Bhubaneshwar Prasad Narain Singh & Ors vs Sidheswar Mukherjee & Ors on 2 February, 1971

Equivalent citations: 1971 AIR 2251, 1971 SCR (3) 646, AIR 1971 SUPREME COURT 2251, 1972 BLJR 523, 1972 (1) SCJ 681, 1972 PATLJR 11, 1971 3 SCR 639, ILR 1972 52 PAT 175

Author: G.K. Mitter

Bench: G.K. Mitter, A.N. Ray

PETITIONER:
BHUBANESHWAR PRASAD NARAIN SINGH & ORS.

Vs.

RESPONDENT:
SIDHESWAR MUKHERJEE & ORS.

DATE OF JUDGMENT02/02/1971

BENCH:
MITTER, G.K.
BENCH:
MITTER, G.K.
RAY, A.N.

CITATION:
1971 AIR 2251 1971 SCR (3) 646
CITATOR INFO :
RF 1991 SC 663 (11)

ACT:
Bihar Land Reforms Act, 1950, s. 6-Scope of-Effect on co-sharer's possession.

HEADNOTE:
In a suit for partition of bakash land a preliminary decree was passed. The defendants-appellants, claiming to be in actual possession of the bakasht land, filed a petition contending that the consequence of s. 6. of the Bihar Land Reforms Act, 1950 (which came into force in the meanwhile) was to put an end to the proprietor's possession of the bakasht land by causing them to vest in the State and simultaneously creating a tenancy in favour of the person in khas possession thereof, and therefore, no final decree

could be passed. The trial court accepted the contention and dismissed the plaintiff's application for passing final decree. In appeal, the High Court set aside the order.
In appeal to this Court,
HELD : Even if the appellants were in actual khas possession within the meaning of s. 2(k) of the Act, it must be held that the plaintiff respondent, who was a co-sharer, was in constructive possession through the appellants, as, under the law, possession of one co-sharer is possession of all co-shares. The appellants did not claim to be trespassers on the property neither did they claim any title to the lands adversely to the respondent. The deeming provision of s. 6 must, therefore, enure for the benefit of all, who in the eye of land) would be regarded as in actual possession. Therefore, the respondent had not lost his share in the bakasht lands and had a right to his share in them, though not as tenure-holder or proprietor, but as a raiyat under the provisions of the Act. [645 E-G]
P. L. Reddy v. L. L. Reddy, [1957] S.C.R. 195, 202, followed.
Surajnath Ahir v. Prithitnath Singh, [1963] 3 S.C.R. 290, Ram Ran Baijal Singh v. Behari Singh alias Bagandha Singh, [1964] 3 S.C.R. 363, S. P. Shah v., B. N. Singh, [1969] 3 S.C.R. 908 and Mahant Sukhdeo Das v. Kashi Prasad, Tewari
JUDGMENT:

referred to.

& CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2588 of 1966. Appeal from the judgment and decree dated January 14, 1964 of the Patna High Court in First Appeal No. 572 of 1958. D. Goburdhun and R. Goburdhun, for the appellants. A. N. Sinha and P. K. Mukherjee, for respondent No. 1.

The Judgment of the Court was delivered by Mitter, J. The only question involved in this appeal is, whether the direction of the High Court that the partition suit launched in 1943 should be allowed to proceed in view of the provisions of s. 6 of the Bihar Land Reforms Act, 1950 which came into force on 25th September, 1950, is correct.

The suit had a chequered career. It was instituted against a number of persons the main relief asked for being partition of four annas Milkiat interest in Touzi No. 702, Tappa Haveli, Pargana Maheshi, District Champaran, Bihar. The Subordinate Judge of Motihari made a preliminary decree for partition declaring the first respondent's share in the property as claimed by him. The High Court in appeal modified the decree reducing the plaintiff's share to Rs. 0-1-4 interest only. In further appeal to these Court the trial court's preliminary decree was upheld on 5th ,October 1953. In the meanwhile the Bihar Land Reforms Act of 1950 effecting far-reaching changes in the incidents of land tenure and land holdings had been passed. The first appellant made an application to the trial court in June 1958 prayina that the proceedings for final decree be treated as having abated in view of the vesting of all estates in land in the State of Bihar. This was accepted by the Subordinate Judge

by an order dated July 12, 1958. The High Court allowed the appeal with the direction above mentioned which the appellants now seek to have set. aside. The bone of contention between the parties is the extensive "bakasht' lands in the aforesaid Mouza. The appellants contend that under s. 6 (1) of the Act all these lands vested in the State and came to be held by the persons in "khas possession" thereof as raiyats under the State. To appreciate the plea it is necessary to make a brief reference to some of the provisions of the Act. As is well known the object of the Act was to cause transference to the State of the interest of proprietors and tenure-holders in land as also of the mortgagees and lessees of such interests including interests in trees, forests, fisheries, jalkars, ferries, hats, bazars, mines and minerals and to provide for certain consequences following there-from and connected therewith. S. 3 of the Act ,enabled the State Government to declare by notification that the estates or tenures of a proprietor or tenure-holder specified therein 'would pass to and become vested in the State. The consequences ,of such vesting are set-forth in s. 4. Under cl. (a) :

> "Such estate or tenure including the interests of the proprietor or tenure-holder in any building or part of a building comprised in such estate or tenure and used primarily as office or cutchery for the collection of rent of such estate or tenure, and his interest in trees, forests, fisheries, jalkars, sairati interest as also his interest in all sub-soil including any rights in mines and minerals whether discovered or undiscovered, or whether being worked or not, inclusive of such rights of a lessee of mines and minerals, comprised in such estate or tenure (other than the interests of raiyats or under-raiyats) shall, with effect from the date of vesting, vest absolutely in the State free from all encumbrances and such proprietor or tenure-holder shall cease to have any interest in such estate or tenure, other than the interests expressly saved by or under the provisions of the Act."

S. 6 of the Act provides for such saving and the relevant portion thereof runs as follows "(1) On and from the date of vesting all lands used for agricultural or horticultural purposes, which were in khas possession of an intermediary on the date of such vesting, including-

(a) (i) proprietor's private lands let out under a lease for a term of years or under a lease from year to year.....

(ii) landlords privileged lands let out under a registered lease for a term exceeding one year or under ,a lease, written or oral, for, a period of one year or less, referred to in section 43 of the Chota Nagpur Tenancy Act, 1908,

(b) lands used for agricultural or horticultural purposes and held in the direct possession of a temporary lessee of an estate or tenure and cultivated by himself with his own stock or by his own servants or by hired labour or with hired stock, and

(c) lands used for agricultural or horticultural purposes forming' the subject matter of a subsisting mortgage on the redemption of which the intermediary is entitled to recover khas possession thereof; shall..... be deemed to be settled by the State with such intermediary and he shall be

entitled to retain possession thereof and hold them as a raiyat under the State having occupying rights in respect of such lands subject to the payment of such fair and equit- able rent as may be determined by the Collector in the prescribed manner.

The broad proposition which was advanced before the High Court and rejected by it and reiterated before us is that the consequence of s. 6, was to put an end to the character of the possession of the bakasht lands to the malik by causing them to vest in the State and simultaneously creating a tenancy in favour of the person in khas possession thereof. There is no dispute that bakasht lands fall under categories (b) and (c). We are not here concerned with category (c) and have quoted it to appreciate some decisions relied on where there are references to that category.

This question has engaged the attention of the Patna High Court more than once and it would appear that the views expressed in different cases have not been uniform. So far as the said High Court is concerned the point was settled by a decision of the Full Bench in Mahanth Sukhdeo Das. v. Kashi Prasad Tewari and Shrideo Misra v. Ramsewak Singh(1). The main questions before the Full Bench were whether on the vesting of an estate which was mortgaged at the material time the bakash lands therein which are deemed to be settled with the ex-proprietor in khas possession would form substituted security for the purpose of the mortgage, and whether a co-sharer proprietor not in actual possession of such lands had Any claim thereto on the basis of his constructive possession. The High Court answered both the above in the affirmative.

One of the earliest cases in which this Court had to interpret s. 6 of the Act was that of Surajnath Ahir v. Prithinath Singh (2) . There the question which engaged the attention of this Court was whether the appellants who had originally gone into possession on the strength of a mortgage lost their right to continue in possession even if they claimed to be trespassers after the redemption of their mortgage by reason of the estate vesting in the State on the passing of the Act. Although the case is not directly in point, it bears upon the identical provisions of law which have to be applied to the facts of the case before us. The facts in that case were that the appellants had entered into possession of kasht lands of the mortgagors on the strength of a mortgage deed. The mortgagors thereafter executed another mortgage with respect to their milkiat (proprietary) interest in favour of certain persons. The plaintiff respondents bought the milkiat rights together with "kasht" lands from the mortgagors and entered into possession of the milkiat property and subsequently redeemed the mortgage deeds in 1943. The appellants however did not make over possessions of the lands in dispute even after the redemption of the mortgage. It was held by this Court that the respondents could not take advantage of section 6 (1)

(c) of the Act as no mortgage subsisted on the date of vesting and the mere fact that the proprietor had a subsisting (1) I.L.R. 37 Patna 918.

(2) [1963]-3 S.C.R. 290 title to possession over certain land on the date of vesting could,' not amount to that land being treated as under his "khas possession" for the purposes of the Act. Referring to the definition of "Khas possession" in s. 2(k) of the Act as meaning "the possession of such proprietor or tenure- holder by cultivating such land or carrying on horticultural operations thereon himself with his own stock or by his own servants or by hired labour or with hired stock".

it was held that in order that the respondents could take advantage of the provision of s. 6 (1) (c) of the Act they had to, establish a subsisting mortgage on the date of vesting which was inclusive, of the land subject to their right of redemption. On the question of possession of the lands it was observed "On the date of vesting, the appellants were not in possession as mortgagees. The mortgages had been redeemed in 1943.

Thereafter, the possession of the appellants was not as mortgagees.It may be as trespassers or in any other capacity.The land in suit, therefore, did not come within cl.(c) of s. 6 of the Act."

Rejecting the construction put on the expression 'khas possession by the High Court in Brijnandan Singh v. Jamuna Prasad(1) it was said :

> " The mere fact that a proprietor has a subsisting title to possession over certain land on the date of vesting would not make that land under his 'khas possession'."

The Full Bench decision of the Patna High Court, came up for consideration by this Court in Ram Ran Bijai Singh v. Behari Singh alias Bagandha Singh(2). There the appellants before this, Court were the plaintiffs who had filed a suit for a declaration that a certain plot of land was their zeraiti land and that the persons impleaded as the defendants 1st and 2nd parties had no right or title thereto and for recovery of possession of the said land by dispossessing them therefrom. It was argued that in view of the concurrent findings of the courts below that the lands were the zeraiti lands of the plaintiffs they would not vest in the State because of the saving in s. 6 of the Act and the appellant should be deemed to have been in khas possession of the land under s. 6 (1) (c). The respondents contended that it was not a case of a mortgagee remaining in possession after payment of the debt without anything more but of tenants who claimed to remain in possession by asserting a title which was as much against the mortgagors as against the mortgagees. Reference was made in the (1) A.I.P. 1958 Patna 580. (2) [1964] 3 S.C.R. 363. (3) I.L.R.37Pat. 918.

course of arguments to the Full Bench decision in Sukhdeo Das's case(3) and it was submitted that a mortgagee continuing in possession of the mortgaged property after payment of the :mortgage amount must hold the same on behalf of the mortgagor and in trust for him. Counsel further relied on certain observations in the judgment of the Full Bench in aid of his proposition and submitted on the basis thereof that even the possession of a trespasser who had not perfected his title by adverse possession for the requisite period of time under the Limitation Act should be considered as in khas possession of the true owner. Turning down this submission it was observed by this Court (p. 378) :

> "We consider that this equation of the right to possession with 'khas possession' is not justified by principle or authority. Besides this is also inconsistent with the reasoning of the Full Bench by which constructive pos- session is treated as within the concept of khas possession."

The Court went on to add that "The possession of the contesting defendants in the present case was in their own right and adverse to the plaintiffs, even on the case with which the appellants themselves came to court."

Noting the statement of the plaintiffs in their plaint that the mortgagees had fulfilled their obligations and the obstruction to possession was put forward only 'by persons who claimed occupancy rights this Court concluded that, in the circumstances of the case, it was not possible for the appellants to contend that these tenants (defendants 1st and 2nd parties) were in possession of the property on behalf of the mortgagor or by virtue of any right through the mortgagor. The case is not therefore an authority for the proposition that a co-sharer's constructive possession is to be ignored under s. 6 (1) (c) of the Act.

Counsel for the appellants also referred us to a recent decision of this Court in S. P. Shah v. B. N. Singh(1) in aid of his contention that the true effect of s. 6 of the Act was to create a new right ,of tenancy in favour of the person in khas possession and consequently even if the plaintiff in the partition suit had a right to ask for demarcation of his Rs. 0-4-0 share of the bakasht lands before the passing of the Land Reforms Act, he could not pursue his claim by a prayer that he be considered a tenant along with those who were in actual khas possession. In our view the above decision is no authority for this broad proposition. In that case the appellants who were mortgagees of an estate including bakasht lands and other lands filed a suit on (1) [1969] 3 S C.R. 908.

64 5 their mortgage and tried to follow up the preliminary decree which was obtained before the Act came into force by a petition for passing a final decree. One of the questions before this Court was whether the mortgage decree had become unexecutable in view of the provisions of the Act. It was held that the net effect of ss. 3, 4 and 6 was that although on the vesting of the, lands in the State a settlement was deemed to be effected with the person in khas possession in law, there were two different transactions and the deemed settlement was in effect a separate transaction creating new rights. The Court came to the conclusion that the only remedy open to the decree-holders wag that provided in Chapter IV of the Act i.e. a claim under s. 14 before the Claims Officer for determining the amount of debt legally and justly payable to each creditor in respect of his claim. The Court was there dealing with the rights of the mortgage creditors after the Act had come into force. Chapter IV of the Act made special provisions for dealing with the rights of secured creditors and s. 4 (1) (d) expressly provided for the abatement of all suits and proceedings for the recovery of any money through proceedings which might be pending on the date of vesting arising out of securities created by mortgage or a charge on an estate or tenure. Here however we are not dealing with the claims of mortgagees under Chapter IV. In this case we have to consider whether the appellants had laid a claim which a co-sharer could not put forward except by pleading ouster or any other independent ground. Even if they were in actual khas possession within the meaning of s. 2 (k) of the Act it must be held that the plaintiff who was a co-sharer was in constructive possession through the appellants as "under the law possession of one co-sharer is possession of all the co-sharers". We see no reason to hold that the observations of this Court to the above effect in P. L. Reddy v. L. L. Reddy(1) are not applicable to the case before us. The appellants do not claim to be trespassers on the property neither did they claim any title to the lands adversely to the plaintiff respondent. The deeming provision of s. 6 must therefore enure for the benefit of all who in the eye of law would be regarded as in actual possession. It follows that the plaintiff had not lost his share in the bakasht lands and had a right to them though not as tenure-holder or proprietor but certainly as a raiyat under the provisions of the Land Reforms Act.' The appeal must therefore be dismissed with costs.

V.P.S. Appeal dismissed.

(1) [1957] S.C.R. 195, 202.