

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.442 of 2003

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Swami Nath Sharma, son of late Chaturi Sharma (since deceased) through their legal representative.

.... Appellant/s

Versus

Ram Chander Singh, son of Late Dhodha Singh & Ors (since deceased) through their legal representative.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arun Kumar Rai-Advocate

For the Respondent/s : Mr. Shashi Shekhar Drivedi &

Mr. Rabindra Kumar Tiwary-Advocates

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 10-02-2016

Appellant/ defendant has challenged the judgment and order dated 03.09.2003 passed by the Additional District Judge-IVth, Saran at Chapra in Title Appeal No.56 of 2001 whereby and whereunder the appeal has been allowed and remanded the matter to the learned lower Court to proceed afresh.

2. Respondents/ plaintiffs filed Title Suit No.199 of 1989 asking for a relief that the Purcha granted in favour of defendant be declared invalid, illegal, for want of jurisdiction as well as on the ground of fraud, a decree for eviction with regard to the property detailed under Schedule, arrear of rent along with rent pendente lite along with interest, cost of the suit, any other relief or reliefs which the plaintiff is entitled for and for that, pleaded that plaintiff possesses R.S. Plot No.4511, 4521 appertaining to R.S. Khata No.81 lying at



village P.S. and Anchal Ekma, District-Saran, which was recorded in the records of revisional survey in name of Bibhuti Sah. Aforesaid Bibhuti Sah died leaving behind three sons Hira Sah, Jawahar Sah, Mangal Sah, who sold away the aforesaid land by three independent registered sale deeds dated 14.03.1983 in favour of plaintiffs, who came over the land. It has further been pleaded that the aforesaid three persons have also executed sale deed in favour of different persons.

3. Then, it has been averred that vendor of plaintiff had constructed four Pacca shops and one tiled roof house consisting of two rooms and a courtyard. The vendor of plaintiffs had inducted the Defendant/ Appellant as a tenant over the suit premises at a monthly rental of Rs.40/- in the year 1965 and since thereafter, was over the house and shop and was paying the rent on monthly basis. Even after purchase by the plaintiff, the defendant acknowledged his status to be landlord and continued with payment of monthly rent. Subsequently, in June, 1989 defendant stopped payment of the rental amount. On query, he disclosed that he obtained Purga with regard thereto and on account thereof, he was not under obligation to make payment. Subsequently thereof, plaintiffs enquired and came to know that vide Case No.01 of 1971-72, Purga had been granted with regard to Survey Plot No.4511, 4521 covering an area 08 decimal. It has also been pleaded that the aforesaid event happens to be collusive one and



the defendant obtained Purcha by playing fraud, because of the fact that apart from having the land and house within the market area, the defendant had his own house at village-Karanpura over Survey Plot No.448 which stood in name of Balgovind, grand father of defendant. It has also been disclosed that Survey Plot No.432 has also been purchased by the defendant from Ali Marhan and Dumnati over which his residential house stands. It has also been pleaded that the defendant has got more than 03 acres of land and was a money lender. Furthermore, it has also been asserted that during continuance of Case No.01 of 1971-72, no notice was served upon the landlord, Karmchari and Circle Inspector never visited at the spot and they have filed collusive report. Therefore, the aforesaid eventualities satisfy the ingredients of the jurisdictional avenue as the order, being collusive also been obtained by playing fraud and so, furnishing other details, suit has been filed with the relief as disclosed above with regard to the property under different Schedules coupled with sketch map.

4. Appellant/ defendant appeared, filed his written statement wherein apart from raising ornamental objection, also pleaded that on account of non-joinder of necessary party, the suit happens to be defective one. It has further been submitted that the alleged sale deed executed by sons of Bibhuti Sah, happens to be sham transaction because of the fact that they have got no right, title



and interest nor possession over the land under dispute. In likewise manner, it has also been denied with regard to construction of four shops and a residential house at the end of vendor of plaintiff and in likewise manner, also controverted inter se relationship as landlord and tenant. It has further been submitted that defendant had not paid a single farthing in lieu of rent at an earlier occasion to the sons of Bibhuti Sah, owner to the plaintiff nor the plaintiff.

5. Then, it has been averred that the land was barren land without having possession of any individual. As, defendant left his house after having differences with his father in the year 1956, came over the land, constructed temporary structure thereupon, began to reside in that house and since 1956 with his family members, he is over the land. It has further been pleaded that he has got no land covering an area of 03 acre. It has further been pleaded that on a prayer made on his behalf, the concerned officials visited the place, found the land under possession of defendant, accordingly reported and on the basis thereof, Case No.01 of 1971-72 was drawn up whereupon, the proceeding commenced and Purga was granted to the defendant. It has also been pleaded that vendor of the plaintiff had challenged the order in appeal which they lost then thereafter, they filed Title Suit No.168 of 1972 before the Munsif, 1st, Saran at Chapra, which was dismissed and the vendor of the plaintiff never

challenged and on account thereof, the judgment met with its finality. Subsequently thereof, with dishonest intention created forged and fictitious sale deed without any consideration which is not at all binding upon the defendant nor it creates any sort of legal right in favour of the plaintiff, so prayed for dismissal of the suit.

6. The learned lower Court as is evident vide order dated 16.06.1992, dismissed the suit on ground of preliminary issue over maintainability of the suit against which firstly Misc. Appeal No.51 of 1992 was filed, which was dismissed and then thereafter, Title Appeal No.56 of 2001 was filed, which was allowed by the judgment impugned and remitted the matter to the learned lower Court to proceed afresh, hence this appeal.

7. It has been submitted on behalf of learned counsel for the appellant that in terms of Order-XIV, Rule-2 of the C.P.C. the learned lower Court was quite competent to frame preliminary issue over maintainability of the suit and after considering the relevant materials having placed before the learned lower Court by the respective parties, dismissed the suit as not maintainable which, the learned Appellate Court wrongly and illegally set aside. In support of such plea, it has been submitted that as per Section 18 of the Bihar Privileged Persons Home Stead Tenancy Act, the ordinary jurisdiction of the Civil Court has been ousted, save and except, where there



happens to be jurisdictional deficiency as well as fraud has been played during course of obtaining Purcha. Whatever been asserted at the end of the respondents are not at all tenable, because of the fact he happens to be purchaser and being so, he has to succeed the right whatever his vendor has. Vendor of the respondent had not only lost appeal rather though Title Suit having been filed on their behalf bearing Title Suit No.168 of 1972 was dismissed in default and on account of slackness on the part of the vendor of the respondent that had met with its finality. Consequent thereupon, defendants were precluded in filing subsequent suit. That being so, the order passed by the learned lower Court happens to be just, legal and proper. The learned Appellate Court while adjudicating upon the same did not consider the aforesaid theme and on account thereof, the order impugned is fit to be dismissed.

8. It has further been submitted that learned Appellate Court had taken into consideration the materials outside the record as is evident from Para-10 of the judgment and that shows non-application of judicial mind. In any view of the matter, the judgment impugned is fit to be set aside.

9. At the other end, the learned counsel for the respondent controverted the submission made on behalf of appellant and submitted that the matter in hand consist peculiar feature which,



the learned lower Court should not have dealt with by way of framing preliminary issue nor it could be decided in such manner. It has further been submitted that there happens to be different kind of rigor prescribed under Bihar Privileged Persons Homestead Tenancy Act which disentitled the defendant from grant of Purcha in his favour and for that, respondent had already incorporated in the plaint the grounds such as the land possessed by the defendant, residential house having possessed by the defendant, collusiveness of the authority, concealment of material facts which, in its cumulative effect disentitled the defendant to have Purcha in his favour and that being so, was well within competence of the Civil Court to adjudicate upon the matter.

10. From perusal of the lower court record, although the earlier order has not been referred by any of the parties, but from the order dated 23.05.1992, it is evident that a prayer was made at an earlier occasion on behalf of appellant/ defendant under Order-XIV, Rule-2 of the C.P.C. to frame preliminary issue and decide the suit on that very score relating to its maintainability. The learned lower Court had elaborately dealt with considering the submissions made on behalf of respective parties as well as going through the relevant provisions of law rejected the prayer. It is further evident that during course of hearing over injunction matter, again a prayer was made on



06.06.1992 over maintainability of the suit whereupon hearing has been made and then, vide order dated 16.06.1992, the suit has been dismissed. After perusal of the order dated 16.06.1992, it is evident that learned Presiding Officer did not care to go through the previous order sheet nor had mentioned the order dated 23.05.1992 whereby and whereunder the aforesaid issue was decided at an earlier occasion. That means to say, the aforesaid order happens to be contrary to order dated 23.05.1992 and that being so, suffers from infirmity. The aforesaid order has not been taken into consideration during course of disposal of appeal though on different ground the order was set aside and appeal was allowed directing remand.

11. Order-XIV, Rule-2 of the C.P.C. is not to be exercised in a routine manner as is evident from plain reading of the Section itself rather it speaks its applicability in exceptional cases. Furthermore, it gives distinction upon the Court to the extent that suit may be disposed of on an issue of law only, it may be decided. That means to say, prohibition of law should be there by which the further proceeding of the suit is found duly barricaded. That means to say where there happens to be question mark over the jurisdiction of the Court or a bar to the suit created by a law enforced, then and then only, the scope of preliminary issue is attracted.

12. From the facts as has been advanced by the

respective parties along with the averments of the respective pleading, it is evident that it needs thorough adjudication which, the learned lower Court vide its order dated 23.05.1992 had rightly held.

13. Accordingly, instant petition sans merit and is dismissed. However, in the facts and circumstances of the case, parties will bear their own cost.

(Aditya Kumar Trivedi, J)

Patna High Court,
Dated-10.02.2016
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