

Sarjug Barhi and Another

Vs

Devendra Mahto and Others

Civil Appeal No. 1400 of 1969

(A.C. Gupta, P.S. Kailasam JJ)

09.08.1979

JUDGMENT

GUPTA, J. –

1. The appellants are defendants 1 to 4 in a suit for declaration of title and recovery of possession. The property in dispute is 6.02 acres of raiyati lands of khata Nos. 52 and 53 in village Pahari in the district of Gaya. In a sale held in execution of a rent decree, two of the co-sharer landlords, defendants 17 and 18, purchased this holding. On July 18, 1946 these two co-sharer landlords executed a document (Ex. 3) in respect of the property in favour of the plaintiffs who are the respondents in the present appeal. It is the nature of this document that is in question in this appeal.

2. In 1949, the plaintiffs instituted a suit for declaration of their title to the land and recovery of possession. There is some dispute as to whether defendants 17 and 18 had succeeded in getting actual possession of the land or only symbolic possession was delivered to them, but the point is not of any importance because there is no question of adverse possession in this case and defendants 1 to 4 who were some of the original tenants and who resisted the plaintiffs' claim had no subsisting interest in the property. There were proceedings in 1947 under Section 145 of the Code of Criminal Procedure, 1898 over this property which was attached under Section 146 of that Code, the land was put in the possession of the receiver and the parties were referred to the civil court for adjudication of their rights. The respondents then instituted the suit out of which this appeal arises.

3. The plaintiffs' claim of title is based on the document Ex. 3 and the only question involved in this appeal relates to the character of this document. The trial Court decreed the suit holding that though Ex. 3 was labelled as a deed of sale, it was really a lease of the land given by the two co-sharer landlords, defendants 17 and 18, to the plaintiffs. The lower appellate Court dismissed the suit on the view that the document was a deed of sale by which defendants 17 and 18 sold raiyati rights in the land to the plaintiffs which the said defendants themselves did not possess. Section 22(2) of the Bihar Tenancy Act reads :

If the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, he shall be entitled to hold the land subject to the payment to his co-proprietors or joint permanent tenure-holders of the shares of the rent which may be from time to time payable to them; and if such transferee sub-lets the land to a third person, such third person shall be deemed to be a tenure-holder or a raiyat, as the case may be, in respect of the land.

It is clear from the section that a co-sharer landlord who purchases the raiyati holding does not

become a raiyat himself, he is only entitled to hold the land on payment to the other landlords their shares of rent. He thus acquires no raiyati interest which he can sell. The section, however, adds that if he "sub-lets" the land to another, the transferee shall be deemed to be a raiyat in respect of the land, if the lease is for agricultural purpose.

4. Before us, Mr. Sarjoo Prasad appearing for the appellants also contends that the documents in question is deed of sale by which the plaintiffs' vendors sought to transfer raiyati interest in the land which, in view of Section 22(2) of the Bihar Tenancy Act, they could not do and, therefore, the document is of no effect. Mr. Sarjoo Prasad relies on a decision of the Patna High Court. Lal Narain Singh v. Mohd. Anzar Hussain (AIR 1949 Pat 367, 368) in which it has been said : "It is the well settled by the authorities that a co-sharer landlord who purchase an occupancy holdings is not a raiyat. He acquires a peculiar status and his only right is to retain possession of the land on payment of the share of rent which was payable for the land to his co-sharer landlords. He cannot sever the two interest and sell his right to hold the land apart from his interest as a co-sharer and a landlord of the holding. The two interest are soldered together and cannot be severed". That may be so - it is not necessary for the present purpose to consider whether the two interest are really so inseparable - but Section 22(2) itself envisage a lease of the co-sharer landlord's right to hold the land. The trial Court held that the document, Ex. 3 though described as a sale deed was really a document by which defendants 17 and 18 settled the land with the plaintiffs. The lower appellant Court took a different view. But the High Court in second appeal has accepted the interpretation put by the trial Court on the document and held that this was a deed by which defendants 17 and 18 granted only a lease of the land in favour of the plaintiffs. The High Court observes :

The object of the interpretation of a document is to ascertain the expressed meaning or intention of the maker of the document. Where the language of a deed is plain and unambiguous and admits of one meaning only, that meaning alone is to be given to it. This is an undisputed general rule. To ascertain the meaning of a document or by that process the intention of the parties, it will be neither safe nor sufficient to go only by the name of by which the document is called or by the use of the one particular word in the deed. The mind of the maker is to be gathered from the and seen through the whole document.

No exception can be taken to this statement. Having said this, the High Court refers to one of the clauses in the document. Ex. 3, which requires the transferees to pay rent to the transferors and to the other co-sharer landlords as well. This according to the High Court 'can only be consistent with the intention of a document of settlement and not a sale from defendants 17 and 18. If it were a case of sale, there would not be any question or obligations on the part of the transferees to pay any rent to defendants 17 and 18' Reading the document as a whole we agree with the construction put on it by the High Court.

5. The appeal is dismissed with costs.

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