
(2004) 09 JH CK 0003

In the Jharkhand High Court

Case No : Misc. Appeal No. 423 of 1997

Ugra Narayan Jaiswal and Others

APPELLANT

Vs

Ram Chandra Pandit and Another

RESPONDENT

Date of Decision : 20-09-2004

Acts Referred:

Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 — Section 63

Citation : (2004) 4 JCR 506

Hon'ble Judges : Hari Shankar Prasad, J

Bench : Single Bench

Advocate : Manoj Kumar Sah, for the Appellant; Manish Kumar, for the Respondent

Final Decision : Allowed

Judgement

Hari Shankar Prasad, J.—This appeal at the instance of the appellant is directed against the judgment dated 7.7.1997 passed in Title Appeal No. 2/5 of 1993/97 whereby and whereunder, the learned 2nd Additional District Judge, Godda set aside the order dated 15.4.1993 passed by the Sub-ordinate Judge, Godda in Title Suit No. 31 of 1991 and remanded the matter back to the trial Court.

2. Facts briefly stated are that plaintiffs, who are respondents here, filed a Title Suit No. 31 of 1991 for declaration of title and confirmation of possession and/or in the alternative recovery of possession and for permanent injunction. Further prayer was made that orders passed by the Deputy Commissioner in RMA No. 12/81-82 on 23.12.1981 and by Commissioner in R. Misc. Appeal No. 225/84-85 on 29.4.1985 be declared as void, illegal and without jurisdiction. Further case of the plaintiff is that the disputed land originally belongs to Karulal Choudhary who died in the year 1930 leaving behind his Son Bahulal Choudhary, who also died in the year 1934 leaving behind his widow Manti Devi whose sons were defendants Nos. 3 to 6 in the Title Suit No. 31 of 1991, but they are appellants here. It was further contended on behalf of the plaintiffs that due to ill health, Babulal Choudhary had given possession of some lands to the father of the plaintiff and

after the death of Babulal Choudhary, Manti Devi came in the possession of all the land except the disputed land. In February, 1937, Manti Devi executed Kurfa deed in favour of Bulla Pandit, but later on Manti Devi under pressure from her daughter and daughter's son, filed a Title Suit No. 92 of 1961 for recovery of possession of plot No. 79 and the same was dismissed in terms of compromise vide order dated 31.8.1961. Thereafter, name of the father of the plaintiff was mutated in Government records, Thereafter defendants Nos. 3 to 6 filed an application on 24.9.1979 under the provisions of Sections 20 and 42 of the Santhal Praganas Tenancy Act, 1949 (hereinafter to be referred to as "SPT Act") for eviction of Bulla Pandit from plot No. 79 vide RER Case No. 510 of 1978-79 before Sub-divisional Officer. Godda who dismissed the application. Then they Hied RMA No. 12/91-82 before the Additional Deputy Collector. Sahebganj which was allowed vide order dated 23.12.1981. Being aggrieved by the order, Bulla Pandit filed an appeal being RMA No. 225 of 1985 before the Commissioner, Bhagalpur, but that was also dismissed vide order dated 22.4.1985/29.4.1985. Aforesaid order was challenged by the plaintiff vide CWJC No. 3221 of 1985 before the High Court, but Bulla Pandit died during the pendency of the appeal before the Commissioner and ultimately, the writ petition was dismissed as withdrawn vide order dated 1.8.1985 and thereafter the instant suit has been filed.

3. Defendants appeared in the suit and filed a petition for rejecting the plaint on the ground of its non-maintainability u/s 63 of the SPT Act as well as Limitation Act. Later on, defendants filed written statement denying the entire case of the plaintiffs such as, giving of land by Babulal Choudhary to Bulla Pandit or the execution of Kurfa deed by Manti Devi on compromise. It was further submitted that pursuant to the order passed by the authorities in RER Case, delivery of possession of lands was effected by the Sub-division Officer in favour of the defendants and the delivery of possession was confirmed on 26.6.1987 and, the suit was filed beyond three years after that. Thereafter a petition under Order XIV, Rule 2"(2) of the CPC was filed and the learned Sub-ordinate Judge after framing preliminary issue, dismissed the suit under the provisions of Section 63, SPT Act. Thereafter respondent Nos. 1 and 2 filed Title Appeal No. 2/93 before the District Judge, Godda which was heard by the learned 2nd Additional District Judge on transfer to his Court and after hearing both the sides, set aside the order dated 15.4.1993 in Title Suit No. 31 of 1991 and remanded the matter back to the trial Court and against that order of remand, appellants have come in this miscellaneous appeal.

4. Learned counsel for the appellants while assailing the judgment submitted that in fact, in the suit a plea under Order VII. Rule 11 was taken up and Order VII, Rule 11 clearly provides for rejection of the plaint if a suit is barred by any provisions of law. Learned counsel further submitted that Section 63, SPT Act, which- is quoted hereinbelow :-

"63. No suits shall be entertained in any court to vary, modify or set aside either

directly or Indirectly, any order of the Deputy Commissioner on any application which is cognizable by the Deputy Commissioner under this Act and every such order shall subject to the provisions of this Act relating to the appeal and revision be final :

Provided that nothing contained in this section shall bar the jurisdiction of civil Court in matters in which it had jurisdiction immediately before the commencement of this Act."

clearly bars jurisdiction of the civil Court in entertaining any suit which is filed for varying, modifying or setting aside the order, of the Deputy Commissioner or Commissioner passed under SPT Act. Learned counsel further submitted that the plaintiffs-respondents has filed the suit for setting aside the order of the Commissioner passed in RER dated 24.5.1984 and thus. the suit clearly comes under SPT Act and when Section 63, SPT Act comes into play, then no suit can lie under this Act because jurisdiction of the civil Court stands barred by the aforesaid Section 63. Learned counsel further pointed out that Commissioner, Bhagalpur Division has not been made party and the order of the Commissioner was the subject matter of challenge. Learned counsel further pointed out that in fact, possession is with the appellants-defendants and in such a situation, no suit can lie. Learned counsel further submitted that in fact this appeal was not at all maintainable.

5. Learned counsel for the respondents submits that appeal is maintainable because this appeal has been Hied under Order XLI. Rules 1(U). CPC and the order of the appellate Court was filed under Order XLI, Rule 23-A and the suit, which was actually not allowed, was tiled. But on a petition under Order XIV. Rule 2, CPC. an order on preliminary issue was passed and thereafter it was held that the suit is not maintainable u/s 63, SPT Act. Learned counsel for the respondents submits that the order passed in the appellate Court is just and proper because of the. fact that the suit was not brought for varying modifying or setting aside the order of the Deputy Commissioner on any application which is cognizable by the Deputy-Commissioner under this Act and the said order was passed subject to the provision immediately before of this Act relating to appeal be final provided that nothing contained in this section shall bar jurisdiction of the civil Court in matter in which it has jurisdiction the commencement of this Act and the suit has in fact been brought for declaration of possession of the plaintiffs or in the alternative, recovery of possession and for permanent injunction and in such a situation, the suit will lie and the jurisdiction of the civil Court shall not stand barred. In this connection, reliance was placed upon 1979 PUR 153 wherein it has been held that it is true that inspite of the decision of the Revenue Court and inspite of section a title suit could be filed in the civil Court if the order was ultra vires of the revenue Court. In such a case. Section 63 would not give any protection. But if the order of the revenue Court was valid in law then the suit would not lie purely for avoiding such an order. Reliance was also placed upon Tarini Marandi Ors. Vs. Lakshmi Mahto Ors., , wherein it has been held that when

an order of Deputy Commissioner is in excess of jurisdiction or without any jurisdiction then it can be challenged in suit and the civil Court is empowered to entertain that suit. In the instant case also, mutation was done in favour of the father of the plaintiff but thereafter defendants filed a petition against the plaintiffs; in that way officer considered their jurisdiction and thus. jurisdiction of the civil Court in such case does not stand barred and plaintiffs suit for declaration of title, confirmation of possession and/or in the alternative recovery of possession and for permanent injunction is maintainable and the learned appellate Court rightly remanded the matter back to the learned trial Court for decision on issues which have been framed in the learned Court below. I do not find any merit in this appeal, which is accordingly dismissed, but in the circumstance no order as to costs.