

Chiranji Lal Khaitan and Others

Vs

Moti Lal Saraogi (dead)

Civil Appeal No 1973 of 1966

(K.S. Hegde, A.N. Grover JJ)

04.08.1971

JUDGMENT

HEGDE, J. -

1. This appeal by certificate arises from the decision of the Calcutta High Court in its appellate decree No. 1033 of 1956. The appellants are the legal representatives of the original plaintiff Chiranji Lal Khaitan. The plaintiff was the owner of the suit property. According to the plaint case, the plaintiff leased out the property described in Schedule III to the plaint, a vacant plot to the defendant in June, 1943, on a monthly rental of Rs. 20/-. It was an oral lease. The defendant took on lease that property for the purpose of carrying on his motor business. But in the year 1947, without the plaintiff's knowledge the defendant constructed several structures on the land. In 1948 the plaintiff asked him to remove those structures but the defendant did not comply with that demand, hence, in September, 1948, the plaintiff served on him a notice to quit determining the tenancy with effect from November 1, 1948. As the defendant did not surrender possession of the property, the plaintiff instituted the suit from which this appeal arises on January 3, 1940, in the Court of Munsif at Purulia. At the time of the institution of the suit, the suit property was within the limits of the State of Bihar. The defendant resisted the suit on various grounds. The learned trial Judge rejected all those grounds and decreed the suit on May (sic), 1952, as prayed for and directed the defendant to deliver vacant possession of the suit plot after removing the structures put up by him. The decree of the Trial Court was affirmed by the first appellate Court on July 11, 1952. Meanwhile in 1956, some of the border areas of the Bihar State were transferred to the State of West Bengal as a result of the amendment of the Constitution. One of the areas that stood transferred to the State of West Bengal is that concerned in the present litigation. The transfer in question took place on November, 1, 1956. The defendant filed a second appeal against the aforementioned decree in the High Court of Patna on September 7, 1956, and the same admitted by the High Court on September 10, 1956. That appeal stood transferred to the High Court of Calcutta under the provisions of the Bihar and West Bengal Transfer of Territories Act, 1956, the Act under which the transfer of territories mentioned earlier took place. Part VII of that Act provided that the law then in force in the transferred territory was to continue until otherwise provided by the competent Legislature or other competent authority. In 1956 the West Bengal Legislature enacted the West Bengal Transferred Territories (Assimilation of Laws) Act, 1958 (to be hereinafter referred to as the '1958 Act'). That Act came into force on July 1, 1959. The second appeal filed by the defendant which had stood transferred to the Calcutta High Court came up for hearing before that Court on August 10, 1965. Before the High Court the defendant's Counsel pressed for decision only two points viz :

(1) That the plaintiff's claim is barred by equitable estoppel; and

(2) The suit is liable to be dismissed under Section 9, read with Section 88 of the West Bengal Non-Agricultural Tenancy Act, 1949 (to be hereinafter referred to as the '1949' Act).

2. The High Court rejected the first contention. Agreeing with the Courts below, it came to the conclusion that there is no reliable evidence to show that the structures in question were put up either with the consent or knowledge of the plaintiff. But it accepted the second contention advanced on behalf of the defendant and dismissed the suit. Hence this appeal.

3. All the Courts below have concurrently come to the conclusion that the defendant has failed to establish his plea of equitable estoppel. That conclusion is based on findings of fact. We see no reason to review those findings.

4. The only question that we have to consider is whether the High Court was right in holding that the suit for ejection ought to fail for noncompliance of Section 9(1)(b)(iii). The High Court held that the plaintiff having failed to give six months' notice before instituting the suit as required by the aforesaid provision, the suit is liable to be dismissed. It is urged on behalf of the appellants that Section 9 of the '1949 Act' is not applicable to the facts of the case.

5. Before instituting the suit for ejection the plaintiff had given a notice to quit under Section 106 of the Transfer of Property Act, the governing provision, at the time of the institution of the suit. It was not disputed that the notice to quit in question at the time it was given was a valid notice. Therefore all that we have to see is whether because of the provisions of the '1949 Act' read with the provisions of the '1958 Act', the suit which was validly instituted has ceased to be maintainable.

6. We have earlier seen that under the provisions of the Bihar and West Bengal (Transfer of Territories) Act, 1956, the existing laws were continued till appropriate provisions are made by the concerned Legislatures. Therefore Section 106 of the Transfer of Property Act continued to be in force in the area concerned till the '1958 Act' came into force. Section 3 of that Act provides :

"(1) All State laws which, immediately before the appointed day, extend to, or are not in force in, the State of West Bengal, but do not extend to, or are not in force in, the transferred territories shall as from that day, extend to or, as the case may be, come into force in the transferred territories :

Provided that the State law specified in Schedule I shall extend to the transferred territories subject to the amendment specified in that Schedule;

(2) All State laws which, immediately before the appointed day are in force in the whole or any part of the transferred territories but not in the rest of West Bengal shall, on that day, stand repealed in the transferred territories :

Provided that such repeal shall not affect -

(a) the previous operation of any State law so repealed or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation, or liability acquired, accrued or incurred under any State law so repealed; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence

committed against any State law so repealed; or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed....."

(The remaining portion of the section is not relevant for our present purpose).

The expression 'State Law' is defined thus in Section 2(b) :

"State Law' means so much of any enactment, ordinance or regulation as relates to any of the matters enumerated in Lists II and III in the Seventh Schedule to the Constitution and include any order, by-law, rule, scheme, notification or other instrument having the force of law."

7. One of the statutes that stood extended to the transferred territory under the '1958 Act' is the '1949 Act'.

8. Section 9(1)(b)(iii) of that Act provides :

"(1) Notwithstanding anything contained in any other law for the time being in force or in any contract if any non-agricultural land has been held for a term of more than one year but less than twelve years -

#(a) X X X##

(b) without a lease in writing;

#(c) X X X##

then the tenant holding such non-agricultural land shall be liable to ejection on one or more of the following grounds and not otherwise, namely;

(iii) on the ground that the tenancy has been terminated by the landlord by six months notice in writing expiring with the end of a year of the tenancy served on the tenant in the prescribed manner in the case of tenancies of the class specified in clause (b) :

Provided that a tenant shall not be liable to ejection on the ground specified in clause (iii) except on payment of such reasonable compensation as may be agreed upon between the landlord and the tenant or if they do not agree, as may be determined by the Court on the application of the landlord or such tenant."

The only other relevant provision is Section 88 of that Act which says :

"The provisions of this Act shall have effect in respect of all suits, appeals or proceedings including proceedings in execution for ejection of a non-agricultural

tenant which are pending at the date of commencement of this Act."

9. The contention based on Section 9(1)(b)(iii) was taken for the first time in the High Court of Calcutta. The High Court as mentioned earlier has accepted that contention. If Section 9, read with Section 88 of the '1949 Act' governs this appeal then undoubtedly the plaintiff's suit has to fail. But the question is whether those provisions are not subject to Section 3 of the '1958 Act' ? This question has not been considered by the High Court. The High Court was greatly impressed by the width of Section 88 of the '1949 Act'. Read by itself there is no doubt that that provision makes applicable all the provisions of the '1949 Act' to all suits, appeals or precedence including proceedings in execution for ejection of non-agricultural tenant which was pending at the time of the commencement of that Act. There is no dispute that the plaintiff has not complied with the requirements of Section 9(1)(b)(iii) of that Act. Therefore if the plaintiff was required to comply with the provisions of the '1949 Act' in all respects, he having not complied with the same, the suit ought to fail. But then, the provisions of the '1949 Act' did not apply to the transferred territories' on their own force. They were extended to those territories under the provisions of the '1958 Act'. There fore their application is subject to the conditions laid down by the '1958 Act'. As seen earlier Section 3 of that Act while repealing the laws that were in force in the transferred territory' and extending the laws that were in force in the rest of the West Bengal saved the previous operation of the existing laws so repealed and further saved anything duly done or suffered under those laws. In other words because of clause (a) of the proviso to Section 3(2) acts duly done under the repealed laws are protected. Hence the quit notices given under Section 106 of the Transfer of Property Act by the plaintiff was an act duly done under a repealed law. That act is protected. Its validity cannot be tested on the basis of the provisions of the '1949 Act'. This is plain from the language of Section 3(2) of the '1958 Act'. That interpretation also advances public interest. Otherwise all ejection suits which had been instituted before the transfer of territories had been effected would automatically fail for non-compliance of Section 9 of the '1949 Act', a law which was not in force in the transferred territory before their transfer. The Legislature would not have intended such a result.

10. If the plaintiff was not required to comply with requirements of Section 9(1)(b)(iii) of the '1949 Act' - as we think he was not-then the plaintiff is not liable to pay any compensation for the structures put up by the defendant. The liability to pay reasonable compensation for the structures put up by the tenant arises under the proviso to clause (iii) of Section 9(1)(b). That proviso imposes the liability to pay reasonable compensation for the structures put up only when the termination of the tenancy is made under clause (iii) if Section 9(1)(b) and not otherwise. As the termination of the tenancy was not made under that provision, the question of paying compensation does not arise.

11. In the result this appeal is allowed, judgment and decree of the Calcutta High Court are set aside and that of the Trial Court as affirmed by the first appellate Court is restored. Parties to bear own costs in this Court and in the High Court.

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