

IN THE HIGH COURT OF JHARKHAND AT RANCHI
S.A. No.128 of 2020

 (Against the judgment dated 26.11.2019 passed by learned Principal District Judge, Dhanbad in Title Appeal No.45 of 2014)

Bandi Shankar Mishra, aged about 70 years Son of Late Sheo Govind Mishra, Resident of Saharpura, Post Office & Police Station- Sindri, District- Dhanbad (Jharkhand)

.... Plaintiff /Appellant/ Appellant

Versus

1. M/s Fertilizer Corporation of India Limited, Sindri Unit, P.O. & P.S. Sindri, District- Dhanbad, (Jharkhand)
2. The Chief Administrative Officer, M/s Fertilizer Corporation of India Limited, Sindri Unit, P.O. & P.S. Sindri, District Dhanbad 828122 (Jharkhand)
3. The General Manager, M/s Fertilizer Corporation of India Limited, Sindri Unit, P.O. & P.S. Sindri, District Dhanbad 828122 (Jharkhand)
4. Shiv Kumar Saw, Son of Late Chintamani Sao
5. Mrinal Kanti Ghosh, Father's name not known
6. Ashish Modak, Son of Sri Dulal Modak
7. Md. Safique, Father's name not known
8. Muniulal Sharma, son of Kali Sharma
9. Laxmeshwar Prasad Srivastava, Son of Late Bharatji Prasad

All of them having their work place/shops at Saharpura Bus stand, Hatia More, P.O. Sindri, P.S. Baliapur, District Dhanbad (Jharkhand) Defendants /Respondents/ Respondents

 For the Appellant : Mr. Rahul Kumar Gupta, Advocate
 Mr. Rakesh Kumar Singh, Advocate

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the learned counsel for the appellant.

2. This Second Appeal, under Section 100 of the Code of Civil Procedure, has been preferred against the judgment dated 26.11.2019 passed by learned Principal District Judge, Dhanbad in Title Appeal No.45 of 2014 whereby and where under in the judgment of concurrence, the learned Principal District Judge has dismissed the appeal.

3. The brief facts of the case is that the respondents were allotted 500 sq. ft. of land vide license dated 22.11.1977 to the plaintiff for running a coal depot. The plaintiff applied for 1000 sq. ft. of more land adjacent to the said laid and in anticipation of the allotment, the plaintiff occupied and possessed such additional adjacent vacant land of 1000 sq. ft. An eviction proceeding bearing Case No.72 of 1990 was initiated by the respondents and vide order dated 12.07.1991, the Estate Officer passed eviction order in respect of the extra land occupied by the appellant. The said order was challenged before the appellate court vide Miscellaneous Appeal No.55 of 1991 which was dismissed vide order dated 05.04.1994. The plaintiff, thereafter, filed Title Suit No.25 of 1999 claiming to be in occupation of 900 sq. ft. of land which has been legally allotted to him but the plaintiff has been directed to vacate. The plaintiff also sought permanent injunction over the suit property being area 25 ft. x 20 ft.= 500 sq. ft.

4. The defendants challenged the jurisdiction of the Civil Court to entertain the suit.

5. The learned trial court first took up the issue of jurisdiction and vide order dated 23.05.2014 it held that the trial court has no jurisdiction to try the suit and as such Title Suit No.25 of 1999 was dismissed by the trial court.

6. Being aggrieved by the said dismissal order of the title suit, the appellant preferred Title Appeal No.45 of 2014 which was ultimately heard and disposed of by the learned First Appellate Court by the impugned judgment and decree.

7. The learned First Appellate Court formulated the following point

for determination:-

“Whether there is any error in the impugned order dated 23.05.2014 of the learned Court below or not?”

8. The learned First Appellate Court considered Section 15 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 which reads as under:-

“15. Bar of jurisdiction. – No court shall have jurisdiction to entertain any suit or proceeding in respect of –

(a) the eviction of any person who is in unauthorised occupation of any public premises, or

(b) the removal of any building, structure or fixture or goods, cattle or other animal from any public premises under section 5-A, or

(c) the demolition of any building or other structure made, or ordered to be made, under section 5-B, or

[(cc) the sealing of any erection or work or of any public premises under section 5-C, or

(d) the arrears of rent payable under sub-section (1) of section 7 or damages payable under sub-section (2), or interest payable under sub-section (2A), of that section, or

(e) the recovery of –

(i) costs of removal of any building, structure or fixture or goods, cattle or other animal under section 5-A, or

(ii) expenses of demolition under section 5-B, or

(iii) costs awarded to the Central Government or statutory authority under sub-section (5) of section 9, or

(iv) any portion of such rent, damages, costs of removal, expenses of demolition or costs awarded to the Central Government or the statutory authority.]”

and also considered the judgment of Hon’ble Supreme Court of India in the case of **B. Sharma Rao H. Ganeshmal & Another vs. Head Quarters Assistant & Others** reported in (1998) 9 SCC 577 wherein the Hon’ble Supreme Court of India has held that the question whether a person is an unauthorized occupant of the public premises or not is to be determined along by the Estate Officer under Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and such determination is appealable before the Appellate Authority under the said act and that the jurisdiction of Civil Court will be barred in that respect. An occupant legal or illegal does not have right to be governed by a Civil Court only in the name of threat of encroachment on the right of possession.

9. The learned First Appellate Court next considered that though the

plaintiff/appellant was under an obligation to establish that the land under his possession was or was not within the ambit of the scope of definition of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and as the plaintiff never challenged the notice dated 14.06.1997 issued against the plaintiff by the respondent contending therein that the plaintiff against the original allotment of his 500 sq. ft. of land, has occupied 3000 sq. ft. of land and sublet the excess land to five other persons which was a clear violation of the conditions of the original allotment letter making specific allotment and the scheme of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 speaks about finality of the order and remedial steps to be taken by the Estate Officer. Hence, the same is not open to be adjudicated by the Civil Court more so because the plaintiff/appellant has admitted in para-7 of the plaint that the appellant is still occupying 900 sq. ft. of land which is against the condition of original allotment letter. Hence, without finding any illegality in the order passed by the learned trial court, the learned First Appeal dismissed the appeal.

10. Learned counsel for the appellant submits that both the courts below have erroneously dismissed the suit on the ground that the same is barred under Section 15 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. It is next submitted that both the courts below were required to ascertain the identity of the land involved in the earlier proceeding and the present proceeding. Hence, it is submitted that both the judgment and decree passed by both the courts below be set aside and the suit of the plaintiff be decreed.

11. Having heard the submission of the learned counsel for the appellant and after going through the materials available in the record, it is pertinent to mention here that it is a settled principle of law as has been held by the Hon'ble Supreme Court of India in respect of a *pari materia* provision in Karnatka Public Premises (Eviction of Unauthorized Occupant) Act, 1974, in paragraph-3 and 4 of its judgment in the case of **B. Sharma Rao H. Ganeshmal & Another vs. Head Quarters Assistant & Others (supra):-**

"3. Shri Venkataramani has further submitted that the bar to the

jurisdiction of civil courts under Section 16 of the State Act has no application to the present case since the proceedings initiated on the basis of the notices issued by the Estate Officer under Section 4(1) of the State Act were without jurisdiction. In this connection, the submission of Shri Venkataramani is that notices that were issued to the petitioners did not comply with the requirements of Section 4(2)(a) of the State Act inasmuch as the said notices did not indicate the reasons as to why the petitioners, who were tenants, were being treated as unauthorised occupants. We find that there is no basis in the pleadings for this contention. In the plaint of the suits filed by the petitioners no such plea has been raised that the notices that were issued under Section 4(1) did not comply with the requirement of Section 4(2)(a) of the State Act. On the other hand in the plaints it is stated that after the receipt of the notice the petitioners had submitted their reply but they are not aware of the orders that have passed in the proceedings thereafter. The case of the petitioners in the plaint is that they are in occupation as tenants of the premises by virtue of Section 116 of the Transfer of Property Act and they could not be regarded as unauthorised occupants. In other words in the suits the petitioners have raised the question that they are not unauthorised occupants and are not liable to eviction under the provisions of the State Act. Having regard to the provisions contained in the State Act we are of the view that the question whether the petitioners are unauthorised occupants or not is required to be determined by the Estate Officer under Section 5 of the Act and a person feeling aggrieved by such determination can assail the same in appeal before the appellate authority.

4. We are, therefore, of the opinion that the High Court has rightly found that the suits filed by the petitioners could not be entertained by the civil court in view of the bar to jurisdiction contained in Section 16 of the State Act. The special leave petitions are accordingly dismissed. No costs."

12. Since the suit of the plaintiff is covered by the Bar envisaged in Section 15 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. Hence, this Court do not find any illegality in the judgments of both the courts below having held that separate suit is not maintainable. This Court also do not find any substantial question of law involved in this appeal.

13. Accordingly, this appeal, being without any merit, is dismissed.

14. Let a copy of this judgment be sent to the courts concerned forthwith.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 12th of July, 2023
AFR/ Animesh