

Korin Alias Etwari Devi

Vs

The India Cable Company Ltd. and Others

Civil Appeal No. 2068 of 1968

(CJI M. H. Beg, P. S. Kailasam, A. C. Gupta JJ )

18.11.1977

JUDGMENT

GUPTA, J. -

1. This appeal by special leave is by a defendant in a suit for declaration of title and recovery of possession. The property in dispute consists of two survey plots, 2677/5782 measuring 0.18 acres and 2677/5783 measuring 0.10 acres, the total area being 0.28 acres, in Tetanga Basti, Mouza Sakchi, Police Station Golmuri in Pargana Dhalbhum, District Singhbhum. The suit was dismissed by the trial Court, decree by the first appellate Court, and the Patna High Court on second appeal affirmed the decision of the lower appellate Court decreeing the suit. The relevant facts are as follows. The fourth respondent, Tata Iron and Steel Company Limited (hereinafter referred to as TISCO) were the proprietors of the disputed plots of land which formed part of the area acquired under the Land Acquisition Act by the local Government for TISCO. In 1924 these two plots of land along with other lands were leased out by TISCO to the plaintiff, the Indian Cable Company Limited (hereinafter referred to as the plaintiff company). TISCO also settled another area measuring about 5 bighas, 17 kathas with one Rajdeo, predecessor-in-interest of the present appellant. There is some dispute as to whether this settlement was in 1924 or 1928 but that is not of any great importance in the present controversy between the parties. According to the plaintiff company, Rajdeo trespassed into the two disputed plots of lands in November, 1932. It appears that in a proceeding under Section 87 of the Chhota Nagpur Tenancy Act, 1908 (referred to hereinafter as the Act) initiated by Rajdeo it was held that the disputed plots were outside the area settled by TISCO with Rajdeo and were part of the land leased out by TISCO to the plaintiff company. It was further held that Rajdeo had been in forcible possession of the plots for about five years since 1932 from which he could be removed only by legal process. Thereafter the plaintiff company instituted title suit 116 of 1938 in the Court of the Munsif at Jamshedpur for Rajdeo's eviction from the land on which he had trespassed which was roughly 1.70 acres and included the two disputed plots. It was again found in that suit that the disputed plots were not part of the 5 bighas and 17 kathas of land settled by TISCO with Rajdeo but it was held that Rajdeo had acquired 'korkar' rights in the portion of the disputed plots in his occupation and therefore he was protected against eviction in view of the provision of Section 78 of the Act. That suit was accordingly dismissed.

2. Later, on March 26, 1945 TISCO recovered under Section 50 of the Act possession of the entire holding of 5 bighas 17 kathas settled by them with Rajdeo. The plaintiff company on July 27, 1954 filed title suit 280 of 1954 out of which this appeal arises for Rajdeo's eviction from the two disputed plots in the Court of the Munsif at Jamshedpur. The Munsif held that Rajdeo was not dispossessed from the entire holding under Section 50 of the Act, but retained possession of 1 1/2 bighas, that Rajdeo was a non-ejectable 'korkar' raiyat in respect of his holding under TISCO and

was therefore protected from eviction under Section 78 of the Act in respect of his homestead that he built on the disputed plots. It was further held that in view of the Bihar Land Reforms Act, 1950 the intermediary rights of both TISCO and their lessees, the plaintiff company, had vested in the State of Bihar and it was the State of Bihar alone that could maintain an action for ejection against Rajdeo. The trial Court was also of opinion that the findings recorded in the earlier suit title suit 116 of 1938, were res judicate in the present suit and therefore Rajdeo's character as a 'korkar' raiyat in respect of his homestead on the disputed plots could not be reopened. It may be stated here that Rajdeo died during the pendency of the suit and was substituted by his heirs and legal representatives.

3. On appeal by the plaintiff company, the first appellate Court reversed the Munsif's decision and dismissed the suit. The appellate Court found that the entire agricultural land held by Rajdeo under TISCO had been taken away from him under Section 50 and consequently he ceased to be a raiyat in respect of the portion of land on which his homestead stood and thus lost the protection given by Section 78 of the Act. The appellate Court held that the findings recorded in title suit 116 of 1938 could not be res judicata because of the changed circumstances - that now the question of Rajdeo's title to the two disputed plots on which his homestead stood was to be considered independently from whatever his interest in the said plots was when they formed part of the agricultural land from which he had been dispossessed under Section 50. It is however a little difficult to understand the relevance of the proceeding under Section 50 to which the trial Court and the first appellate Court both referred. If that proceeding related to a holding under a different landlord, and was not part of the land belonging to the plaintiff now in dispute, Rajdeo's dispossession under Section 50 could possibly have no bearing on the nature of his interest in the disputed plots. However, as it appears that all the Courts including the High Court as well as the parties to the litigation proceeded on the footing as if the homestead plots and the agricultural land constituted one holding, we do not propose to pursue the matter further.

4. The High Court in second appeal preferred by the defendants affirmed the decision of the first appellate Court. The High Court also held that the findings in title suit 116 of 1938 were not res judicata, that the protection of Section 78 of the Act was not available to the defendants after they were dispossessed from the agricultural lands under Section 50 and consequently Rajdeo's homestead became subject to the ordinary incidents of a tenancy governed by the Transfer of Property Act. On the point that after the Bihar Land Reforms Act, 1950 came into force the plaintiff company and their lessors TISCO ceased to have any interest in the disputed land, therefore this suit for recovery of possession at their instance was not maintainable, the High Court was of opinion that as the tenancy of the two disputed plots was governed by the provisions of the Transfer of Property Act and not the Chhota Nagpur Tenancy Act, the vesting of estates under the Bihar Land Reforms Act had "nothing to do with the present suit for eviction of the defendants".

5. As regard res judicata, if the nature of the defendants interest, in the disputed plots changed after TISCO recovered possession of Rajdeo's agricultural lands under Section 50 of the Act, the reason given by the first appellate Court why the rule of res judicate should not apply would be sound calling for no interference. A test to find out if the right that the defendants had in the disputed plots had undergone a change consequent on their dispossession from the agricultural lands is whether the protection of Section 78 was still available to them. Section 78 reads :

Homesteads. When a raiyat holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local custom or usage, and subject to local custom or usage by the provisions of this Act

applicable to land held by a raiyat.

Mr. S. Chaudhury appearing for the first respondent, the plaintiff company, referred to two decisions of the Patna High Court on Section 78. In *Joy Chand v. Bhutnath Khan* (AIR 1930 Pat 236 : 11 PLT 207 : 125 IC 561) a Division Bench of the High Court held that Section 78 will apply so long as the tenant of the homestead continues to be a raiyat in respect of the other land but no longer. In *Secretary of State v. Babu Beni Prasad* (AIR 1937 Pat 444 : 170 IC 77 : 1937 PWN 649), another Division Bench held that Section 78 "was enacted as a protection to the cultivating tenant, so that he may not be turned out of his homestead as long as he holds his raiyati land. If he parts with the raiyati land, his tenancy of the homestead becomes subject to the ordinary incidence and does not suffice to keep up his status as a raiyat". This appears to be the consistent view taken by the Patna High Court on the point and we find no reason, at least none has been pointed out, inducing us to take a different view.

6. It follows therefore that the defendants' tenancy is governed by the provisions of the Transfer of Property Act and, on the facts found, the plaintiff company would be entitled to a decree for recovery of possession unless, consequent on the vesting of the estates and tenures under the Bihar Land Reforms Act, 1950 it ceased to have any interest in the subject-matter of the suit. The trial Court held that the land had vested in the State, the first appellate Court did not advert to the question, and the High Court thought it was not relevant. The High Court apparently failed to see that the question was relevant in order to find out if the suit was maintainable at the instance of the plaintiff company. We therefore send the matter back to the High Court. The High Court will record a finding as to whether the land forming the subject-matter of the suit had vested in the State and the plaintiff company ceased to have any interest in the land consequent on the vesting. If the High Court finds that the land had vested and the plaintiff company had no subsisting interest therein, it will dismiss the suit. If however the High Court finds that the land had not vested or that the plaintiff company retained an interest in the land in spite of vesting, it will affirm the decree of ejectment passed by the first appellate Court. As it may be possible to decide the question on affidavits and as this is a very old case, the High Court will try to dispose of the matter expeditiously, if possible within three months from the date when it receives back the record of the case.

7. The appeal is allowed to the extent and the manner indicated above. There will be no order as to costs in this appeal.

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