

Deonarayan Singh and Others

Vs

Commissioner of Bhagalpur and Others

Civil Appeal No. 4657 of 1984

(S. B. Majmudar, M. Jagannadha Rao JJ)

23.04.1997

JUDGMENT

S. B. MAJMUDAR, J. –

1. This appeal on special leave is directed against the decision rendered by a Full Bench of the Patna High Court dismissing the writ petition filed by the appellants.

2. In order to appreciate the grievance of the appellants it will be necessary to note a few relevant facts leading to these proceedings. A Jamabandi No. 65 of Mauza Billi within Police Station Madhupur, in the District of Santhal Parganas in the State of Bihar was recorded in the names of Sitaram Singh, Jaleshwar Singh, Yudhisthir Singh and Kastura Kumari Devi as Mool Raiyat Ka Jote. They amongst themselves has 8 annas interest in the said jote. As occupants of lands, they were called Raiyats with their headman as Mool Raiyat. Mool Raiyat Ka Jote was a land tenure in Santhal Parganas. It was attached to a Mool Raiyat who as a village headman was responsible for the collection of land revenue in times of British rule. The proprietor landlord was called "Ghatwal". Requisite rent of the land was to be handed over by the Mool Raiyat to the Ghatwal. Mool Raiyat had two types of land tenures. Mool Raiyat Ka Jote was alienable and personal. Mool Raiyat Jote was inalienable and was attached to his office. It was admeasured 1 acre 81 decimals while Mool Raiyat Ka Jote which was Nij Jote admeasured 71 acres 71 decimals. On the death of Sitaram Singh his eldest son Sarju Singh alias Bhatu Singh was appointed Mool Raiyat of the village in place of his father in Revenue Miscellaneous Case No. 99 of 1938-39 of the Court of Sub-Divisional Officer, Deoghar. The said appointment was duly approved by the Deputy Commissioner of Santhal Parganas. It is the case of the appellants that as the entire family of Sarju Singh Bhatu Singh was heavily indebted and was in need of money, the said 8 annas interest in Mool Raiyat comprising 38 acres 9 decimals representing his share in Nij Jote came to be sold by the said Bhatu Singh and his brothers to one Bimal Kanti Roy Choudhury on 22-3-1939. The further case of the appellants is that the said vendors had been in possession of 38.09 acres of land in lieu of their 8 annas interest in Mool Raiyat by family arrangement with their co-sharers. The said sale was effected for a consideration of Rs. 10,000. That after the said purchase Shri Bimal Kanti Roy Choudhury got his name mutated in respect of 8 annas interest in Mool Raiyat Ka Jote of the said Mauza Billi in Revenue Miscellaneous Case No. 21 of 1939-40 by an order of the Sub-Divisional Officer, Deoghar dated 27-11-1939 which was duly approved by Deputy Commissioner, Dumka on 28-11-1939. Shri Bimal Kanti Roy Choudhury was subsequently appointed as 16 annas sarbarakar of the said mauza. The said order was passed after service of notice on all the co-owners of Jamabandi No. 65.

3. That by sale deed dated 26-6-1950 the said Bimal Kanti Roy Choudhury sold his entire right, title and interest in the Mool Raiyat Ka Jote to Shri Radha Prasad Singh, father of the appellants for a

consideration of Rs. 17,000. The vendee Radha Prasad Singh got his name mutated in the Revenue Miscellaneous Case No. 40 of 1950-51 of the Court of Sub-Divisional Officer, Deoghar. The said order of mutation was passed after service of notice on all the opposite parties, Respondents 4 to 15. The vendee Radha Prasad Singh during his lifetime remained in possession of the aforesaid 38.09 acres of land of Jamabandi No. 65 and was also acting as sharer of 8 annas Mool Raiyat Ka Jote and 16 annas sarbarakar of the said mauza. As the contesting respondents sought to disturb the possession of Radha Prasad Singh proceedings under Section 145 Code of Criminal Procedure were initiated. They were registered as Criminal Case No. 567 of 1950. But the learned Sub-Divisional Officer, Deoghar by his order dated 31-8-1951 declared the possession of the appellants' father. Revision against the said order was rejected by the Sessions Judge, Dumka. After the death of Radha Prasad Singh, Appellant 4 Mathura Prasad Singh, was appointed as Mool Raiyat to the extent of his interest in the said Jote amounting to 8 annas and as 16 annas sarbarakar of the said mauza. It was only thereafter that in the year 1970-71 Respondents 4 to 15 claiming to be the original co-sharers of the mauza filed an application before the Sub-Divisional Officer, Deoghar against the appellants for their eviction from 38.09 acres of land of Jamabandi No. 65 alleging that the same had been illegally alienated. It was registered as Revenue Eviction Case No. 67 of 1970-71. They sought the aforesaid relief under the provisions of Section 20, sub-section (5) read with Section 42 of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 (hereinafter referred to as "the Act").

4. In the first instance the learned Sub-Divisional Officer, Deoghar, rejected the said application. Respondents 4 to 15 carried the matter in appeal before Deputy Commissioner, Santhal Parganas. It was transferred to the file of Additional Deputy Commissioner, Dumka, who by his order dated 30-9-1975 allowed the appeal and ordered eviction of the appellants. It was held by the Additional Deputy Commissioner that the original sale transaction by Bhatu Singh in favour of Bimal Kanti Roy Choudhury dated 22-3-1939 was violative of provisions of Section 27(1) of the Santhal Parganas Settlement Regulation, 1872 (hereinafter referred to as "the Regulation") which applied at the relevant time and consequently the subsequent sale by Shri Bimal Kanti Roy Choudhury in favour of the appellants' father was equally violative of the provisions of Section 20(1) of the Act. Hence the appellants were liable to be evicted from the land. The aforesaid decision of the appellate authority resulted in further revenue miscellaneous appeal before the Commissioner, Bhagalpur Division, who by order dated 2-6-1976 dismissed the same and confirmed the eviction order passed by the Additional Deputy Commissioner, Dumka. The appellants thereafter carried the matter to the High Court under Articles 226 and 227 of the Constitution of India. The appellants' writ petition was heard by a Full Bench consisting of the then Chief Justice S. S. Sandhawalia, Justice S. Ali Ahmad and Justice B. S. Sinha. The full Bench considered the main question which was posed for its decision, namely, whether the prescriptive period of 12 years for perfecting the title by adverse possession when the original transfer was in contravention of Section 27 of the Regulation would stop running from 1-11-1949 being the date of enforcement of the Act. The Full Bench noted that this was the significant solitary question arising from a deep-seated conflict of precedent within that Court which had necessitated that reference to the Full Bench. The Full Bench speaking through S. S. Sandhawalia, C.J., on this moot question referred to an earlier decision of the Full Bench of that Court in the case of Rhauri Lal Jam v. Sub-Divisional Officer (AIR 1973 Pat 1 : 1972 BLJR 897 : 1972 Pat LJR 415) and posed the question whether the earlier Full Bench decision covered the controversy posed for their decision in the present case and if so what was the precise mandate of the earlier Full Bench decision. In the impugned judgment the Full Bench took the view that the earlier transaction of 22-3-1939 was violative of Section 27 of the Regulation and that the possession of the vendee through Bimal Kanti Roy Choudhury from that date was adverse to the

vendors but by the time the Act applied to Santhal Parganas with effect from 1-11-1949 the said vendee Bimal Kanti Roy Choudhury had not completed 12 years of adverse possession and consequently the transaction in his favour and the subsequent transaction by him in favour of the appellants' father on 26-6-1950 were liable to be voided both under Section 27(1) of the Regulation as well as Section 20(1) of the Act read with Section 42 thereof. Resultantly the Full Bench did not find a fault with the decision rendered by the lower authorities against the appellants. Sandhawalia, C.J., also noted in his judgment that in view of his decision he was disinclined to permit or advert to the ancillary contentions sought to be urged in the alternative for the first time in the writ jurisdiction by the appellants. Thus there was a unanimous decision of the Full Bench that prescriptive period of 12 years for perfecting the title by adverse possession in connection with the transactions entered into in contravention of Section 27 of the Regulation would stop running from 1-11-1949 being the date of enforcement of the Act. However on the question of relief to be granted under the circumstances the majority of the learned Judges took the view that the orders of the learned Commissioner and the Additional Deputy Commissioner directing settlement of land with Respondent 10 must be set aside meaning thereby according to the majority the land should be placed at the disposal of the State Government for being dealt with in accordance with law. We may note at this stage that the contesting respondents who had moved a separate special leave petition to the extent they were aggrieved by the decision of the majority of the High Court setting aside the direction for restoration of the land in their possession could not persuade this Court to admit their special leave petition which had stood dismissed. Hence strictly speaking they are out of the arena of contest and now the contest remains between the officers of the State of Bihar, namely, Respondents 1 to 3 and State of Bihar, Respondent 16 on the one hand and the appellants on the other.

5. Dr. Dhavan, learned Senior Counsel for the appellants, raised various contentions before us for assailing the decision of the Full Bench under appeal. He also had a serious grievance against the earlier decision of the Full Bench of the Patna High Court in the case of Bhauri Lal Jain (AIR 1973 Pat 1 : 1972 BLJR 897 : 1972 Pat LJR 415). However as will be indicated hereinafter it is not necessary for us to pronounce upon the correctness of the decision of the Full Bench in the case of Bhauri Lal Jain (AIR 1973 Pat 1 : 1972 BLJR 897 : 1972 Pat LJR 415). which in its turn was heavily relied upon by the latter Full Bench of the Patna High Court in the impugned judgment. The appellants are, as will be demonstrated hereinafter, entitled to succeed on an entirely different ground which also was placed for our consideration by Dr. Dhavan, learned Senior Counsel for the appellants and which was justifiably contested by the learned counsel for the respondent authorities. We will, therefore, deal with this solitary ground.

6. The aforesaid narration of facts leading to these proceedings shows that on 22-3-1939 when 8 annas share in Mool Raiyat was conveyed by one of the co-sharers of the said Jote, namely, Bhatu Singh in favour of Shri Bimal Kanti Roy Choudhury, Section 27(1) of the Regulation was holding the field. The said Section 27(1) read with Section 27(3) of the Regulation provided as under :

"27. (1) No transfer by a Raiyat of his right in his holding or any portion thereof, by sale, gift, mortgage, lease or any other contract or agreement, shall be valid unless the right to transfer has been recorded in the record of rights, and then only to the extent to which such right is so recorded.

#(2) \* \* \*##

(3) If at any time it comes to the notice of the Deputy Commissioner that a transfer in

contravention of sub-section (1) has taken place, he may, in his discretion, evict the transferee and either restore the transferred land to the Raiyat or any heirs of the Raiyat who have transferred it, or resettle the land with another Raiyat according to the village custom for the disposal of an abandoned holding :

Provided -

- (a) that the transferee whom it is proposed to evict has not been in continuous cultivating possession for twelve years;
- (b) that he is given an opportunity of showing cause against the order of eviction; and
- (c) that all proceedings of the Deputy Commissioner under this section shall be subject to control and revision by the Commissioner."

It is not in dispute and was not rightly disputed by the learned Senior Counsel for the appellants that the said transaction prima facie appeared to be violative of Section 27(1) of the Regulation as Bhatu Singh who was a Raiyat sought to transfer his 8 annas share in the Mool Rajyat when the right to transfer which was recorded in the Record of Rights enabled the Mool Raiyat to transfer, if at all, his entire rights in the mauza consisting of his alienable Mool Raiyat Ka Jote as he was the Mool Raiyat. But the learned Senior Counsel for the appellants submitted that by a family partition prior to the transaction of sale 8 annas share in the Mool Raiyat comprising of 38 acres and 9 decimals fell to the share of Bhatu Singh and it was his entire share in the Mool Raiyat that was transferred by the transaction. Hence Section 27(1) was fully complied with. This contention is not open to the learned Senior Counsel for the appellants for the simple reason that the Full Bench of the High Court of Patna in the impugned judgment has noted in paragraph 22 that there was a concurrent finding of the Sub-Divisional Officer, the Deputy Commissioner and the then Commissioner that the said transfer was in violation of the record of rights of the estate and consequently Section 27(1) of Regulation III of 1872 and that concurrent finding was not challenged before the High Court and indeed being based on the relevant record was thus wholly unassailable. We must, therefore, proceed on the basis that the transaction of sale dated 22-3-1939 by vendor Bhatu Singh in favour of vendee Bimal Kanti Roy Choudhury was violative of Section 27(1) of the Regulation.

7. But now arises the further question as to how the said transaction was treated by the authorities charged with the administration of the Regulation in the area. So far as this aspect is concerned unfortunately the attention of the High Court does not seem to have been drawn to it. After the aforesaid purchase the vendee Bimal Kanti Roy Choudhury moved an application before the Sub-Divisional Officer, Deoghar District, Santhal Parganas, for getting clearance of the transaction and for getting his name mutated in the records as a vendee of the transferred lands. That case was registered as Revenue Miscellaneous Case No. 21 of 1939-40. Thus he drew the attention of the competent authority in connection with this transaction. The Sub-Divisional Officer by his order dated 31-5-1939 issued notices to the parties concerned for objection, if any. Notices were duly served. The landlord Ghatwal did not file any objection through his agent as noted in the proceedings of 1-7-1939. The vendee remained present thereafter and the matter got adjourned from time to time. On 19-8-1939 the landlord's agent objected to the clearance of the transaction by saying that the security offered by other co-sharers was insufficient and that the purchaser had taken only Mool Rajyat's interest. Hence notices were issued to the co-sharers of the late Mool Raiyat why their share would not remain in security. Thereafter on 9-10-1939 vendee's agent and landlord's agent were present and no one appeared for the co-sharers of the late Mool Raiyat. Matter was put

up for orders on 2-11-1939. On 2-11-1939, the vendee was present. The Sub-Divisional Officer heard and adjourned the matter for orders on 27-11-1939. On 27-11-1939 co-sharers of the late Mool Raiyat did not appear or object. He, therefore, held that mutation was required to be allowed. He, therefore, submitted the matter to the Deputy Commissioner for orders. And then is found the order dated 28-12-1939 of the Deputy Commissioner approving the transaction and the mutation in favour of the vendee Bimal Kanti Roy Choudhury. Accordingly mutation was carried out on 24-1-1940 and papers were corrected. The aforesaid facts which have been brought on record and on which learned counsel for the authorities could not obviously offer any objection, leave no room for doubt that the first transaction of sale dated 22-3-1939 was duly scrutinised by the competent authorities and the Deputy Commissioner who approved the same. The proceedings remained under scrutiny from 31-5-1939 till 28-12-1939. Thus for seven months the enquiry went on and ultimately the aforesaid decision was rendered. It must, therefore, be held that there was ample opportunity for the Deputy Commissioner, if so advised, to order eviction of the transferee in exercise of his powers under Section 27(3) of the Regulation but it appears that in his discretion he had waived his objection to the transaction and the same was regularised. The said inference is inevitable as but for the said fact mutation in favour of vendee Bimal Kanti Roy Choudhury would never have been sanctioned by the competent authority at the relevant time. It must, therefore, be held that on the peculiar facts of this case the first transaction of sale dated 22-3-1939 was duly approved and cleared by the competent authority exercising powers under Section 27(3) of the Regulation. Once that happened a right accrued in favour of the vendee to remain in possession of the transferred lands admeasuring 38.09 acres in his own right and the curtain dropped on the said transaction. It is obvious that thereafter under the said Regulation if it had continued to operate the transaction would not have been reopened once it was found that the Deputy Commissioner having notice of the transaction had not thought it fit to exercise powers under Section 27(3) of the Regulation for evicting the illegal transferee. It may be, as learned counsel for the authorities rightly submitted, that if in a given case relevant facts were not brought to the notice of the Deputy Commissioner earlier and if a subsequently he had found that the transaction was violative of sub-section (1) of Section 27 in a proper case he could have exercised power under Section 27(3) but such are not the facts of the present case. As noted earlier seven months elapsed during which the transaction remained under the gaze of scrutiny of the Sub-Divisional Officer and ultimately got scrutinised by the Deputy Commissioner himself. Consequently on the peculiar facts of this case it must be held that the said transaction was duly filtered by the competent authority who in its discretion approved the same years back on 28-12-1939. Accordingly it must be held that a right accrued to the transferee of the said transfer in his favour under the Regulation. Let us now see as to what was the effect on this right of the vendee by the coming into operation of the Act. As noted earlier the Act became applicable from 1-11-1949. Section 3 of the Act states that the enactments mentioned in Schedule A are repealed to the extent specified in the fourth column thereof. When we turn to Schedule A to the Act we find listed as one of the Acts the Regulation of 1872 and the extent of the repeal of the Regulation was in connection with Sections 27 and 28. Once Section 27 of the Regulation stood repealed by the Act, the question arises whether the right which had accrued to the vendee, Bimal Kanti Roy Choudhury under the Regulation in connection with the operation of Section 27, sub-sections (1) and (3) of the Regulation was saved or not despite the repeal of the said Section 27. A mere look at the relevant provisions of the Act shows that there is no express provision in the Act which lays down that notwithstanding the orders passed or actions taken in connection with transactions under the Regulation, and notwithstanding any rights which might have accrued thereunder fresh scrutiny of the said transaction could be made under the relevant provisions of the Act which corresponded to the earlier repealed Section 27 of the Regulation. When such a contrary intention does not appear from the scheme of the Act, the effect of the repeal of Section 27 of the

Regulation squarely attracts the provisions of Section 8 of the Bihar General Clauses Act, 1917 which reads as under :

"8. Effect of repeal. - Where any Bihar and Orissa Act or Bihar Act repeals any enactment hitherto made, or hereafter to be made, then, unless a different intention appears, the repeal shall not -

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed, or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture of punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or a punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed."

As repealed Section 27 of the Regulation is re-enacted as Section 20(1) of the Act and as the latter Act does not project any different and contrary intention to set at naught any final orders rendered by the competent authorities under the repealed Section 27 of the Regulation, the repeal of Section 27 of the Regulation by the Act will not affect any right, privilege, obligation, or liability acquired, accrued or incurred under the said repealed provision. Consequently the immunity earned by the transaction of 22-3-1939 under the Regulation and the approval granted to it by the competent authority, namely, the Deputy Commissioner by his order dated 28-12-1939 remained available and accrued to the vendee Bimal Kanti Roy Choudhury despite the repeal of Section 27 of the Regulation by the Act. Thus on the peculiar facts of this case it must be held that the transaction of 22-3-1939 cannot be said to have any adverse effect on the right of the vendee under the said transaction and he remained perfectly competent to deal with the transferred 38.09 acres of land covered by the said transaction in his favour which was duly filtered by the then competent authorities under the Regulation. Consequently the decision rendered on the merits of this transaction by all the authorities below and which came to be accepted by the High Court in the impugned judgment cannot be sustained on account of these salient tell-tale facts which have remained undisputed on the record of the case.

8. The second transaction which is on the anvil of scrutiny is the sale dated 26-6-1950 by Bimal Kanti Roy Choudhury in favour of Radha Prasad Singh, father of the appellants. So far as this sale deed is concerned it stands on a still stronger footing. By the said sale deed the entire right, title and interest of Bimal Kanti Roy Choudhury in 38.09 acres of land got conveyed to Radha Prasad Singh. Consequently it could not be said to be a transfer which was hit by Section 20 of the Act. The relevant provisions thereof read as under :

"20. Transfer of Raiyat's rights. - (1) No transfer by a Raiyat of his holding or any portion thereof, by sale, gift, mortgage, Will, lease or any other contract or agreement express or implied, shall be valid, unless the right to transfer has been recorded in the Record of Rights, and then only to the extent to which such right is so recorded :

Provided that a lease of Raiyati land in any sub-division for the purpose of the establishment or continuance of an excise shop thereon may be validly granted or renewed by a Raiyat, for a period not exceeding one year, with the previous written permission of the Deputy Commissioner :

Provided further that where gifts by a recorded Santhal Raiyat to a sister and daughter are permissible under the Santhal law, such Raiyat may, with the previous written permission of the Deputy Commissioner, validly make such a gift :

Provided also that an aboriginal Raiyat may, with the previous written permission of the Deputy Commissioner, make a grant in respect of his lands not exceeding one half of the area of his holding to his widowed mother or to his wife for her maintenance after his death.

#(2)-(4) \* \* \*##

(5) If at any time it comes to the notice of the Deputy Commissioner that a transfer in contravention of sub-section (1) or (2) has taken place he may in his discretion evict the transferee and either restore the transferred land to the Raiyat or any heirs of the Raiyat who have transferred it, or resettle the land with another Raiyat according to the village custom for the disposal of an abandoned holding :

Provided that the transferee whom it is proposed to evict shall be given an opportunity of showing cause against the order of eviction."

It would at once become clear that Section 20(1) of the Act runs parallel to the scheme of the earlier provisions of Section 27(1) of the Regulation. Bimal Kanti Roy Choudhury was a Raiyat who was recognised as the Mool Raiyat by the competent authorities under the Regulation. His entire right, title and interest in the said land which was an alienable jote was transferred under the said second transaction in favour of the appellants' father. The right to transfer was duly recorded in the Record of Rights and required the transferor to transfer if at all his entire right, title and interest in the Mool Raiyat. That is precisely what was done by Bimal Kanti Roy Choudhury in favour of the appellants' father by the transaction dated 26-6-1950. Therefore, this transaction did not offend the provisions of Section 20(1) of the Act. If that is so, it remained fully within the four corners of the said provisions and could not be treated to be illegal or invalid from any angle. Consequently there would remain no occasion for the authorities to invoke Section 20(5) of the Act read with Section 42 thereof in connection with this latter transaction of sale dated 26-6-1950. In fact in fairness to the respondents it must be submitted that all authorities below as well as the High Court by the impugned judgment have considered the invalidity of the first transaction of sale dated 22-3-1939 and in that light they have voided the second transaction as a consequential transaction. Once the nexus between the two sales gets snapped and the earlier transaction by itself cannot be fault with from any angle, would remain no occasion for the respondent authorities to invoke the provisions of Section 20(1) read with sub-section (5) and Section 42 of the Act in connection with even the second sale transaction dated 26-6-1950. Once that conclusion is reached the result becomes obvious. On these peculiar facts there is no escape from the conclusion that the possession of the

appellants as heirs of the deceased vendee Radha Prasad Singh can be said to have been validly obtained and a valid title that was conveyed in land admeasuring 38.09 acres, to their father Radha Prasad Singh under the second sale transaction dated 26-6-1950, got legally transmitted to the appellants by rules of succession. Consequently on these facts no action could have been taken by the authorities under the relevant provisions of the Act against the appellants. Only on this short ground, therefore, the appeal is required to be allowed. We make it clear that in view of the aforesaid decision of ours we have not thought it fit to consider the correctness of the decision of the Full Bench of the High Court in the case of Bhauri Lal Jain (AIR 1973 Pat 1 : 1972 BLJR 897 : 1972 Pat LJR 415) as well as the a impugned judgment of the Full Bench in connection with the adverse possession of the vendee under an invalid transaction of land in the area being violative of Section 27(1) of the Regulation or Section 20(1) of the Act. That question is, therefore, kept open. Similarly we have also not thought it fit to go into the wider question canvassed by the learned counsel for the respondent authorities that even if mutations are rendered by the authorities under the Regulation or the Act if on subsequent facts being brought to the notice of the Deputy Commissioner and once there was no earlier occasion or possibility for the Deputy Commissioner to exercise powers under Section 21(5) of the Act or Section 27(1) of the Regulation, such power could be exercised later on under those circumstances. We leave that question also open as it is not necessary for us to pronounce upon the same in view of the decision rendered by us on the merits of the impugned two transactions as seen earlier.

9. In the result the appeal is allowed. The judgment and order of the High Court are quashed and set aside. Similarly the decision rendered by the Additional Deputy Commissioner Duruka dated 30-9-1975 as well as the decision rendered by the Commissioner dated 2-6-1976 are also quashed and set aside and the application moved by Respondents 4 to 15 under Section 20, sub-section (5) read with Section 42 of the Act is ordered to be dismissed. In the facts and circumstances of the case there will be no order as to costs.