

Jharkhand State Housing Board vs Shri Didar Singh on 9 October, 2018

Equivalent citations: AIRONLINE 2018 SC 720

Author: N.V. Ramana

Bench: Mohan M. Shantanagoudar, N. V. Ramana

NON- REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8241 OF 2009

JHARKHAND STATE HOUSING BOARD

... APPELLANT

VERSUS

DIDAR SINGH & ANR.

...RESPONDENTS

JUDGMENT

N.V. RAMANA, J.

This appeal by special leave is directed against the impugned judgment and decree dt. 12.10.2001 passed by the High Court of Jharkhand at Ranchi in Second Appeal No.88/2000 whereby the High Court dismissed the appeal filed by the Board by confirming the concurrent findings of the courts below.

2. Brief facts in nutshell for proper adjudication of the dispute involved in the present appeal are, the plaintiff has filed a suit for permanent injunction alleging that suit schedule property originally belongs to Raja A.P. Singh Deo of estate of Seraikella. Later the property was purchased by Kumar Subodh Singh Deo vide registered Sale Deed No.3201 dated 4.12.1989. He, in turn, sold the property to the plaintiff vide registered Sale Deed dated 8.8.1990 for a consideration of Rs.12,000/- and since then he is in peaceful possession and enjoyment of the property by constructing a residential building in the land. While that being so, the defendant Board has issued notice dated 4.1.1992 asking the plaintiff to quit and give vacant possession of the suit land and threatened the plaintiff to dispossess from the suit land without any right and title over the same. Hence the plaintiff has come up with the present suit to protect his possession.

3. The defendant has filed the written statement contending that the plaintiff vendor has no legal right and title over the suit schedule property and the sale deed executed by his vendor will not confer any right or title to the plaintiff. Further the suit schedule property along with other properties was acquired by the defendants by way of land acquisition proceedings in the year 1965 and the possession was handed over to them. As such, except the defendant, no one else has right or title over the property. The defendant has taken several other grounds with regard to maintainability of the suit on the ground of misjoinder of proper and necessary parties to the suit, on the ground of limitation, under section 92 of the B.S.H.B. Act and Rules, as no prior notice was issued before instituting the suit. Also under Section 62 of the CNT Act, it is the case of the defendant that the present Suit is not maintainable without seeking the relief of declaration of title. The suit schedule property was recorded in the revenue records in the name of the defendant. Without seeking right, title, possession and correction of entries in record of right, plaintiff cannot maintain the suit for injunction and hence sought for dismissal of the suit.

4. The trial court has decreed the suit holding that suit is not barred under any of the provisions of the B.S.H.B. Act, CNT Act and the Limitation Act. Though Court took note of Ex.□ – letter of giving possession to the defendant has come to the conclusion that the evidence on record does not establish that the land acquisition proceedings have attained finality. With regard to maintainability of a suit for injunction, Court gave a finding that as the plaintiff is able to prove his possession by oral and documentary evidence, he can maintain a simplicitor suit for injunction without seeking the relief of declaration.

5. The unsatisfied defendant approached the 1st Additional District Judge, Singhbhum (West) at Seraikella by way of Title Appeal No.46/1995. The 1st Appellate Court dismissed the appeal by holding that the mere suit for injunction is maintainable as the Board threatened to demolish the plaintiff's house and the proceeding under the Land Acquisition Act are not successfully proved by the defendant by adducing cogent evidence. The defendant further carried the matter to the High Court by way of second appeal and that also ended up in dismissal. The High Court also observed that as the plaintiff is in possession of the property, he can protect his possession against any interference and it is not necessary to prove his title to the property.

6. The unsuccessful defendant is before us by way of this appeal.

7. The learned counsel for the appellant□Board has argued that the disputed property was part of the Government land acquired through land acquisition proceedings and the possession of the same lies with the appellant□Board. The claim of the respondents□

plaintiffs over the suit land was hence illegal and they were enjoying the same unlawfully and without a valid title. The appellant Board therefore sought to evict the respondents plaintiffs from the suit land. Further, they claimed that the suit is barred under Section 92 and Section 62 of the Bihar State Housing Board Act and Rules. The plaintiff's suit for mere injunction is not maintainable without seeking the relief of declaration of title and hence the Courts below erred in decreeing the suit.

8. On the other hand, the counsel for the respondents has submitted that the suit land was a private property and respondent No.1 herein got the ownership rights by virtue of a registered sale deed No. 2343 executed on 7th August, 1990 and since then the property has been in his possession. He could prove his possession and prima facie title to the property. It is further stated that without claiming the relief of declaration of title, he can maintain the suit for mere injunction and Courts below have rightly and concurrently found that he is in possession of the property.

9. We have heard the learned counsel for the appellant and the respondent and perused the material available on record. In view of the concurrent finding of facts by the courts below we are conscious of the limited scope of adjudication in this appeal.

10. The issue that fall for our consideration is: "Whether the suit for permanent injunction is maintainable when the defendant disputes the title of the plaintiff?"

11. It is well settled by catena of Judgments of this Court that in each and every case where the defendant disputes the title of the plaintiff it is not necessary that in all those cases plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, plaintiff cannot maintain a suit for bare injunction.

12. In the facts of the case the defendant Board by relying upon the land acquisition proceedings and the possession certificate could successfully raise cloud over the title of the plaintiff and in those circumstances plaintiff ought to have sought for the relief of declaration. The Courts below erred in entertaining the suit for injunction.

13. Hence in view of the above discussion, we are of the considered opinion that the judgment and decree impugned in the appeal deserves to be set aside and accordingly we set aside the same. However, a request was made at the time of hearing on behalf of the plaintiff to direct the parties to maintain status quo for a period of three months to enable the plaintiff to avail the appropriate remedies available under law. In view of the long pending litigation, we deem it appropriate to direct the parties to maintain status quo with regard to possession for a period of

three months. Resultantly, the appeal is allowed with the above observations by setting aside the judgment and decree dt. 12.10.2001 but in the circumstances without costs.

.....J. (N. V. RAMANA)J.
(MOHAN M. SHANTANAGOUDAR) NEW DELHI, OCTOBER 09, 2018.

NON- REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8242 OF 2009

JHARKHAND STATE HOUSING BOARD

... APPELLANT

VERSUS

ANIRUDH KUMAR SAHU & ORS.

...RESPONDENTS

JUDGMENT

N.V. RAMANA, J.

In this appeal the unsuccessful defendant impugned the judgment and decree passed by the High Court of Jharkhand at Ranchi in second appeal in 273/2003 dt. 26/8/2004 whereby the High Court has confirmed the concurrent findings of the courts below by decreeing the suit.

2. A close scrutiny of the plaint is necessary for adjudication of the dispute involved in the present appeal. The plaintiff has filed title suit no. 5 of 1992 on the file of the Munsif court at Seraikella.

In the plaint after the cause title, he stated that the suit is for declaration of title, confirmation of possession and permanent injunction and the suit is valued at Rs. 20,000/-. Then the plaint starts with the description of facts that the suit schedule property belongs to Raja Adithya Pratap Singh Deo of the estate of Seraikella and subsequently it is purchased by Kumar Subodh Singh by registered sale deed dated 24-08-1990, he in turn sold the suit schedule property to the plaintiff by way of registered sale deed dt 21-10-1990 for a consideration of Rs. 20,000/- and ever since than he has been in possession of the

property by constructing a residential building. The defendant has sent notice dated 04.01.1992 asking the plaintiff to quit and deliver vacant possession of the suit land and for payment of amount and further threatened the plaintiff to dispossess him from the land. Hence he came up with the present suit seeking the relief of permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the plaintiff.

3. The defendant has filed the written statement alleging that the suit is barred under the principles of waiver, estoppel, acquisition, under Section 38 of Specific Relief Act and on the ground of not impleading the proper and necessary parties to the suit, and also on the ground of not issuing the notice under Section 62 and 92 of the BSHB Act. Further it was stated that the mere suit for perpetual injunction without claiming any relief of declaration as to the entry in the record of right, declaration of title and for confirmation of possession, is not at all maintainable either in law or in facts. In fact, the plaintiff in the suit is indirectly seeking the declaratory relief which is not permissible.

4. It is further averred in the written statement that the plaintiff's vendor has no right and title to the property as the property is in possession of the defendant since 1965 and prior to that it was in possession of the State of Bihar. The property was acquired through land acquisition proceedings and possession was delivered way back in 1965 and hence sought dismissal of the suit.

5. We have gone through the judgment of the trial Court, 1st Appellate court and the High Court. The Courts below have entertained the suit as if the suit is filed for declaration of title which is evident from the judgments wherein they have categorically observed that the Suit is for declaration of title, confirmation of possession and also for perpetual injunction. The trial Court has framed the issue with regard to the title and gave a finding that plaintiff has proved his title and possession over the suit land and constructed a house over the same, as there is interference, he has come up with the present suit, as such he is entitled to maintain the suit in the present form. The trial Court has framed several issues and held all the issues in favour of the plaintiff but only granted the relief of permanent injunction to the plaintiff.

The unsuccessful defendant approached the appellate Court and the appeal was dismissed. In the second appeal, the High Court also went ahead with the same assumption that it is a declaratory suit and dismissed the appeal by observing that both the Courts concurrently found that plaintiff has valid right, title and interest.

6. We have heard the learned counsel on either side and perused the material available on record. We are very much surprised at the way the suit was dealt with by the Courts below

contrary to the pleadings and contrary to the settled legal position. In the plaint, plaintiff has clearly averred that as the defendants are interfering with his possession, the necessity arose to file the suit for permanent injunction and particularly sought the prayer for permanent injunction. The trial Court has framed several issues and held all the issues in favour of the plaintiff including the issue with regard to title but granted only the relief of injunction. The trial Court has given several findings with regard to the title and observed that plaintiff has got right and title to the property. Even the 1st appellate Court has also made specific observation with regard to title and gave a clear finding that plaintiff has asked for declaration. High Court mechanically confirmed the judgment and decree of the Courts below without appreciating both the legal and factual aspects.

7. We have given our anxious consideration and we are of the considered opinion that the Courts below misconstrued the pleadings and went on a premise that the suit is for declaration of title when the same is for bare injunction and in a way declared the title of the plaintiff. Even before this Court plaintiff filed the counter and stated that his suit is only for the relief of injunction. The learned counsel has also submitted that the relief sought is only for injunction. The copy of the plaint filed before us also strengthens the same. The judgment and decree under appeal deserves to be set aside and accordingly appeal is allowed. It was brought to our notice that plaintiff is continuing with the possession of the property during the pendency of the litigation. In view of the same we deem it appropriate to direct the parties to maintain status quo for a period of 3 months and if so advised, to avail the remedy available under law. Resultantly, the appeal is allowed with the above observations by setting aside the judgment and decree dated 26th August, 2004, in the circumstances without costs.

.....J. (N. V. RAMANA)J.
(MOHAN M. SHANTANAGOUDAR) NEW DELHI, OCTOBER 09, 2018.