

Bhaiya Shankar Pratap Deo

Vs

Tapeshwari Singh and Others

Civil Appeal No. 2159 of 1969

(Syed M. Fazal Ali, P. S. Kailasam, A. D. Koshal JJ)

08.02.1980

JUDGMENT

FAZAL ALI, J. -

1. This appeal by certificate is directed against the judgment of the Patna High Court upholding the decree of the trial Court and dismissing the plaintiff's suit.
2. The detailed history of the case has been given in the judgment of the High Court and it is not necessary to repeat the same in view of the only point of law that has been argued before us. Mr. U. R. Lalit, counsel for the appellant submitted that in view of the Bihar Land Reforms Act of 1950, as the appellant was in khas possession of the land in question on the crucial date it did not vest in the government. A perusal of Section 6 of the Act clearly shows that if the appellants were not in khas possession of the land on the crucial date i.e. November 6, 1951, then their title to the property would stand extinguished. The High Court has clearly pointed out that on this crucial date, the lands remained attached by Magistrate under Section 146(1) of CrPC and no step were taken by the appellant to get the land released. Ultimately, however the lands were released in favour of the defendants and the income collected by the receiver were also allowed to be taken by the defendants. It is therefore clear that even if the receiver was in possession of the lands in question while the attachment under CrPC was in force, the attachment would in law be deemed to have been on behalf of the defendant in whose favour the lands were released. Thus it is clear that on November 6, 1951 the property being custodia legis the appellant was not in actual or constructive possession of the land, hence his title stood extinguished. Secondly, even if we assume that Khorposh grant land did not fall within the ambit of Section 6 of Bihar Land Reform Act of 1950, there was a amendment under which these lands also stood vested in the state unless the Zamindar was in possession of the land on January 26, 1955. Here also the evidence and the findings of fact recorded by the courts below and upheld by the High Court are that the defendants were in possession of that land on January 26, 1955. Thus the title of the appellant stood extinguished and the High Court was therefore right in affirming the decree of dismissal of the suit by the trial Court. We do not find any merit in this appeal. It is accordingly dismissed but in the circumstances there would be no order as to costs in this Court.

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