R.M.M. Law College, Saharsa

Pt. Lecturer- KESHAV KUMAR SHRIVASTAVA

L.L.B Part- 3rd

Subject- Bihar TenancyAct

Paper- 4th

Date- 12/09/2020

Topic- Discuss the facts and principles of law decided in the case of Bhagwat Sharma vs. Baijnath Sharma A.I.R 1954 pat 408.

Discussion –

1. This appeal under the Letters Patent raises a problem of some complexity as to the transfer of homestead land governed by Section 182, Bihar Tenancy Act. The problem, in some of its aspects, has been the subject of consideration in several decisions of this Court and the Calcutta High Court. The latest decision of this Court was that of a Special Bench of three Judges in --'Hari Narain' Singh v. Babui Mohari' : AIR 1949 Pat 413 (A), which practically overruled the earlier decision in --'Mahadeoashram Prasad Sahi v. Parikha Choudhri' : AIR 1945 Pat 428 (B). Under orders of my Lord the Chief Justice the appeal has now been placed before a Full Bench of five Judges.

2. The facts so far as they are relevant to this appeal, may be briefly stated. The plaintiffs are the appellants. They brought a suit for a declaration of title and confirmation of possession, or, in the alternative, recovery of possession in respect of about .08 acres of land comprised in plot No. 1050 of holding No. 176 situate in village Lauria, in the district of Monghyr within tauzi No. 445 of the proprietor, popularly known as the Banaili Raj. The holding was recorded in the record of rights (finally published in 1908) as 'gairmaarua-malik', the total area of the holding being 13 acres. The holding consisted of this plot, namely, plot No. 1050 on which stood a house and 'sahan'. In the remarks column of the record of rights was recorded the possession of one Musammat Darsano Kuari, widow of Tale Rai. On the death of Musammat Darsano Kuari, one Musammat Chaurabati came in possession of the plot. She was the widow of a brother of Tale Rai.

On the 11th of July, 1939, Musammat Chaurabati conveyed the plot, along with her raiyati lands, about 1.46 acres in area appertaining to holding No. 66 in village Siloutha and about 1.08 acres of holding No. 25 of village Tevai, to the defendant second party, namely, one Jagrup Mawar. Musammat Chaurabati died sometime in 1941. The case of the plaintiffs was that they took possession of the plot on the death of Musammat Chaurabati, in spite of the sale deed executed by her on 11-7-1939. Then, on 27-6-1946, Bhagwat Sharma, one of the plaintiffs, took

settlement of the plot from the landlord, Banaili Raj, under a registered Kabuliat of that date. The house standing on the plot having become dilapidated by that time, the plaintiffs repaired the house and began to grow vegetables on the rest of the land and amalgamated it with survey plot No. 1051.

3. The defendants first party, Baijnath Sharma and others, claimed .08 acres out of the plot on the strength of an oral purchase from Musammat Chaurabati for a consideration of Rs. 75/- only, made some 15 or 16 years before the institution of the suit. There was a proceeding under Section 144, Criminal P. C., between the plaintiffs on one side and the defendants first party on the other. This proceeding terminated in favour of the defendants first party by the order of the Sub-divisional Magistrate, Monghyr, dated 6-1-1948, which order was upheld by the District Magistrate on 20-1-1948. The plaintiffs then brought their suit on 29-1-1948, against the defendants first party.

4. Jagrup Mawar intervened, and was added as the defendant second party. His claim, I have already stated, was that he had purchased the disputed land along with her raiyati lands from Musammat Chaurabati by a registered sale deed dated 11-7-1939. Jagrup Mawar's defence was that Musammat Chaurabati left the house after the sale, and though she returned sometime after and lived with him till her death in 1941, he came in possession of the disputed land and house after his purchase. The contention of Jagrup Mawar was that he acquired a good title to the homestead by reason of the sale-deed in his favour.

5. In the Courts below as also before us the case proceeded on the footing that (a) the disputed land and house were a homestead, (b) Musammat Chaurabati was the tenant of the homestead, and (c) Musammat Chaurabati had no other raiyati land in village Lauria, though she had raiyati lands in village Siloutha and Tevai. It was also admitted that the disputed homestead was held by Musammat Chaurabati otherwise than as part of her raiyati holdings in the aforesaid two villages. Several questions of fact and law fell for decision in the Courts below.

6. I had better state first the findings of the learned Munsif who dealt with the suit in the first instance. He found that the story of oral purchase set up by the defendants first party was not worthy of credence. Secondly, he found that no local custom or usage having been pleaded by any of the parties, Musammat Chaurabati had a transferable interest in the homestead. The learned Munsif relied on my decision in -- ': AIR 1945 Pat 428 (B)' for this finding, and held that Jagrup Mawar had acquired a good title to the homestead on the strength of his sale deed dated 11-7-1939. Thirdly, he held that Jagrup Mawar having acquired a good title in 1939, the landlord could not make a valid settlement in favour of the plaintiffs in 1946.

Fourthly, the learned Munsif disbelieved that Musammat Chaurabati had abandoned the holding, or that the landlord came in possession after her death. On the question of possession, he held that though the defendant second party had acquired title to the land in 1939, he never came in possession; and after the death of Musammat Chaurabati, the defendants first party took possession of the disputed portion of .08 acres as trespassers, and the plaintiffs took possession of the undisputed portion of plot No. 1050. On these findings, the learned Munsif dismissed the suit, primarily on the ground that the plaintiffs had failed to make out any title to the disputed portion of plot 1050.

7. On appeal, the learned Subordinate Judge held that the question of possession was of little importance in the case, as admittedly Musammat Chaurabati died in 1941, and the defendants first party who came in possession thereafter, were not in possession for more than 12 years. He thereupon discussed the question of title, and affirmed the finding of the learned Munsif that Musammat Chaurabati had a transferable interest in the homestead, which had been validly transferred to Jagrup Mawar; in arriving- at this finding, the learned Subordinate Judge corrected an apparent error of the learned Munsif in treating the disputed land in Lauria as a raiyati holding.

The learned Subordinate Judge rightly pointed out that the land was homestead land, held otherwise than as part of a raiyati holding. The learned Subordinate Judge found, however, that Siloutha and Lauria were adjoining villages under the same landlord, and relying on the decision in -- 'Krishna Kanta Ghosh v. Jadu Kasya' AIR 1916 Cal 32 (C) and other Calcutta decisions, he held that the incidents of the homestead land, in the absence of any local custom or usage, would be governed by the provisions of the Bihar Tenancy Act applicable to the raiyati land of Musammat Chaurabati; in that view of the matter, the learned Subordinate Judge held that Musammat Chaura- bati could validly transfer her interest in the homestead land.

8. A second appeal was then preferred to this Court which was heard by Sarjoo Prosad J. (as be then was). The case was first remanded for a definite finding if the defendant second party had acquired both the raiyati and homestead lands of Musammat Chaurabati by the sale deed dated 11-7-1939. The learned Subordinate Judge gave a finding that the defendant second party had acquired both the homestead and raiyati lands by the aforesaid sale deed. Sarjoo Prosad, J. then heard the second appeal, and distinguishing the Full Bench decision of this Court in -- ': AIR 1949 Pat 413 (A)' held that inasmuch as the raiyati holding had also been transferred along with the homestead land, the transfer was a valid transfer. He expressed himself as follows :

"The homestead land taken apart from his raiyati holding is devoid of all incidents except under local custom or usage, and, as such, there may be no right to transfer under Section 26A of the Act of such a land; but along with the raiyati holding itself the incidents whereof continue to regulate the incidents of the homestead land, I see no reason why such a homestead land cannot be transferred. There the raiyat is not transferring merely his homestead which loses its incidents as soon as it is sought to be severed from the raiyati holding to which it is linked by virtue of the common incidents which regulate the two. So long therefore, as this link of common incidents continues to operate upon the homestead land as the raiyati holding of the tenant, and the two are transferred together the incident of the right to transfer, in my opinion, still operates with equal efficiency upon the homestead land as well.

In the present case, the finding being that both the raiyati lands and the homestead have been transferred, I see no reason to hold that the right of transfer which could be validly exercised in respect of the raiyati holding with the incidents of which the homestead land continues to be regulated could not be validly exercised in respect of the homestead. This distinction, therefore, in my opinion, is essential, and the decision of the Pull Bench does not in any manner conflict with the view which I am adopting in regard to the validity of the transfer of the homestead land in the present case.

The End