Supreme Court of India
Sabitri Devi Thirani vs Satya Narain Mandal on 28 January, 1971
Equivalent citations: AIR 1972 SC 42, (1972) 4 SCC 261, 1971 III UJ 230 SC
Author: A Grover
Bench: A Grover, K Hegde
JUDGMENT A.N. Grover J.

1. This is an appeal by special leave from a judgment of the Patna High Court. The facts may be stated. The appellant had purchased land measuring 3 Bighas, 6 Kathas and 3 Dhurs in the town of Kishanganj, Bihar. Out of the aforesaid land the dispute between the parties relates to an area of 1 Katha and 10 Dhurs. The respondent entered upon the appellant filed a suit in the year 1959 against the respondent for possession and mesne profits in respect of the land The suit was resisted by the respondent on various grounds One of the points which was raised by the respondent was that the interest of the appellant in the suit land was that of an intermediary and it had vested in the State under the Bihar Land Reforms Act, 1950, hereinafter called the 'Act'. The suit was decreed by the trial Court and that decree was affirmed by the first appellant Court.

2. On Second appeal by the respondent the High Court called for a finding on the question as to what was the character and nature of the appellant interest in the disputed land. The Additional Subordinate Judge submitted a finding that the appellant held the interest of an intermediary in the land. This finding was not disputed before the High Court when the judgment under appeal was delivered. What was contended was that the suit land was "homestead" and was saved from vesting in the State by Section 5 of the Act. The High Court was of the opinion that the suit land was not "homestead" within the meaning of Clause (j) of Section 2 which gives the definition of the term "homestead". This is what the learned Judge, observed:

In my opinion, the suit land was not homestead within the meaning of Clause (j) of Section 2 of Bihar Act 30 of 1950, wherein the term 'homestead' has been defined. On the findings recorded by the Court of appeal below earlier as also as now submitted, it was a piece of land in possession of, and belonging to, the ex-intermediary, namely, the plaintiff. The defendant-appellant dispossessed the plaintiff in the year 1953 from this piece of land. He built a house upon it, that is to say, the use to which the land was put by the defendant was for the purpose of a building but that did not make the land a dwelling house used by a proprietor or tenure holder either for the purpose of letting out on rent to the tenants within the meaning of the definition clause. Now is this a land which formed part of the Court-yard, compound garden or orchard or outbuilding included in or appurtenant to dwelling house within the meaning of the second part of the definition clause. Nor is this a piece of land within the meaning of the explanation appended to Clause (j) of Section 2 of Bihar Act 30 of 1950 on which there stood 'such dwelling house' meaning thereby the dwelling house, as defined in the main clause. That being so, it was not homestead within the meaning of Bihar Act 30 of 1950 which was saved to the ex intermediary Under Section 5 of that Act.

Clause (j) of Section 2 defines "homestead" to mean a dwelling house used by the proprietor or a tenure holder for the purpose of his own residence or for the purpose of letting out on rent together with...and includes any out building used for the purpose connected with agriculture...appertaining

to such dwelling house. It is quite clear that no other conclusion could have been reached except the one at which the High Court arrived in view of the facts which have been found, namely, that the interest of the appellant was that of an intermediary and the construction which had been made by the respondent as also the land on which it stood could not possibly fall within the definition of "homestead" even when read with the explanation contained in Clause (j) of Section 2 of the Act. It was neither a dwelling house used by the appellant for the purpose of personal residence or for the purpose of letting out on rent nor was it an out-building used for the purposes mentioned in the definition. Under Section 5 it is only the "homestead" which is in the possession of an intermediary on the date of vesting of which the intermediary is entitled to retain possession. Although the respondent did not have any legal title and has been found to be a trespasser but the entire estate of the appellant including the disputed land had vested in the State under the Act and therefore the suit for possession was not maintainable unless the appellant could take advantage of Section 5 read with Section 2(j) of the Act. This benefit the appellant could not get for the reasons stated by the High Court and noticed above.

3. The appeal fails and it is dismissed but in view of the entire circumstances we leave the parties to bear their own costs throughout.