

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.49 of 1981

(Against the judgment and decree dated 14.10.1980 passed by 2nd Additional Subordinate Judge, Chapra in Title Suit No.10 of 1978/41 of 1980)

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The State of Bihar and Ors.

.... Defendants-Appellants

Versus

Dr. Nageshwar Prasad Singh

.... Plaintiff-Respondent

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Appearance :

For the Appellants : Mr. Sushant Praveer, A.C. to S.C.27

For the Respondent : None

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. JUDGMENT

Date: 10-03-2015

This first appeal has been filed by the defendants-appellants against the judgment and decree dated 14.10.1980 passed by the learned 2nd Additional Subordinate Judge, Chapra in Title Suit No.10 of 1978/41 of 1980 whereby the learned court below decreed the plaintiff-respondent's suit.

2. The plaintiff-respondent filed the aforesaid suit for declaration that he has acquired occupancy right by virtue of a sale deed dated 14.03.1970 executed by Bishundeo Narain Singh and the defendants have no right to take any action against the plaintiff.

3. The plaintiff claimed the aforesaid relief on the facts inter alia that the disputed land measuring 6 bighas 14 kathas 10 dhors was settled by the State of Bihar in favour of Bishundeo



Narain Singh (a retired military personnel). The settlement was made without putting any condition. The order of settlement was made on 02.09.1965 which was rent free for five years and rent of Rs.7/- was chargeable thereafter. Thereafter the said settlee sold the property to the plaintiff by registered sale deed dated 14.03.1970 and put the plaintiff in possession. The further case is that the settlee after settlement borrowed money and reclaimed the land and made it fit for agricultural purpose. The State of Bihar is trying to dispossess the plaintiff and *jamabandi* in the name of the plaintiff has been cancelled.

4. The State of Bihar and authorities filed contesting written statement taking various legal pleas and defended alleging that the settlee, a retired military personnel, Bishundeo Narain Singh was landless person, therefore, for the purpose of his livelihood agricultural lands were settled for agricultural purpose and homestead land was also settled for constructing his house for residence. Since the settlement was made for agricultural purpose, it was understood that he had no right to transfer the land. Subsequently a circular was also issued in the year 1974 by the State Government imposing restriction on the settlee from transferring the settled land. Since the settlee was landless and lands were settled for agricultural purpose only for his livelihood, it was understood that he will not transfer the

property. However, subsequently in violation of the said term he sold the property for his benefit and he became again landless person.

5. On the basis of the aforesaid pleadings of the parties the learned trial court framed the following issues:-

- (i) Is the suit as framed maintainable?
- (ii) Whether the plaintiff has got valid cause of action for the suit?
- (iii) Whether the suit is bad for want of notice u/s 80 C.P.C.?
- (iv) Is the sale deed taken by the plaintiff from Bishundeo Narain invalid, illegal and inoperative or the plaintiff has got title to the suit land on the basis of the same?
- (v) Has Bishundeo Narain any right to sell the suit land to the plaintiff?
- (vi) Whether the plaintiff is entitled for declaration as sought for in respect of the suit land?
- (vii) To what relief, if any, is the plaintiff entitled?

6. By the impugned judgment and decree the court below recorded the finding that on the date of settlement no restriction was imposed, therefore, the settlee had right to sell the property and as such the plaintiff has acquired title. Accordingly, the plaintiff's suit was decreed.

7. The learned counsel appearing for the State-appellants submitted that the State of Bihar settled the land for the purpose of agricultural only with a view to give source of livelihood to the plaintiff as he was a landless retired military personnel. Impliedly, therefore, the restriction was that the suit land to be utilized for



agricultural purpose and that too, for livelihood of the military personnel. This restriction on the right to enjoy the property settled indicates that the ownership was not transferred. These settlements were made by the State with the landless persons but subsequently it came to the knowledge of the State authorities that after getting settlement the landless persons started selling the property and utilizing the consideration amount for their own benefit violating the terms of settlement that it was settled for the agricultural purpose. Therefore, in the year 1974 circular was issued and a clear condition was imposed in the settlement deeds subsequently. The only difference in this case is that there is no mention of restriction imposed in the settlement order but that does not mean that the settlee became the absolute owner but the learned court below misunderstood the matter and decreed the plaintiff's suit.

8. It appears that in this case in spite of notice on the plaintiff-respondent and the fact that the name of the learned counsel is printed in the daily cause list, nobody appeared on behalf of the respondent.

9. In view of the submission of the learned counsel for the appellants the only point arises for determination in this first appeal is as to whether the landless retired military personnel had any right to sell the property of the State of Bihar which was settled with him and

whether the judgment and decree of the court below is sustainable in the eye of law?

10. The plaintiff has examined witnesses in support of his case that after sale he came in possession and that the settlement was unconditional. P.W.8 is the plaintiff whereas P.W.7 is the father of the plaintiff. They have stated that the retired military personnel was settled with the land in dispute. He sold the property to the plaintiff for Rs.10,000/- by registered sale deed dated 14.03.1970. The sale deed has been marked Ext.3. It further appears that there was agreement to sell between the plaintiff and Bishundeo Narain Singh prior to the sale deed. The agreement has been produced which has been marked Ext.4. Ext.5 is the rent schedule which has been produced by the plaintiff. The other witnesses P.W.4 to P.W.6 have supported the case of the plaintiff regarding purchase and his possession. From the above evidences it appears that the name of the plaintiff was mutated and *jamabandi* was also opened. These are the evidences adduced on behalf of the plaintiff.

11. The appellants have produced the application filed by Bishundeo Narain Singh for settlement alleging that he is a landless person. This application has been marked Ext.C. Ext.D is the order whereby the land was settled with the said retired Bishundeo Narain Singh wherein it has clearly been mentioned that the settlement was



made for agricultural purposes only. This is again supported by Ext.A/1 (the letter written by Collector to the Secretary, Government of Bihar, Revenue and Land Reforms, Patna). In this letter also it is made clear that the land is settled in favour of Bishundeo Narain Singh for agricultural purpose. It appears that subsequently circulars were issued by the State Government which have been marked Ext.G and Ext.H wherein the restrictions have been imposed regarding right to sell. The learned State counsel submitted that because earlier there was no specific restriction imposed in the settlement, subsequently circulars were issued.

12. It may be mentioned here that in the present case from the settlement order and Ext.A/1 itself it is clear that the suit lands were settled for the purpose of agriculture. Admittedly Bishundeo Narain Singh was a landless person. If the right to sell was there then the very purpose for settlement would be frustrated. After all the land belonged to State of Bihar and the purpose of settling was to give source of livelihood to a landless person. Therefore, the settlements were made imposing restriction therein that the lands will be utilized for agricultural purpose only. It was never for the purpose of selling the same and became again landless person. Here, admittedly when the property was settled for the purpose of agriculture, the settlee could not have utilized the suit land for any other purpose but in the

present case instead of utilizing the property for his livelihood, he sold the property and became again landless person. The further glaring fact is that the purchaser is not a landless person.

13. From perusal of the judgment of the court below, it appears that the court below only held that the subsequent circulars imposing conditions will not be attracted in the present case because here the settlement was made in 1965 whereas the circulars were issued in the year 1974. According to the learned court below, restrictions were imposed after 1974 and not prior to that. In my opinion, the approach of the Court in this connection is not acceptable. The court below has not considered that settlement was made for particular purpose only, therefore, the exclusive ownership was not transferred to the settlee. The owner who settled the land still had to see that the land which was settled is utilized for the purpose of which it was settled and not for any other purpose. In this case it appears that to circumvent the right of the State authorities the land which was settled and since it was rent free for five years and thereafter rent was chargeable it was sold by the settlee in favour of the plaintiff. This is nothing but to defeat the very purpose of settlement and to defeat the welfare scheme of the State Government.

14. In view of my above discussion and considering the facts and circumstances of the case I find that there was implied

condition that the landless person, who obtained the land on that ground, had no right to transfer or that he had no right to utilize the land which he got in settlement for any other purpose than for which it was settled. In no stretch of imagination it can be said that by settlement he got the title to transfer. If in this way the settlement is interpreted in the present case then after sale the settlee again became the landless person and will be entitled for the settlement of land for his livelihood from the State of Bihar in view of the welfare scheme of the State of Bihar. The learned court below has not considered all these aspects of the matter.

15. In view of the above discussion I find that the settlee Bishundeo Narain Singh had no title to transfer the property to the plaintiff. As such, the plaintiff did not deprive any title on the property through the sale deed. The finding of the court below on this question, therefore, is reversed.

16. In the result, this first appeal is allowed. The impugned judgment and decree is set aside. The plaintiff's suit is dismissed. No order as to costs.

(Mungeshwar Sahoo, J)

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