

SUPREME COURT OF INDIA

Mehar Chand Das

Vs.

Lal Babu Siddique

C.A.No.6413 of 2000

(S.B.Sinha and Markandey Katju, JJ.)

17.01.2007

JUDGMENT

S.B.Sinha, J.

1. The defendant in the suit is before us aggrieved by and dissatisfied with the judgment and decree dated 18.8.1999 passed by a learned Single Judge of the High Court of Judicature at Patna in Second Appeal No. 29 of 1993 affirming the judgment and decree dated 20.1.1993 passed in Title Appeal No. 20/1985 whereby the appeal from judgment and decree dated 14.3.1985 passed by the Munsif Court, Samastipur, in Title Suit No. 71/1978, was dismissed.

2. The basic fact of the matter is not in dispute.

3. The appellant herein was a tenant under the respondents. He was, however, said to be a landless person. A Parcha was purported to have been granted on or about 29.9.1969 by the Collector of Samastipur District, in terms of the provisions of Section 6 of the Bihar Privileged Persons Homestead Tenancy Act, 1947 ("the Act", for short), the father of the respondents (Nos. 1 to 5) filed a suit for eviction against the appellant herein, purported to be one under Bihar Buildings (Lease, Rent & Eviction) Control Act, 1947. The said suit was dismissed on 27.5.1977. No appeal thereagainst was filed. Another suit, however, was filed in the Court of Munsif-II, Samastipur, which was marked as Title Suit No. 71/1978, on the premise that the said Parcha under Section 6(2) of the Act, was issued without jurisdiction and the same had been fraudulently obtained.

4. The reliefs prayed for in the said suits are:

"(a) On consideration of the above facts the court be pleased to set aside the order of the B.D.O., Pusa passed in case 1166/69-70 on 29.9.69 u/s. 6(2) of the Act as being without jurisdiction and fraudulently obtained.

(b) Any other relief or reliefs which may be deemed suitable a decree to that effect may be passed in favour of the plaintiff against the defendant."

Sub-section (2) of Section 6 of the Specific Relief Act, 1963 reads as under :

"No suit under this section shall be brought -

- (a) after the expiry of six months from the date of dispossession; or
- (b) against the Government"-

5. One of the contentions raised by the appellant herein in the said suit was that in terms of the proviso appended to sub-section (2) of Section 6 of the Act the suit was not maintainable. On a finding that the said Parcha was obtained upon committing fraud, the suit was decreed. The appeal preferred there against by the appellant was dismissed. In the second appeal which was filed by the appellant, the following purported questions of law were formulated :

"(i) Whether the suit for setting aside the order dated 29.6.69 in absence of any consequential relief for possession was barred under Section 34 of the Specific Relief Act, in view of the decision of Supreme Court in case of *Vinay Kirshna v. Keshav Chandra & Anr^l.*?

(i) Whether the instant suit was barred for non-joinder of the collector, who was necessary part to the suit?"

6. The High Court, as noticed hereinbefore, dismissed the second appeal inter alia holding that the defendant had been in possession. It, however, purported to have applied the law laid down by this Court in *Vinay Krishna v. Keshav Chandra and Anr².*, on the premise that as, admittedly; the defendant had been in possession of the suit property and the only relief prayed for in the suit was to set aside the order dated 29.9.1969, no consequential relief was required to be made for in the suit.

7. Mr. S.B. Upadhyay, learned senior counsel appearing on behalf of the appellants would submit that in view of the express bar contained in the proviso appended to Section 34 of the Specific Relief Act, 1963, the suit was not maintainable. It was submitted that in any event the Collector having not been impleaded as a party, the suit should have been dismissed.

8. Learned counsel appearing on behalf of the respondents, however, supported the impugned judgment.

9. Section 34 of the Specific Relief Act, 1963 reads as under :

"Discretion of Court as to declaration of status or right. - Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief :

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."

10. In this case, it stands admitted that the appellant was treated to be a tenant by the respondents. The suit property, according to the respondents, was a tenanted one. The possession of the appellant, therefore, was denied and disputed. It is furthermore admitted that the suit for eviction which was filed by him, was as noticed hereinbefore dismissed by the Civil Court on 27.5.1977.

11. The defendant-appellant, therefore, had been in possession of the suit property. In that view of the matter the plaintiff-respondents could seek for further relief other than for a decree of mere declaration of title.

12. The High Court, in our opinion, committed a manifest error in not relying upon the decision of this Court in Vinay Krishna (supra). The said decision categorically lays down the law that if the plaintiff had been in possession, then a suit for mere declaration would be maintainable; the logical corollary whereof would be that if the plaintiff is not in possession, a suit for mere declaration would not be maintainable.

13. Furthermore, the institution of a civil suit was barred in terms of Section 18 of the Act. We may also notice that in terms of Section 17A thereof, the privileged tenant not having permanent tenancy in homestead is to hold the same under the State Government and the amount of rent payable to the landlord by the privileged tenant in respect thereof would become payable to the State Government. Once the defendant-appellant claimed title as a privileged tenant in terms of the provisions of the said Act, the relationship of landlord and tenant come to an end. It was, therefore, obligatory on the part of the plaintiff-landlord to file a suit in terms of Section 18 of the said Act. In absence of a decree passed in such a suit, which as noticed hereinbefore, would lie only on a limited group for want of jurisdiction or fraud, the plaintiff-respondent was not entitled to have a decree in his favour in a suit of the nature instituted by him and for the reliefs sought for by him. Section 2(d) & 2(i) of the Act are as under :

"Homestead' means any land which is held on lease or used with the consent, express or implied, of the landlord for residential purposes and includes any building erected thereon, together with any Sohan and Bari appurtenant thereto."

"Privileged person' means a person-

(1) who is not a proprietor, tenure-holder, under-tenure-holder, or a mahajan; and

(2) who, besides his homestead, holds no other land or holds any such land not exceeding one acre;

but does not include any person who has come into possession of the homestead land in contravention of the provisions of Section 20 of the Senthal Parganas Tehancy (Supplementary Provisions) Act, 1949 (Bihar Act XIV of 1949), of section 46 of the Chotanagpur Tehancy Act, 19808 (Act VIII of 1985)."

14. Apart from the fact that in such a suit the plaintiff was bound to establish fraud or want of jurisdiction on the part of the Collector, to grant a Parcha in favour of the tenant, the Collector was a necessary party. In absence of the Collector, therefore, the suit could not have been decreed.

15. We, therefore, have no hesitation to hold that the High Court wrongly answered the substantial question of law framed by it. The judgments and decrees passed by the High Court and the Courts below are, therefore, set aside and the appeal is allowed. No costs.

Judgment Referred.

¹*AIR (1993) SC 0957*

²*(1993) Supple. 3 SCC 0129*