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IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.309 of 2014

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1. Jagdish Chaudhary.
2. Raju Chaudhary both Son of late Bhagwan Lal Chaudhary, both R/o village Sakara, Faridpur, P.O. Dholi, P.S. Sakara Munsif Muzaffarpur East, District-Muzaffarpur.

.... Appellant/s

Versus

Bharat Bhagat son of late Deoki Nandan Bhagat, R/o Village, Sakara Faridpur, P.O. Dholi, P.S. Sakara, District-Muzaffarpur.

.... Respondent/s

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with

Second Appeal No.310 of 2014

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Kusheshwar Sah s/o late Rajendra Sah, r/o village Sakara, Faridpur, PO Dholi, PS Sakara, District Muzaffarpur.

.... Appellant/s

Versus

Bharat Bhagat, s/o late Deoki Bhagat, r/o village Sakara, Faridpur, PO Dholi, PS Sakara, District Muzaffarpur.

.... Respondent/s

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Appearance :
(In SA No.309 of 2014 and S.A. No. 310 of 2014)

For the Appellant/s : Mr. Ganpati Trivedi, Sr. Adv.
Mr. R.K. Sinha, Adv.
Mr. Chandra Kant

For the Respondent/s : Mr. Naresh Chandra Verma, Adv.
Mr. Lakshmi Kant Tiwari, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

11 10-11-2015 Heard Mr. Ganpati Trivedi, the learned senior counsel appearing on behalf of the appellants.

In view of the submission on behalf of the appellants that the common questions of law and facts arise for consideration

in both the second appeals, the same have been heard together.

The appellants in the two appeals were the defendants in the eviction suit nos. 48 of 1996 and 49 of 1996 respectively and have filed these two appeals assailing the judgment and decree of affirmance passed by the appellate court below against them.

The plaintiff filed the above two eviction suits with the relief for declaration of his title and interest over the suit premises and a decree for eviction against the defendants from the suit premises after the declaration that the Basgit Parchas in favour of the defendants respectively were void, without jurisdiction and not binding upon the plaintiff. The suit property was mentioned as shop no. 1 and shop no. 6 of a market complex (Sakara Bazar) and fully described in the schedule of the respective plaints of the two suits. In both the suits the plaintiff claimed his title over the suit property on the basis of a registered sale deed dated 09.03.1979 executed in his favour by the owner namely Asagar Hassan. It was the case of the plaintiff that after the purchase of the suit premises by the plaintiff, the defendants who were tenants in the suit premises from before, were informed by their landlord regarding the sale of the suit premises in favour of the plaintiff and then the defendants started paying rent to the plaintiff but later on, after December 1989 they stopped payment of rent and denied the

relationship of landlord and tenant asserting their own title over the suit premises on the basis of the Basgit Parcha granted to them under the Bihar Privileged Persons Homestead Tenancy Act, 1947 (hereinafter referred to as the 'Act').

The defendants, in their respective written statements, denied the claim of the plaintiff. It was the common case of the defendants in both the suits that the land over which the suit premises had been constructed was a ditch and no shop or Katra was in existence thereon. It was further case of the defendants that their predecessors filled up the ditch and made construction of a small house over the same and later on the collector under the Act granted Basgit Parcha to them. The defendants denied that the Ahmad Hassan (vendor of the plaintiff) had any concern with the said land and also denied to have paid any rent to Ahmad Hassan. The defendants claimed that they had been running a shop in a part of the suit premises and also residing in the remaining part. The defendants, thus, claimed their own title and possession over the suit premises denying the right, title and interest of the plaintiff or his vendor over the suit land and premises.

The trial court returned the findings on the issues in favour of the plaintiff and granted the decree for eviction against the defendants with a further decree of arrears of rent also as

claimed. The appellate court by common judgment in the two appeals by the defendants has concurred with the findings of the trial court and dismissed the appeals.

Mr. Trivedi, the learned senior counsel for the appellants in both the appeals has made his submission in support of the two appeals by raising mainly two contentions. The first contention is that the suit filed by the plaintiff was not maintainable. It has been propounded that as the Basgit Parcha in favour of the defendants for the suit property has been granted by the collector under the Act, no relief against the said Parcha can be granted in absence of the State of Bihar as a party to the appeal and as such the suit filed by the plaintiff suffered from non-joinder of a necessary party. The learned senior counsel has placed his reliance in this regard on the decision of the Apex Court in the case of **Mehar Chand Das Vs. Lal Babu Siddique, A.I.R. 2007 SC 1499**. The next contention by the learned senior counsel is that the two suits filed by the plaintiff was barred by limitation as the plaintiff had the knowledge of grant of Basgit Parcha much before the three years or at the least from 1989 when according to the plaintiffs the denial of his title and interest over the suit premises was made by the defendants. It has been submitted that the suits filed in the year 1996 were, therefore, definitely barred by

limitation in view of Article 58 of the Limitation Act.

After perusal of the judgments of both the courts below and considering the submissions, it is pellucid that the plaintiff filed the two eviction suits against the respective defendants claiming his title and interest over the suit premises and alleging non-payment of rent and denial of title of the plaintiff by the defendants on the basis of respective Basgit Parchas in their favour granted under the Act for the suit property. On the basis of scrutiny of evidence, both the courts below have found that the suit property originally belonged to Ahmed Hassan. This fact has also been corroborated by the Basgit Parcha (Ext. D) which is the basis of the claim of the defendants. The seminal issue relating to extinguishment of the title of the original owner Ahmed Hassan and non-conferment of title over the suit property upon the plaintiff by sale deed executed by him in view of the Basgit Parcha (Ext. D) to the defendant has also been decided against the defendant holding that the grant of said Basgit Parcha on the basis of admitted and established facts was without jurisdiction and vitiated due to fraud. It has also been held that the two suits were not barred by limitation in view of the provision of Article 65 of Limitation Act.

In the backdrop of aforesaid facts and the findings by

both the courts below, the contention on behalf of the appellants that the suits suffered from non-joinder of necessary party and must have been dismissed as such because the State was not impleaded as party is to be examined. The learned senior counsel for the appellants, at the outset, has fairly accepted that the plea of non-joinder of the State as party defendant in the suit was not raised in the written statement or at any stage of the suit, and no such plea was also raised at the appellate stage. In view of the provision contained in Order 1 Rule 9 C.P.C. a suit may be defeated by reason of non-joinder of a necessary party. But this provision is to be read with the stipulations in ***Order 1 Rule 13 C.P.C.*** which reads as follows:

> *"...**Order 1 Rule 13 C.P.C**. **Objections as to non-joinder or misjoinder**- All objections on the ground of non-joinder or misjoinder of parties shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived..."*

As held by the three Judge bench of the apex court in ***Sri Ram Pasricha Vs. Jagannath, AIR 1976 SC 2335*** the plea of non-joinder of necessary or proper party pertains to the domain of the frame of the suit and such a plea should have been raised, for what it is worth, at the earliest opportunity. This Court in the case of Jagganath Singh Vs Laxmi Singh , A.I.R. 1988 Patna 296 has also repelled similar objection at the second appellate stage holding that " the question of defect of party should have been raised at the earliest opportunity so that the defect could have been rectified. It is not possible now to dismiss the suit on that account on the basis of argument raised for the first time in second appeal." Further the postulates contained in Order 1 Rule 9 C.P.C. and Order 1 Rule 13 C.P.C. as also Section 99 C.P.C. clearly rule out such perfidious objection intending to set at naught the entire proceeding so far, at the second appellate stage without any explanation at all as to why such objection was not raised at any earlier stage when admittedly it was available to the appellant at the time of filing of the written statement. The provisions enshrined in the Civil Procedure Code are meant to be used in meaningful and constructive manner for effective and complete disposal of the issues arising between the parties and not to trip the proceeding at the fag end.

To examine this aspect from another angle also, it would be pertinent to take into notice the provisions of the Act as contained in Section 4 and 17(A). Section 4 stipulates that a privileged tenant shall have a permanent tenancy in the homestead held by him at any time continuously for a period of one year but this stipulation has also been made subject to the payment of such rent as may be agreed between a privileged tenant and his landlord , or where there is no contract or no valid contract in respect of rent or where the rent contracted is alleged to be unfair or inequitable, such rent as may be fixed by the collector under the proviso to sub section 3 of Section 17 (A). The learned senior counsel for the appellants has again fairly conceded that there has been no averment in the written statement of the defendant-appellants in conformity with the requirement envisaged under Section 4 of the Act. Further the provisions of Section 17 (A) of the Act has been made subject to the other provisions contained in the Act including the Section 4. In the present case, the facts as demonstrable from the impugned judgments and submissions on behalf of the appellants depict an entirely different situation where the defendants have categorically denied the right, title and interest of the original owner Ahmed Hassan (vendor of the plaintiff) . As mentioned above, it was the

definite case of the defendants that the suit land was lying as a ditch and the predecessor of defendants took possession of the same by filling up the ditch and making construction thereupon. The appellate court below has also taken into notice the deposition of the defendant (in Eviction Suit No. 48/96) as D.W.10 where in paragraph-86 he has stated that he does not know who was the landlord of Plot No.995 and 996 (suit plots) and has also expressed ignorance of the fact that Ahmed Hassan was the landlord of Tauji No.2644. The similar statement was made by the defendant (in Eviction Suit No.49/96) as D.W.8 in paragraph-84 that he had no knowledge about the landlord or his heirs and he did not make any enquiry about the ownership of the suit plot. The fact that in the two Basgit Parchas (Exts. D and G) the name of Ahmed Hassan as landlord has been mentioned has not been denied on behalf of the appellants. The conclusion is inevitable on the basis of the admission of the defendants, therefore, that there was no relationship of landlord and tenant in between the landlord Ahmed Hassan and the defendants and the defendants had obtained the two Basgit Parchas in question in absence of notice and without the knowledge of the landlord Ahmed Hassan. There is also no evidence on record that the notice was issued to the landlord Ahmed Hassan in the proceeding for grant of Parcha

rather the courts on the basis of evidence on record have come to the finding that the two Parchas in question has been granted on the basis of the report of the Karamchari which was submitted on the same day when he was directed to give report.

From the preamble of the Act also it is manifest that the same was enacted in order to make better provisions relating to the law of landlord and tenant in respect of the homesteads held by certain classes of persons in rural areas of the State of Bihar. From the conspectus of the provisions of the Act it is further manifest that a Basgit Parcha can be granted only in favour of a privileged tenant as defined in the Act. A bench of this Court in ***Ragho Singh Vs State of Bihar , AIR 1957 Patna 163*** after taking notice of the provisions of the Act has observed that the law implies a promise by the occupier to pay the landlord a rent and that a relationship of landlord and tenant must exist between the parties in order to attract the provisions of the Act. In the present case, admittedly the defendant-appellants never paid any rent to the land owner Ahmed Hassan as they have pleaded and deposed ignorance about the landlord of the land and it is their definite case that they had occupied the suit land without permission from anybody much less the land owner. In this fact situation it is not difficult to hold that the defendant-appellants are not privileged

tenant within the meaning of the Act and were not entitled to the grant of Basgit Parcha in question as they are only a trespasser or squatter. On identical facts, similar view has been taken by this Court in the case of ***Bishwanath Singh Vs. State of Bihar, 1980 PLJR 533***.

In the background of the aforesaid discussions, it is not far to visualize that an effective decree , as prayed by the plaintiff could have been passed in the two eviction suits even in absence of the State of Bihar as a party in the suit as it is manifest that the presence of State of Bihar as party defendant would not have made a difference in view of the facts which have been admitted by the defendant-appellants in their written statement as well as depositions . Further also, on admitted facts, the provisions of the Act are not applicable and there is also no averment that any rent or compensation amount has ever been paid to the land owner Ahmed Hassan by the State of Bihar . The plea of non-joinder of State of Bihar as a party remains only a technical plea and appears to have been made in desperation at the second appellate stage. The decision in the case of ***Mehar Chand Das (Supra)*** relied on behalf of the appellants has been rendered in different setting of facts where the tenancy between the parties was an admitted fact and the suit for eviction was earlier dismissed

but the later suit was filed for setting aside the Basgit Parcha as without jurisdiction and fraudulently obtained without seeking further relief of recovery of possession. In the background of these facts and also taking into notice the provisions of Section 17 (A) of the Act that their lordships have held that the Collector was a necessary party. In ***Mumbai International Airport Private Limited Vs. Regency Convention Centre and Hotels Private Limited , 2010(7) SCC 417*** their lordships have observed that "… *every judgment must be governed and qualified by the particular facts of the case in which such expressions are to be found; that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision and that even a single significant detail may alter the entire aspect; that there is always peril in treating the words of a judgment as though they were words in a legislative enactment , and it is to be remembered that judicial utterances are made in the setting of the facts of the particular case…..*"

This Court, therefore, does not find persuaded to align with the submission made by the learned senior counsel for the appellants that the State of Bihar was a necessary party and no effective decree could have been passed against the appellants in absence of the State of Bihar as a party in the suit.

The second contention raised on behalf of the appellants regarding the suit being barred by limitation is also devoid of merit. The suit filed by the plaintiff was mainly a suit for declaration of his title and recovery of possession over the suit land after the declaration that Basgit Parcha in favour of the defendant appellants was illegal , without jurisdiction , void and not binding upon the plaintiffs. Such suit is definitely governed by Article 65 of the Limitation Act which prescribes a period of 12 years from the date when the possession of the defendant has become adverse. There is no evidence on behalf of the appellants that the plaintiff had the knowledge of the Basgit Parcha or the assertion of the title by the defendants over the suit property on that basis prior to 1989. The two suits have been filed in the year 1996 and thus both the courts below have rightly held that the two suits are not barred by limitation.

For the aforesaid reasons and discussions, it is held that there is no substantial question of law arising for consideration in these two appeals, which are, accordingly, dismissed.

(V. Nath, J)

Devendra/-Nitesh

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