

A. K. Ghosh

Vs

Bharat Coking Coal Limited

Civil Appeal No. 3048 of 1981

(Kuldip Singh, N.M. Kasliwal JJ)

13.11.1992

JUDGMENT

KASLIWAL, J.

1. This appeal by grant of special leave is directed against the judgment of the Patna High Court dated February 26, 1981.
2. The appellant filed a suit for declaration, permanent injunction and recovery of possession of a single storeyed pucca house standing on plot Nos. 294, 295 and 296 in Village Koiridih, P.S. Baghmara in the district of Dhanbad. The case of the plaintiff was that he had purchased the plots by registered sale deed dated March 10, 1965 and thereafter constructed building on the plots. The building was let out to one Shri D.P. Gupta, Manager East Khas Bahiardih Colliery on a monthly rent of Rs. 100. Shri Gupta, Manager East Khas Bahiardih was transferred to Calcutta and as such he delivered the possession of the building to the plaintiff. The plaintiff alleged that he was the owner and in possession of the building at all material times. As the respondent was trying to take forcible possession of the property, he filed the aforementioned suit.
3. The respondent filed a written statement and its main defence was that the land in question was purchased and the building was constructed by the New Govindpur Colliery Company Private Limited from its own funds. The purchase was not made by the plaintiff from his own money and he did not construct the building from his own fund. Mr. Gupta was not tenant of the plaintiff but was a tenant of the Company who owned New Govindpur Colliery. It was further alleged that the right, title and interest of the owners of New Govindpur Colliery vested in the Central Government under the Cooking Coal Mines (Nationalisation) Act, 1972 (hereinafter referred to as 'the Act'). It was further alleged that the building in question is a mine as defined in Section 3(j)(vi) of the Act and as such it vested in the Central Government under Section 4 of the Act and subsequently in the respondent - Bharat Coking Coal Limited.
4. The trial court held that the plots of land were purchased by the plaintiff from his own money and the building was also constructed by him from his own fund. It was also held that the building in question did not form part and parcel of the New Govindpur Colliery. It was further held that the building in question did not vest in the Central Government under the Act. The trial court, as such, decreed the suit of the plaintiff and also granted a decree for recovery of possession as the plaintiff had been dispossessed during the pendency of the suit. The Bharat Cooking Coal Limited and others aggrieved against the judgment of the trial court went in appeal. Learned Additional District Judge, Dhanbad affirmed the findings of fact regarding the ownership and possession in favour of the plaintiff. He also held that the house in question belonged to the plaintiff in his individual capacity.

On a further appeal by Messrs. Bharat Cooking Coal Limited, learned Single Judge of the High Court though agreed with the contention of the learned counsel for the plaintiff but expressed his inability to decide the case in favour of the plaintiff as sitting singly, he was bound by a decision of the Division Bench of that Court given in F.A. No. 289 of 1979 titled Bharat Cooking Coal Limited v. Kali Prasad Agarwalla decided on April 24, 1980.

5. Aggrieved against the aforesaid judgment of the learned Single Judge the plaintiff has come in appeal. It was contended by the learned counsel for the defendant - respondent that K.P. Agarwalla's case has been affirmed by this Court in Kali Prasad Agarwalla v. Bharat Cooking Coal Limited.(1989 Supp (1) SCC 628 : (1989) 2 SCR 283) It has thus been submitted that there is no force in this appeal and it ought to be dismissed as fully covered by the aforesaid decision in K.P. Agarwalla case. On the other hand, it was contended by the learned counsel for the appellant that the case of K.P. Agarwalla is wholly distinguishable and the plaintiff's suit in the present case ought to be decreed on the basis of the finding of fact recorded in favour of the plaintiff by all the courts.

6. We have gone through the record and the judgment of the courts below and we are clearly of the view that K.P. Agarwalla case (1989 Sopp (1) SCC 628 : (1989) 2 SCR 283) is distinguishable and is not applicable in the facts and circumstances of the present case. In K.P. Agarwalla case (1989 Supp (1) SCC 628 :(1989) 2 SCR 283) the suit property consisted of 30 bighas, 18 kattar and 11 chhataks being part of plot Nos. 59 and 70 in Village Dhansar. The claim of the plaintiff K.P. Agarwalla was based on a registered indenture of lease dated December 9, 1949. The plaintiff in that case claimed that they had become the owners of the leasehold land and were in possession of the same by exercising diverse acts of possession, mutating their name and by payments of stipulated rents to the State of Bihar, who had recognised the said lease. The trial court decreed the suit, but on appeal the High Court held that the lease granted to the plaintiffs was an encumbrance and it was annihilated with the issuance of the notification under Section 3 of the Act. The lease of the plaintiffs having come to an end consequent upon the issuance of notification under Section 3 of the Act, the plaintiffs had no title to be declared and the decree of the trial court was liable to be set aside. The High Court further held that the suit lands were adjacent to a coal mine, namely, North Bhuggatdih Colliery and were being used for the purposes of said mine, namely, stacking of coal and effecting local sales thereof. This Court after considering the various provisions of the Act and the evidence led by the authorities in the aforesaid case held as under. (SCC p. 633, paras 16 and 17)

"In the light of this evidence, the location of the suit land and the uses to which it is put to are beyond doubt. The land is being used for carrying on the mining operations and it is adjacent to a mine. It is used for the purposes of the time for carrying on the mining operations in respect of the part of the seam lying immediately below the surface. Apparently, there cannot be any working mine without the surface being included in that concept. If the surface does not form part of the concept of mine, it is not possible to have any excavation. Section 2(h)(iv) includes open cast working within the definition of 'mine'

Secondly, the suit land is also adjacent to coal mine, namely North Bhuggatdih Colliery and is being used for the purpose of the said mine, namely, stacking of the coal and effecting local sale thereof. It is, therefore, a mine as defined under Section 2(h)(vi) of the Act."

This Court ultimately on the basis of the above findings dismissed the appeal and clearly observed that "on the facts and circumstances of the case we cannot, therefore, accept the contention urged for

the appellant in his regard."

7. So far as the case before us is concerned, the property in question is a building used for residential purposes. All the courts have recorded a finding in favour of the plaintiff that he purchased the plot of land and also constructed the building over it in his individual capacity and not on behalf of New Govindpur Colliery Company Private Limited. On these facts, it cannot be held that the building in question falls within the meaning of 'mine' under Section 3(j) read with clause (vi) of the Act. As already mentioned above, the case of K.P. Agarwalla (1989 Supp (1) SCC 628 : (1989) 2 SCR 283) is totally distinguishable on facts and as such it lends no assistance to the respondent in the present case. The above appeal has to be allowed on its own facts and circumstances of the case without expressing any opinion on any question of law raised in the present case.

8. In the result, we allow this appeal, set aside the impugned judgment of the High Court and restore the judgment and decree of the trial court decreeing the suit of the plaintiff. In the facts and circumstances of the case we make no order as to costs.

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