

Nathuni Prasad Singh and Others

Vs

Bishwanath Singh Sharma and Others

Civil Appeal No. 2296 of 1968

(Y. V. Chandrachud, P. K. Goswami, P. N. Shinghal JJ)

24.03.1977

JUDGMENT

CHANDRACHUD, J. –

1. The appellants brought in the Court of the Additional Subordinate Judge of Begusarai a suit against the respondents and others for a declaration of their title in regard to certain property situated in the village of Matihani and for possession thereof. They also asked for mesne profits for the years 1357 fasli to 1360 fasli and for future mesne profits. The suit was decreed by the trial Court. Under the decree, the appellants became entitled as owners of the suit property to recovery possession thereof from the respondents and for mesne profits from the year 1357 fasli until recovery of possession. In an appeal filed by the respondents, the High Court dismissed the suit on the ground, firstly, that the appellants were not entitled to recover possession of the suit property by reason of the provisions contained in Sections 3, 4 and 6 of Bihar Land Reforms Act of 1950, and secondly, that the suit was barred by limitation by virtue of Article 3 of Schedule III of the Bihar Tenancy Act VIII of 1935. The High Court granted to the plaintiffs a certificate under Article 133 (1) (a) of the Constitution to file an appeal to this Court.

2. Mr. Desai, who appears on behalf of the appellants, concedes that the appellants cannot obtain a decree of possession from the respondents and the other defendant since under the Bihar Land Reforms Act, 1950., the suit property came to be vested in the government on January 26, 1956. Mr. Desai said is right in the concession which he has made, because as held by this Court in Ram Ran Bijai Singh v. Behari Singh alias Bagandha Singh (1964) 3 SCR 363 : AIR 1965 SC 524 : (1965) 1 SCJ 83) and Gurucharan Singh v. Kamal Singh (AIR 1977 SC 5 : (1976) 2 SCC 152) a decree for possession cannot be obtained by a landlord or an owner after the land has vested in the State Government.

3. But, the learned Counsel contends that the High Court Court was in error in holding that the suit is barred under Article 3 of Schedule III of the Bihar Tenancy Act. Normally, such a question would be of academic interest since the appellants are not entitled to obtain possession of the lands from the defendants, but the decision of this question assumes importance in this case by reason of its impact on the appellants right to obtain an order of mesne profits as against the defendants. If the suit itself is barred by limitation, the appellant cannot possibly recover mesne profits from the defendants. If on the other hand, the appellants cannot obtain possession of the land by mere reason of the provisions contained in the Bihar Land Reforms Act, they may yet be entitled to recover mesne profits from the defendants from the date from which the defendants possession became wrongful subject to the claim being within the period of limitation. It, therefore, becomes necessary to examine whether, as held by the High Court, the suit can be said to be barred by limitation under

Article 3 of Schedule III of the Bihar Tenancy Act.

4. That article provides a period of limitation of two years for a suit "to recover possession of land claimed by the plaintiff as a landlord or a rayat", and the time from which the period begins to run for the institution of the suit, is mentioned in the third column of the third schedule, as "the date of dispossession".

5. Mr. Desai, may, perhaps, be right that this is not a suit of the description mentioned in Article 3, by reason of fact that appellants did not file the suit in their capacity as landlords. We, however consider it unnecessary to enter into that question, because Article 3 seems to us to be inapplicable to the present suit for the reason that the suit is not filed on the plea that the appellants have been dispossessed by the defendants in the sense in which the expression 'dispossession' is used in Article 3. The plaint, read as a whole, is only capable of the meaning that according to the appellants the possession of the defendants became unlawful from a certain date and that, therefore, the appellants became entitled to recovery possession of suit property from them. The appellants have referred in their plaint to certain orders passed under Section 145 of the Code of Criminal Procedure, but those have no bearing on the application of Article 3, because the particular averment has been made by the appellants in the plaint only to show that by reason of those orders, a cause of action accrued to them to ask for possession.

6. If Article 3, which was also relied upon by the High Court to non-suit the appellants, has no application, the appellants' suit is liable to fail for the reason only that they cannot obtain possession of the land by reason of the provisions contained in the Bihar Land Reforms Act and not for the additional reason that the suit is barred under the Bihar Tenancy Act. It must, therefore, follow that the appellants would be entitled to recover mesne profits from the defendant for a period of three years before the institution of the suit until the date on which the suit property vested in the State Government by reason of Bihar Land Reforms Act. We would like to make it clear, in order to avoid any further litigation, that in the proceeding which is said to be pending in regard to the recovery of mesne profits, or in such other proceeding as the appellants may hereafter institute, appellants would be entitled to recover mesne profits from the defendants from May 26, 1950 till January 26, 1955 only. For this period, the quantum of mesne profits shall be determined in accordance with law by the Court seized of the proceeding. There will be no order as to costs.

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