

Prithvinath Singh and Others

Vs

Suraj Ahir and Others

Civil Appeal No. 203 of 1967

(J. M. Shelat, C. A. Vaidialingam, P. Jagmohan Reddy JJ)

04.12.1970

JUDGMENT

VAIDIALINGAM, J. -

1. In this appeal on certificate issued by the Patna High Court, the question that arises for consideration is whether the respondents Nos. 1 to 8 (hereinafter referred to as the defendants) are entitled to claim restitution under Section 144 of the Code of Civil Procedure as against the appellants (hereinafter referred to as the plaintiffs) in views of the estate in which the suit lands are situated having vested in the State Bihar under the Bihar Lands Reform Act, 1950 (Bihar Act 3 of 1950) (Hereinafter referred to as the act). The State of Bihar is the 9th respondent in this appeal.
2. We may now refer to the circumstances under which the claim for restitution was made by the defendants. The plaintiff's predecessors-in-title had executed a mortgage in favour of the defendants predecessors-in-title on July 3, 1906 in respect of an extent of lands measuring 10.24 acres. The plaintiffs redeemed the mortgage on April 5, 1943. Notwithstanding the redemption of the mortgage, the defendants did not make over the possession of the suit lands. Hence the plaintiffs instituted on November 18, 1946 title suit No. 93/1946 in the court of the Subordinate Judge, Arrah, against the defendants for a declaration of their title to and for recovery of possession of 10.24 acres of land along with mesne profits. The plaintiffs case was that the defendants notwithstanding the redemption of the mortgage were in illegal occupation of the lands and hence they are bound so surrender possession of the properties together with mesne profits for the period they have been in such illegal possession. The defendants contested the claim of the plaintiffs on the ground that the disputed lands were never the Baksht lands of the proprietors of the village but on the other hand the lands were really their Raiyati Qaimi Kasht lands and that the plaintiffs never purchased the disputed lands and therefore they had no title to the suit lands. The Trial Court dismissed the suit holding that the plaintiffs had no subsisting title to the suit lands as they never purchased the same and that the suit was barred by limitation as the defendants has been in adverse possession for over the statutory period. On appeal by the plaintiffs (First Appeal No. 143 of 1948) the Patna High Court held that the plaintiffs were the purchasers of the suit lands and that the defendants had been in possession only as mortgagees. The High Court set aside the decree of the Trial Court and granted the reliefs of declaration and recovery of possession as well as mesne profits as prayed for by the plaintiffs. The defendants on certificate issued by the High Court, filed Civil Appeal No. 533 of 1960 in this Court. By its judgment, dated May 4, 1962, this Court set aside the judgment of the High Court and restored the decision of the Trial Court dismissing the plaintiffs' suit. The judgment of this Court is reported in Surajnath Ahir and Others v. Prithinath Singh and Other ((1963) 3 SCR 290 : AIR 1963 SC 454 : (1963) 2 SCJ 140). We will refer later to the reasons given by this Court for dismissing the plaintiffs suit. An application filed by the plaintiffs for reviewing the said order

was dismissed by this Court on December 10, 1962.

3. At this stage we may mention that when First Appeal No. 143 of 1948 was pending before the Patna High Court, the Act had come into force on September 25, 1952, and by virtue of the notification issued by the State Government under Section 3(1) the estate in which the suit lands are situated passed to and vested in the State on January 1, 1956. In consequence of the judgment of the High Court, dated January 28, 1958, the plaintiffs took possession of the lands from the defendants on May 6, 1959. As the decision of the High Court was reversed by this Court on May 4, 1962, the defendants filed on June 25, 1962, Miscellaneous Case No. 110 of 1962 before the Subordinate Judge, Arrah, Under Section 144, C.P.C., claiming : (a) redelivery from the plaintiffs of the suit lands, (b) mesne profits from May 6, 1956, the date when the plaintiffs took delivery of possession, up to the date redelivery and (c) refund of costs realised by the plaintiffs in the title suit proceedings. These restitution proceedings are the subject of consideration before us.

4. The plaintiffs contested the claim of the defendants for restitution on the ground that this Court had held the defendants to be trespassers and that the suit lands had vested in the State of Bihar under the Act. The plaintiffs raised a further contention that as the entire estate including the suit lands has vested in the State of Bihar, in law, the plaintiffs must be considered to be in possession on behalf of the State of Bihar and it is the concern of the State of Bihar, if at all, to claim possession and that the defendants have no manner of right in law to take possession from them. They also resisted the claim for mesne profits as well as the rate of interest with regard to the amount of costs which the defendants wanted to be refunded. The learned Subordinate Judge receded only on the basis that the plaintiffs having obtained possession of the lands in pursuance of the decree of the High Court in First Appeal No. 143 of 1948, the defendants are entitled to ask for restitution under Section 144 C.P.C., when once the decree of the High Court was set aside by this Court. The Subordinate Judge also held that the defendants have been deprived of the income from the lands after the plaintiffs took possession on May 6, 1959. The claim for refund of costs collected by the plaintiffs was also accepted by the Subordinate Judge, but he allowed interest only at the rate of 6% per annum. In the result the Subordinate Judge by his order, dated July 24, 1963, allowed the defendants' application and ordered restitution in their favour together with mesne profits and also refund of the costs of the title suit proceedings.

5. The plaintiffs challenged this order before the Patna High Court in the appeal from the original order No. 214 of 1963. The High Court, by its judgment, dated October 18, 1964, dismissed the plaintiffs' appeal and confirmed the order of the Subordinate Judge. It is this judgment of the High Court which is under attack in the appeal before us.

6. During the pendency of the appeal in the High Court, the State of Bihar had filed an application on September 20, 1965, for being impleaded as a party to the appeal as the estate in which the suit lands were situated has vested in the State under the Act. A request was also made to order that neither the plaintiffs nor the defendants had any further right, title or interest in the suit lands covered by the title suit No. 93 of 1946 in which the restitution proceedings were being fought out by the parties. The State had also averred in the affidavit filed in support of its application that it had lawfully taken possession of the suit lands from the plaintiffs on August 22, 1965, and therefore, the question of delivery of suit lands to any other party no longer arose for consideration.

7. The High Court on October 14, 1965, allowed the said application of the State impleading it as a party to the appeal. Before the High Court the plaintiffs did not properly resist the claim for refund of costs already collected by them from the defendants in the proceedings connected with the

4 title suit. But they objected to the claim for restitution as well as for payment of mesne profits on the ground that in view of the Act and as the suit lands have vested in the State who have also taken possession of the lands, the defendants are not entitled to claim redelivery of the suit lands, on the basis of the Judgment of this Court in the title suit, the plaintiffs further urged that the suit lands have been lawfully delivered to the State in whom the entire estates has vested under the Act. The High Court appears to have become somewhat suspicious about the manner in which possession has been taken by the State, and it also held that it has not been shown that any action has been taken by the Collector under Section 4(g) of the Act. The High Court has also taken the view that the rights, if any, of the defendants under the Act have also not been adjudicated upon by this Court and therefore the fact that the State claimed to have taken possession from the plaintiffs is not of any consequence. The High Court, agreeing with the Subordinate Judge, held that the question of restitution has to be considered on the basis of the result in the title suit. As the plaintiffs have admittedly taken possession by virtue of the High Court's judgment in First Appeal No. 143 of 1948 and as this Court reversed the High Court decree, the High Court held that the plaintiffs were bound to redeliver possession of the lands to the defendants. The High Court did not accept the contention of the plaintiffs that they are not liable for mesne profits because they must be considered to have been in possession of behalf of the State, but it was conceded by the defendants before the High Court that their claim for mesne profits can be restricts to the period from May 6, 1959, to August 22, 1965, on which date the State claimed to have taken possession of the suit lands. In view of this modification of their original claim, the High Court confirmed the order of restitution passed by the Subordinate Judge, but limited the period for which mesne profits were payable as from May 6, 1959, till August 22, 1965.

8. Dr. C. B. Agarwala, learned counsel for the plaintiffs, has urged that though normally restitution could be ordered under Section 144, Cr. P.C. when the plaintiffs lost before this Court, in this particular case the claim for restitution and for mesne profits should not have been allowed in view of the fact that the suit lands have vested in the State with effect from January 1, 1956. The defendants in this case cannot be considered to be entitled to any benefit by way of restitution or otherwise, as the right to possession has passed to the State under the Act and in fact the suit lands have also vested in the State. Both the plaintiffs and the State have accepted before the High Court that the latter have taken possession of the suit lands and the High Court has not acted properly in ignoring this vital consideration and becoming suspicious about the conduct of the plaintiffs and the State. The points raised in the appeal, the counsel urged, should have been adjudicated upon on a proper consideration of the material provision of the Act and not as a mere question of restitution. The stand taken by Dr. Agarwala has been supported by Mr. B. P. Jha, learned counsel appearing for the 9th respondent, the State.

9. Mr. S. K. Metha, learned counsel appearing for the defendants, has very strongly relied upon the decision in *Suraj Nath Ahir and others v. Prithinath Singh and others* (supra) and urged that this Court has categorically held that the plaintiffs have lost their rights to recover possession of the suit lands from the defendants even if they were trespassers inasmuch as the plaintiffs' estate had vested in the State by virtue of Section 3 and 4 of the Act as also the further finding that the plaintiffs had no subsisting rights to recover possession from the defendants. As the suit lands were taken possession from the defendants by the plaintiffs under the High Court's judgment which was subsequently reversed by this Court, the plaintiffs are bound to restore possession of the suit lands to the party from whom possession was taken. In this case the possession admittedly was taken from the defendants and hence they are entitled to restitution and also for mesne profits for the period during which they were out of possession. The counsel also pointed out that his clients had very fairly limited their claim before the High Court for mesne profits till the date when the State has

taken possession from the plaintiffs.

10. Having due regard to the contentions placed before us, we are of the opinion, that the claim for restitution and the further claim for mesne profits should not have been allowed in this case in favour of the defendants. It is now necessary to refer to some of the findings recorded by this Court in *Surajnath Ahir and Others v. Prithinath Singh and Others* (supra). At the outset we must point out that though the Act has come into force on September 25, 1950, and the estate including the suit lands had become vested in the State on January 1, 1956, and though the First Appeal No. 143 of 1948 in the High Court was pending during those material dates, no notice was given to the State nor was it impleaded as a party as is mandatory under Section 4(ee) of the Act. The result was that both the appeals in the High Court and the appeal in this Court were heard and decided without the State as a party and therefore it is only legitimate to infer that the rights of the plaintiffs and the defendants inter se were alone dealt with and decided in those proceedings. In fact even if any finding had been recorded prejudicial to the State, those findings will not be binding on the State.

11. We have already referred to the circumstances under which the title suit appeal came to this Court. As is seen from the judgment of this Court, the main contention that was urged by the defendants was that after the coming into force of the Act and the vesting of the estate including the suit lands in the State on January 1, 1956, the plaintiffs have ceased to have any proprietary right in the suit lands and therefore they had no right to recover possession from the defendants. This Court after a reference to the material provisions of the Act accepted this contention of the defendants and held that after the vesting of the estate no interest other than that expressly saved by or under the provisions of the Act remained in the plaintiffs. It was also held that the right to recover possession from the trespasser also got vested in the State. It was further held that on the date of vesting the plaintiffs were not in Khas possession of the lands and as no mortgage subsisted on the date of vesting, the plaintiffs cannot claim any rights under Section 6 of the Act. So far as the defendants were concerned, it was held that on the date of vesting they were not in possession as mortgagees because the mortgage had been redeemed on April 5, 1953, and that after that the possession of the defendants may be "as a trespasser or in any other capacity". Finally, this Court held that as the plaintiffs had no rights over the suit lands after the date of vesting, they had lost their right to recover possession from the defendants 'even if they were trespassers, on their estate being vested in the state' by virtue of Section 3 and 4 of the Act and that, therefore, thereafter they had no subsisting right to recover possession from the appellants as the right to possession now vests in the State. Reference to the "appellants" in the above quotation is to the defendants. As the plaintiffs were held to be no more entitled to recover possession of the suit lands, this Court set aside the decree of the High Court and dismissed the plaintiffs' title suit.

12. From what is stated above, it will be seen that this Court in the above decision had no occasion to deal with the rights of the State as such. The effect of the Act was only considered for the purpose of finding out whether the plaintiffs had plaintiffs had subsisting title to prosecute their suit for recovery of possession. The sum and substance of the decision of this Court is that the plaintiffs had no right to recover possession of the suit lands and that the defendants has no right as mortgagees and that their possession 'may be as trespasser or in any other capacity. But it must be noted, that this Court had categorically held that after the estate vested in the State, the right to possession vested in the State and the right to recover possession from a trespasser also got vested in the State. The State had not been impleaded in those proceedings.

13. We are not inclined to accept the contention of Mr. Mehta that the dispute between the parties in the restitution proceedings has to be adjudicated merely on the basis of Section 144, C.P.C.,

ignoring the decision of this Court and the material provisions of the Act. Through normally the rule is that when a person who has obtained a benefit under a decree is reversed by a superior court. In fact, both the Subordinate Judge and the High Court have oversimplified the matter by proceeding on the basis that the normal rule enunciated above will have to be applied to this case. We will not refer to some of the provisions of the Act. As we have already pointed out the Act came into force on September 25, 1957. By virtue of the notification issued under Section 3(1) there is no controversy that the estate in which the suit lands are comprised had passed to and become vested in the State. Section 4 mentions the consequences which follow on the publication of the notification under sub-section (1) of Section 3. According to Section 4(a), such estate or tenure including the interests of the proprietor or tenure-holder in the various objects mentioned therein shall with effect from the date of vesting vests absolutely in the State free from all incumbrances and such proprietor to the tenure-holder shall cease to have any interest in such estate or the tenure other than the interest expressly saved by or under the provisions of the Act. Section 4 (ee) is as follows :

"Section 4(ee)

In every suit, appeal or proceeding, in respect of any estate or tenure which has vested under Section 3 or Section 3-A pending on the date of the commencement of the Bihar Land Reforms (Amendment) Act, 1953, the Court in which the suit, appeal or proceeding in pending shall cause a notice thereof to be served on the State Government who may within three months of the service of the notice apply to the Court to be added, and shall thereupon be added as party thereto and shall be entitled to conduct or defend such suit or proceeding, as the case may be, and in the absence of service of such notice, the decree or order passed in such suit, appeal or proceeding shall not be binding on the State Government."

This sub-clause was not in the original Act of 1950. It has been inserted in the year 1954 by the Bihar Land Reforms (Amendment Act) 1953 (Bihar Act 20 of 1954). At any rate this provision was in force from May 17, 1954. That is why we have mentioned earlier that in the First Appeal No. 143 of 1948, which was pending before the Patna High Court, no steps were taken to issue notice to the State so as to enable it to appear and conduct or defend the proceedings before the High Court. That sub-clause also makes it clear that in the absence of such notice, the decree or order passed in the suit, appeal or proceedings shall not be binding on the State Government. Therefore, it is clear that as the State was not made a party before the High Court or in the further appeal to this Court, the State had no occasion or opportunity to place its objection to the claims made by the parties in those proceedings.

14. The next relevant provision is Section 4, clause (f). As it now stands it runs as follows :

"The Collector shall be deemed to have taken charge of such estate or tenure and of all interests vested in the State under this section."

15. Here against we may point out that Section 4(f) in the original Act of 1950 ran as follows :

"The Collector shall take charge of such estate or tenure and of all interests vested in the State under this section."

By the Amendment Act of 1953, referred to above, it was provided that in clause (f) for the words "take charge" the words "be deemed to have taken charge" shall be substituted and shall be deemed always to have been substituted. Therefore, by virtue of this Amendment Act, clause (f) of Section

4, as it now stands has effect from 1950 itself and therefore in respect of the various items which have vested in the State under Section 3 and 4, the Collector shall be deemed to have taken charge of such estate or tenure of all interests, from the date they vested in the State.

16. We do not think to refer to clause (g) of Section 4 as it originally stood or after its amendment in 1954 or as it stands at present as substituted in 1959 because it has no bearing in deciding the claim of the parties before us.

17. From the provisions referred to above, it is clear that the estate in which the suit lands are situate has vested in the State on January 1, 1956, and from that date by virtue of clause (f) of Section 4, the Collector shall be deemed to have taken charge of such estate. Prior to the amendment of this clause in 1954, as we have already states, that provision was to the effect that the Collector shall taken charge. If those provision had continued, then there will be some scope for an argument that there must be some action taken by the Collector by way of taking charge so as to divest the state from the person who is already in possession and if the Collector had not taken any steps to take charge, possession will continue to be where it is. But the position stands altered because of Section 4(f) as it now stands, read with Section 4 and 4. All these provision make it clear that on the issue of a notification under Section 3(1) the estate and the various items mentioned in Section 4 vest in the State and on such vesting the Collector shall also be deemed to have take charge of such estate from the date when it vested. Therefore, the position in this case is that on January 1, 1956, the estate in which the suit lands are included vested in the State and from that date the Collector in law should be deemed to have taken the charge. When that is the position the question is whether the defendants are entitled to get recitation in these proceedings.

18. We have already indicated that it is mandatory that notice should be given to the State under Section 4(ee). Apart from the fact that no such notice was given in First Appeal No. 143 of 1948 and in Civil Appeal No. 533 of 1960 before this Court, no such notice was also issued to the State even when the present miscellaneous case No. 110 of 1962 was filed by the defendants before the Subordinate Judge for restitution. Even when the matter came before the High Court in appeal from the original order No. 214 of 1963, no notice was given to the State in first instance. On September 13, 1965, on behalf on one of the plaintiffs an affidavit was filed in the High Court that the estate including the suit lands had vested in the State of Bihar with effect from January 1, 1956 and that the Collector is to be deemed to have taken charge of the lands. The affidavit further proceeds to state that they possession of the plaintiffs was adverse to the State, which if at all, would be entitled to mesne profit and that the State having taken physical possession of the lands, restitution to the defendants by way of delivery of possession, has become out of question. No doubt this affidavit which was sworn to on August 26, 1965, and filed in the High Court on September 13, 1965, did not give the date when the State had taken physical possession. On the same date, that is on September 13, 1965, the Government Pleader, on behalf of the State, seems to have appeared before the High Court and made representation on the basis of which the High Court issued notice to the State under Section 4(ee) of the Act. The State entered appearance on September 20, 1965, and filed an application for getting impleaded as a party to the appeal. In the affidavit filed in support of the application, it has been stated that the suit lands had vested in the State of Bihar with effect from January 1, 1956, and that the plaintiffs, who were illegally in possession of the suit lands, have delivered possession of the same to the State of Bihar on August 22, 1965, and that the State was in lawful possession of the suit lands which was the subject of the appeal before the High Court since August 22, 1965. It was further averred that neither the plaintiffs not the defendants have any right, title or interest in the suit lands and that in particular the defendants are not entitled to claim restitution of the property which is in the lawful possession of the State. It was prayed that the State

should be impleaded as a party and that the Court should hold that neither the plaintiffs nor the defendants have any right, title or interest in the suit lands. This application was heard by the High Court on October 14, 1965, and the State was impleaded as a party to the appeal and also heard on merits. The affidavit on behalf of the State, unfortunately, has been sworn to by the Circle Inspector Anchal Sahar in the district of Shahabad. It is rather regrettable that in such an important matter, the State instead of having a proper affidavit filed by the Collector or any other responsible officer chose to file an affidavit sworn to by a Circle Inspector. The High Court in consequence felt suspicious about the conduct of the State and hence rejected its contention that no relief should be granted to either the plaintiffs or the defendants.

19. We are of the opinion that the High Court was not justified in rejecting the claim made on behalf of the State. This Court, in the title suit proceedings, has categorically held that the estate had vested in the State and the right to possession, as well as rights to recover possession from a trespasser, also got vested in the State.

20. Section 4(ee) makes it clear that the State is as of right entitled to be impleaded in the proceedings referred to therein and place its point of view before the Court. In this case the State has raised objection before the High Court that as the estate has vested in the State under the Act and as the Collector is deemed to have taken charge of the estate, from the date of vesting, there is no question of any claim for restitution surviving in the plaintiffs or the defendants in these proceedings. Apart from the fact that from January 1, 1956, the estate had vested in the State and the Collector under Section 4(f) shall be deemed to have taken charge of the estate from the date of vesting, there is categorical averment by the State that they have taken possession from the plaintiffs on August 22, 1965. The plaintiffs have also stated that they have surrendered possession to the State. So far as we could see, the High Court has not rejected as false the claim made by the State. The High Court has proceeded on the basis that the question of restitution has to be considered only as between the plaintiffs and the defendants on the basis of the result of the title suit proceedings.

21. As we have already pointed out even without the actual physical possession taken on August 22, 1965, in law the State must be considered to have been in possession from the date of vesting by virtue of Section 3 and 4, read with Section 4(f). We have already pointed out the difference between Section 4(f) as if originally stood and after its amendment in 1954 with retrospective effect. Apart from the fact that the Collector shall be deemed to have taken charge, the position is further strengthened by the State having actually taken possession from the plaintiffs on August 22, 1965. It is also significant that the defendants were prepared to restrict their claim before the High Court for mesne profits till August 22, 1965, the date on which the plaintiffs surrendered possession to the State.

22. From what is stated above it follows that the defendants have no right to get possession from the plaintiffs after the estate had vested and possession delivered to the rightful party, namely, the State. Therefore, the order of restitution passed as against the plaintiffs was erroneous.

23. The same principles will apply to the claim for mesne profits made by the defendants. The defendants have claimed mesne profits from May 6, 1959, the date when the plaintiffs took delivery of the suit lands by virtue of the High Court's decision, but long before i.e. January 1, 1956, the State had vested in the State under the Act. As we have held that the defendants are not entitled to get restitution, it follows that they will not also be entitled to claim mesne profits. Therefore, this claim also will have to be rejected.

24. The claim made by the defendants for refunds of costs collected by the plaintiffs in the title suit proceedings has not resisted by the latter and that claim has been allowed by the High Court. That part of the order of the High Court will stand. Subject to the direction given above, the judgment of the High Court directing the plaintiffs to surrender possession of the suit lands to the defendants and pay mesne profits will stand set aside and the claim made by the defendants in this regard will stand dismissed.

25. The appeal is allowed to the extent indicate above. In the circumstances, the parties will bear their own costs.

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