

**SUPREME COURT OF INDIA**

Achyutanand Choudhary (D) Through

Vs.

Luxman Mahto

S.L.P.(Civil ) No. 8225 of 2003

(P. Sathasivam and J. Chelameswar JJ.)

06.01.2012

**ORDER**

**CHELAMESWAR, J.**

1. The maintainability of a Civil Suit filed by the respondents being titled suit No. 34 of 1996 filed in the Court of Subordinate Judge, Bhagalpur is the question raised in the Special Leave Petition. The suit is filed with the following prayer:-

That the plaintiffs pray for the following reliefs: (A) The court be pleased to hold and declare that the plaintiffs are the bonafide owners of the suit property having acquired Kayami right (right of occupancy) at the time of last cadastral survey and the entry of the suit property in the Khaitiayan of the defendant is wrong and illegal and result of collusion of survey amlas and did/does not confer any right to the defendant at any material time and the same is not binding upon the plaintiffs. (B) The court be further pleased to restrain the defendant from dispossessing the plaintiffs from the suit property or from disposing of the suit property by passing an order of the temporary injunction till the disposal of the suit.

(C) The cost of the suit be awarded to the plaintiff.

2. For the sake of convenience the parties are referred to as they are arrayed in the suit.

3. The plaintiffs claim that the Suit Scheduled Property admeasuring 7.29 acres is owned by them and their ancestors and they have been in an uninterrupted

possession of the same for the period of about 100 years. The instant suit is filed with the allegation that the defendants (petitioners herein), threatened to dispossess them (plaintiffs) on the ground that the Suit Scheduled Property has been recorded in the name of the defendant in the Consolidation Survey. The Relevant portion of the plaint reads as follows:- That on 26.11.1995 for the first time the defendant came to the plaintiffs and disclosed that an area on 7.29 acres of land of the family of the plaintiffs have been recorded in the name of the defendant during consolidation survey for which P.S. Plot No. 793 area 5.97 and P.S. Plot No.755 area 1.32 have been made and land P.S. Khata No.4 the above two plots have been included along with other land of defendant so on such knowledge, the plaintiff sent a messenger to Bhagalpur for taking certified copy of Khatian of consolidation survey and when the copy of said Khatian was delivered to the messenger of the plaintiff on 2.12.1995 the above information of defendant was found to be correct on perusal of certified copy of Khatian aforesaid.

4. The instant Special Leave Petition is filed urging various questions of law regarding the maintainability of the suit in the light of Sections 37 and 15 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956. (hereinafter referred to as the Act).

5. From the counter affidavit filed on behalf of the first respondent in the instant Special Leave Petition, it appears that after the trial of the suit commenced and two witnesses were examined on behalf of the plaintiffs, a petition was filed praying to determine the preliminary issue. The relevant portion of the counter affidavit reads as follows:- That during the pendency of the suit aforesaid when the case was opened for trial and evidences on behalf of the respondents were started and two witnesses were examined, thereafter for the purpose of delaying the disposal of the suit, the petitioner filed a petition dated 11.9.2002 praying therein to determine preliminary issue on two questions namely, (1) the certificate of final Khatian of consolidation survey is a conclusive proof and for want of notice under section 80 C.P.C., the present suit cannot proceed which was replied by these respondents on 12.9.2002.

6. The learned sub-judge, Bhagalpur by his order dated 26.09.2002 rejected the said petition. Aggrieved by the same, the defendant carried the matter by way of a revision to the High Court of Patna.

7. The High Court dismissed the Revision by its order dated 14.1.2003 and hence the instant Special Leave Petition.

8. Unfortunately the defendants did not chose to place on record either the written statement filed by them in suit No. 34 of 1996 nor a copy of the application dated 11.9.2002 referred (supra). In order to enable this Court to understand the exact scope of the defence and also the preliminary objections raised in the above-mentioned petition. Neither the order of the Trial Court dated 26.9.2002 nor the order of the High Court dated 14.1.2003 throw any light on the question.

9. However, in the instant Special Leave Petition, the submission made is that the suit is barred in view of Sections 15 and 37 of the Act.

10. From a perusal of the order of the trial court dated 26.09.2002, it appears that the objection raised is that in view of the declaration under Section 15 of the Act, the certificate issued under Section 15 is conclusive proof of the title of the holder of the certificate, and, therefore, the suit is not maintainable. It does not appear from the above-mentioned order that any specific objection on the basis of the bar contained under Section 37 of the act was pleaded.

11. In our opinion, the statutory declaration that a particular document is conclusive proof of a particular fact or legal right by itself, does not oust the jurisdiction of the Civil Courts. The effect of such a statutory declaration is that in any enquiry regarding the existence of such fact or a legal right, Courts/Tribunals are forbidden from entertaining any further evidence on such an issue the moment the document which is declared to be conclusive proof of such fact/legal rights is produced before the Court or Tribunal conducting such an enquiry. The ouster of the jurisdiction is altogether a different matter.

12. The learned senior counsel Shri S.B. Sanyal, argued that the suit which is a subject matter of discussion is barred in view of the express language of Section 37 of the Act. He also relied upon the following decisions, Ram Krit Singh Vs. State of Bihar, AIR 1979 Patna 250 and Sheoratan Chamar and Ors. Vs. Ram Murat Singh alias Kishori Raman Singh Ors., 1985 PLJR 86 in an attempt to support is submission that the suit is barred under Section 37 of the Act.

13. On the other hand learned counsel for the respondents Shri A.N. Choudhry relied upon a full Bench decision of the Patna High Court reported in 1990 (1) BLJR 51, Kalika Kaur alias Kalika Singh Vs. State of Bihar and Ors., in support of his submission that the suit is maintainable.

14. For an appreciation of the issue on hand, an examination of the scheme of the Act and relevant provisions is necessary.

15. The Act is virtually a sequel to the Abolition of Zamindaries in the State of Bihar. The purpose behind the Act is the consolidation of the small holdings and prevention of the fragmentation of the small pieces of land held by the raiyats. The expression 'fragmentation' and 'holding' and 'raiya' are defined under the Act. Section 3 of the Act authorises the State Government to declare an intention to make a scheme for consolidation of holdings in any area by notification in the official gazette.

16. Section 4 declares that on the publication of such notification certain consequences enumerated therein would ensue. One of them being the abatement of all suits or legal proceedings for the correction of records, declaration of rights or interest in any land etc. covered by the notification. Such abatement is subject, of course, to certain conditions. The details of such are not necessary for the present purpose.

17. Section 8 of the Act stipulates that after publication of the notification under Section 3, an up to date record of rights shall be prepared in accordance with the various enactments specified therein. Section 8, in so far as it is relevant for the present purpose reads:-

8. Preparation of up-to-date record of-rights before consolidation.--(1) Save as provided in sub- section (2) as soon as may be after the publication of a notification under section 3, an up-to-date record of-rights, in respect of all lands comprised in the notified area, together with a map shall be prepared in accordance with the provisions of Chapter X of the Bihar Tenancy Act, 1885 (Act VIII of 1885), or as the case may be, Chapter XII of the Chota Nagpur Tenancy Act, 1908 (Ben. Act VI of 1908) or the Santhal Parganas Settlement Regulation, 1872 (Regulation III of 1872: [or the Bihar Tenants Holdings (Maintenance of Records) Act, 1973 (Bihar Act 28 of 1975]:

18. On the preparation of such record-of-rights, the various steps contemplated in the subsequent provisions of the Act are required to be taken. The details of which are not necessary for the purpose of this case except to note that Section 11 contemplates the preparation of draft scheme. To indicate the nature of the draft scheme, we may extract Section 11 in so far as it is relevant.

11. Preparation of draft scheme--

(2) The Village Advisory Committee and the Assistant Consolidation Officer shall in preparation of a scheme of consolidation, keep the following factors in view, namely-- Xxx xxx xxx xxx (d) every raiyat is, as far as possible allotted a compact area of the plots where he holds the largest part of his holdings; Provided that no raiyat may be allotted more chaks than three except with the approval in writing of the Deputy Director of Consolidation.

(e) every raiyat is, as far as possible allotted the plot on which exists his private source of irrigation or any other improvement, together with an area in the vicinity equal to the valuation of the plots originally held by him; (f) every raiyat is, as far as possible, allotted chaks in conformity with the process of rectangulation in rectangular units; and

(g) subject to rules made in this behalf by the State Government, the lands held by an under raiyat is consolidated:

Provided that the land allotted under the scheme to an under raiyat in lieu of any land held by him before the confirmation of the scheme shall form part of the new holding allotted under the scheme to the raiyat under whom the under raiyat originally held the land. Section 13 prescribes that the draft scheme is required to be confirmed after considering the objections, if any, raised against such draft scheme. The section further mandates that the relevant extracts of the Consolidation scheme shall be granted to the concerned raiyat and declares that such extracts shall be the final allotment orders.

19. Section 15 contemplates the grant of a certificate:- 15(1) The Consolidation Officer shall grant to every raiyat to whom a holding has been allotted in pursuance of a scheme of consolidation a certificate in the prescribed form containing the prescribed particulars. Such certificate shall be conclusive proof of the title of such raiyat to such holding and he shall be liable for payment of such rent as may be specified in the certificate.

Section 35 provides for a revision etc. to the Director of Consolidation against any case decided or proceedings taken under the provisions of the Act by any authority subordinate to him. The only other provision which is relevant for the present purpose is Section 37 which reads as follows:-

37. Bar of jurisdiction of Civil Courts.--No Civil Court shall entertain any suit or application to vary or set aside any decision or order given or passed under this Act with respect to any other matter for which a proceeding could or ought to have been taken under this Act.

20. In substance, under the said Section, the jurisdiction of the ordinary Civil Courts to entertain any suit, application either to stay or set aside any decision given or any order passed under the Act or with respect to any matter for which a proceeding ought to have been taken is ousted.

21. In the background of the scheme of the Act, the question before us is the maintainability of Civil Suit filed by the respondent out of which the instant special leave petition arises.

22. Learned counsel for the defendant/petitioner relied upon the judgment in Ram Krit Singh (supra) and Sheoratan Chamar (supra) in support of the submission that the suit is not maintainable. In our opinion, neither of the judgments support the submission made by the learned counsel for the petitioner. In Ram Krit Singh (supra), a Full Bench of the Patna High Court was dealing with the effect of Section 4 of the Act on pending Civil Suits. We have already noticed that Section 4 declares that all pending suits with respect to the lands in the notified area shall abate. It was a case where the petitioners before the Patna High Court filed a suit in the year 1966 questioning certain alienation made by the first defendant in the suit in favour of the second defendant. While the suit was pending trial, a notification under Section 3 of the Act came to be issued. Therefore, the defendant raised preliminary objections that in view of the declaration under Section 4 of the Act, the suit had abated. The trial Court accepted the preliminary objection. Challenging the said decision of the trial Court and also the constitutionality of Section 4, 12A and 37 of the Act, the plaintiffs thereon approached the High Court on the ground that those provisions violated Article 14 of the Constitution of India.

23. The Full Bench did not examine the scope of the content of Section 37. It was not necessary for the Full Bench to examine the question because the limited issue which fell for the consideration of the Full Bench on the facts of the case was the effect and constitutionality of Section 4 of the Act.

24. Coming to the next decision, Sheoratan Chamar and ors. Vs. Ram Murat Singh alias Kishori Raman Singh Ors., 1985 PLJR 86 (Full Bench). In this case also the High Court was concerned with the effect of Section 4 on the pending suit on the date, the Notification under Section 3 of the Act was issued.

25. The scope of section 37 did not fall for consideration of the Full Bench.

26. On the other hand, the learned counsel for the respondent relied upon a judgment, *Kalika Kuar alias Kalika Singh Vs. State of Bihar and Ors.* reported in 1990 (1) BLJR 51 (Full Bench) in support of his submission that the respondents suit is maintainable. We need not examine the content of the judgment of the High Court for the simple reason that the said judgment stood set aside by this Court in a Judgment reported in *Kalika Kuar alias Kalika Singh Vs. State of Bihar and Ors.*, 2003 (5) SCC 448.

27. Therefore, the averment whether the instant suit is barred either under Section 15 or 37 of the Act is required to be examined. We have already held that Section 15 only embodies a rule of evidence and does not create any bar of the jurisdiction of the Civil Courts. No doubt Section 37 creates a bar to the jurisdiction of the Civil Courts to entertain any suit or application;

(a) to vary any decision or set aside any order given or passed under the Act;

(b) with respect to any mater for which a proceeding could or ought to have been taken under the Act.

28. From the material on record, it is not clear as to what exactly is the nature of the objection raised by the defendants to the maintainability of the suit. Whether the objection of the defendants to the maintainability of the suit is either under (a) or (b) mentioned above and what are the relevant facts are pleaded in support of the objection. It is also not possible to ascertain from the record whether the objection of the defendants is with respect to both the prayers of the suit (extracted earlier) or otherwise. On the other hand, it appears that the trial of the suit is in progress. Therefore, we are of the opinion the extraordinary jurisdiction of this Court under Article 136 ought not to be exercised to interdict the suit. It is always open to the defendants to seek the framing of an appropriate issue regarding the maintainability of the suit upon proper pleadings and invite a decision thereon.

29. The Special Leave Petition is, therefore, dismissed.