanded the case to the Collector under the Act. This time the D.C.L.R. rejected the Sikmidar's application u/s 48E of the Act on 24.7.1981, against which Sikmidars filed Appeal which was pending.

7. Reliance was placed on a Division Bench decision of this Court in Ram Narain Singh and Others Vs. State of Bihar and Others, , wherein it was held that plain construction of Section 48E(13) means that after a proceeding is initiated u/s 48E(1), except for express provisions in the Act, civil and criminal courts shall have no jurisdiction over the subject matter of the dispute in the proceedings. In other words, it expressly bars institution of suit in respect of property, which is subject matter of dispute in such proceeding. If intention of the legislature would have been to make Section 48E(13) applicable to only pending proceedings, it would have been specifically stated in the Section that civil or criminal court shall cease to have jurisdiction in pending proceedings over subject matter of a dispute in respect whereof a proceeding u/s 48E(1) is initiated.

8. Provisions of a statute are ordinarily to be given a plain meaning and words thereof are to be give exceptional construction only in certain limited circumstance. It was also observed in the aforesaid decision that so long a proceeding is not initiated a suit can be instituted but once a proceeding is initiated, jurisdiction of civil or criminal court over subject matter of the proceeding is taken away. Thereafter no suit can be instituted in respect thereof. In other words, the remedy provided u/s 48E to an under raiyat is merely supplemental and not substitute.

9. Applying ratio of the said Division Bench case in Ram Narain Singh and Ors. (supra), present Title Suit No. 31 of 1982, after initiation of a proceeding u/s 48E(1) of the Act had become infructuous, as civil court's jurisdiction became barred and the plaint of the said suit ought to have been rejected under Order 7 Rule 11 of the Code of Civil Procedure.

10. I, therefore, set aside the impugned judgments and decrees passed by both the courts below. Consequently, Title Suit No. 10 of 1976 stands dismissed.

11. In the result, this appeal is allowed, but without costs.