

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14053 of 2005

Virendra Narain Rai son of Late Murti Narain Rai, resident of village Sohadi, P.S. Bardaha, District Araria, holding power of Attorney of Smt. Vinita Rai

.... Petitioners

Versus

1. The State of Bihar
2. The Collector, Araria
3. Jitendra Prasad Mandal
4. Rajendra Prasad Mandal

Both sons of late Jagu Mandal, resident of village Sohadi, P.S. Bardaha, Dist. Araria.

.... Respondents

Appearance :

For the Petitioner : Mr. K.K.Tripathi, Sr. Advocate.
Mr. Raghunath Singh, Advocate.
For the Respondents : Mr. Shashi Nath Jha, Advocate.

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 9 -10-2015

The writ application filed under Article 227 of the Constitution of India seeks direction/order to quash the proceeding taken by the Court of learned Munsif, Araria in Title Suit no. 373 of 1998.

Background facts out of which the present writ application arises in brief are as under:-

The dispute pertains to 1.73 acres of land situated in village Sohadi in the District of Araria which, according to the writ petitioner, belonged to Smt. Vinita Rai, daughter of the petitioner who holds power of attorney on her behalf to manage the affairs of



her estate. The respondents filed application before the Circle Officer under Section 48D of the Bihar Tenancy Act (for short 'the B.T. Act') numbered as case no. 53/1995-96 to declare them as 'kaimi raiyats'. The same was allowed. The petitioner being the landlord/land owner of the subject land filed an appeal before the Sub Divisional Officer Araria –cum-designated appellate authority under the B.T. Act numbered as appeal case no. 132 of 1997-98. On contest, the appellate court allowed the appeal and set aside the order of the Anchal Adhikari vide order dated 29.7.1998 (Annexure-1). The respondents thereafter filed Title suit no. 373 of 1998 for decree of permanent injunction wherein the land owner was arrayed as the defendant. On notice the defendant appeared and filed written statement (Annexure-3) on 21.04.1999. He raised an issue with regard to the jurisdiction of the Court to proceed in the matter. Again similar application /objection was filed on 16.3.2001 (Annexure 3/1) requesting the court to dismiss the suit as the Civil Court would not have any jurisdiction in the matter. Vide order dated 28.8.2003 the Court in presence of plaintiffs rejected the petition as not pressed. The petitioner-defendant had not appeared on that date. The Court further directed both the parties to file list of witnesses and the original documents and the trial progressed and evidence was adduced. The trial Court under order dated 3.9.2010 after hearing the



parties found that no petition filed on behalf of any party was pending consideration and thus directed the parties to make arguments/submissions. Thereafter a review petition is said to have been filed by the petitioner against the order dated 3.9.2010 (Annexure-8) under Order 47, Rule 1 CPC on 26.11.2010 for reviewing/recalling the order dated 3.9.2010 which is pending consideration before the Court. Before filing the review petition the defendant-petitioner filed the present writ application on 16.11.2005 which was admitted to hearing on 20.9.2012. That is how the case has been placed before this court for hearing and final disposal .

I have heard Mr. K.K.Tripathy who has appeared on behalf of the petitioner and Mr. Shashi Nath Jha who argued on behalf of the plaintiffs-respondents.

The main contention of the petitioner in support of the application is that the lis being the subject matter of proceeding under the B.T. Act and decided by the appellate authority cannot be raised and adjudicated upon by the Civil Court. The suit is barred by the general principle of res judicata. The B.T. Act creates a right and provides forum for enforcement of those rights and as such the jurisdiction of the Civil Court shall stand ousted. The appellate authority under the B.T. Act is the last forum which has already adjudicated the rights of the parties with respect to the subject land

and as such the proceeding instituted before the court and allowed to continue is nothing but abuse of the process of the Court.

Mr. Jha, in contra, supported the continuance of the proceeding in the court until final adjudication thereof in accordance with law. He argued that the present writ petition to declare that the Civil Court in such matter shall have no jurisdiction is not maintainable as this court would not appraise the case of the parties with reference to their pleadings and hold that the Civil Court shall have no jurisdiction. This issue can be raised to be considered by the trial court itself along with other issues. He has also challenged the maintainability of the writ petition on the ground that two parallel proceedings at the behest of the defendant should not be allowed. The defendant-petitioner has filed a review petition in the court below after filing of the writ petition for review/recall of the order dated 3.9.2010 which is still pending consideration by the trial court. Referring to the plaint (Annexure-2), it has been submitted that the suit was filed for grant of permanent injunction against the defendant. It is not a suit for declaration of title. He referred to the relevant portion of the plaint (Annexure-2) as well as paragraph no.17 of the written statement in order to submit that the same be treated as a fact not in controversy. There is no provision under the B.T. Act which bars filing of a suit arising out of the proceeding taken under

the B.T. Act. The contention of the defendant-petitioner is therefore, misplaced.

I have considered the rival submissions of the parties. Perused the records.

In **Jacky vs. Tiny @ Antony & Ors. 2014(6) SCC 508**

the jurisdiction of the high court under Articles 226 and 227 of the Constitution of India in the matter of consideration of case arising out of a suit was examined in detail. The High court under Articles 226 and 227 of the Constitution of India had set aside the plaint and further proceeding initiated on the basis of the plaint in the suit and also quashed the order passed by the Munsif. On challenge made thereto the Apex Court reiterated the nature and scope of power under Article 227 of the Constitution adumbrated in **Jai Singh and others vs. Municipal Corporation of Delhi and Anr. (2010) 9 SCC 385**, wherein it was held as under:-

“We have anxiously considered the submissions of the learned counsel. Before we consider the factual and legal issues involved herein, we may notice certain well recognized principles governing the exercise of jurisdiction by the High Court under Article 227 of the Constitution of India. Undoubtedly the High Court, under this Article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in



accordance with the well-established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well-known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well-recognized constraints. It cannot be exercised like a “bull in a china shop”, to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice.”

Mr. Tripathy in support of his contention has heavily relied on an order passed by a Single Bench of this Court in **Suryabansh Upadhyay vs. Awadhesh Chaudhary and Ors. 1999(2) PLJR 173**. The suit was filed by the plaintiffs for declaration that they are occupancy raiyats of the land appended to the plaint and for permanent injunction against the defendant. The defendant-writ petitioner filed application to dismiss the suit as not maintainable as the Civil Court shall have no jurisdiction. The said petition was rejected by the trial Court. The claim of the plaintiffs was negatived



by the Anchal Adhikari on the ground that there was no order declaring him/them under raiyat(s) and as such the claim to declare occupancy raiyat was fit to be rejected. Similar relief was prayed in the suit. In this factual background it was held by this Court that the suit was not maintainable. In the case at hand, indisputably, no relief with regard to declaration of status as occupancy right or 'kaimi' raiyat has been prayed by the plaintiffs respondents in the suit. The suit was filed only for grant of permanent injunction.

In 1992(2) PLJR 645 a Division Bench of this Court considered as to whether a suit for grant of permanent injunction shall abate under Section 4(c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (for short 'the Consolidation Act'). The trial Court on an application filed by the defendant held the suit to have abated. The Division Bench of this Court held that the suit for permanent injunction in relation to land in an area falling within the notification issued under section 3 of the Consolidation Act would be maintainable. However, it was further held that if grant of injunction would depend upon the determination of the right, title or interest on the land only then the provisions shall be attracted but for this the pleadings of the parties have to be looked into and not merely the form of the pleadings of the plaintiff or the prayer made by him in the suit. The question is who shall look into



these pleadings. Obviously, the Court where the pleadings have been filed for adjudication of the dispute would be the forum to appreciate such pleadings and come to a conclusion as to whether the grant of permanent injunction prayed for is dependent upon the determination of the right, title or interest of the parties in the land.

The records reveal that application filed by the defendant-writ petitioner under Order 7, Rule 11(d) for rejection of the plaint has already been rejected as not pressed and the Court proceeded further and reached the stage of argument. It would not be appropriate for this Court to permit raking up of such issue which shall be one of the considerations of the trial Court for disposal of the suit. That apart, it is settled beyond cavil that for rejection of the plaint, the Court is only required to look to the plaint and not the rival claims. In addition, in the case at hand, it is found that the petitioner either before filing of the writ petition or during the pendency filed a review application in the trial Court itself for review/recall of the order dated 03.09.2010 which is pending consideration and not disposed of till date. The writ Court will not countenance the two parallel proceedings. Even if a case is made out for invocation of discretionary writ jurisdiction can be refused on this score.

As a result of the discussion made hereinabove, the

invocation of writ jurisdiction in favour of the petitioner is declined.
The writ application is dismissed.

(Kishore Kumar Mandal, J)

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