

under such circumstances, his adverse possession could be acknowledged. He submits that supplementary provisions of Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 came into effect from 1st November, 1949 and if a person remained in possession and other ingredients of adverse possession are satisfied for a period 12 years prior to 1st November, 1949, his adverse possession could be declared. Paragraph 56 of the aforesaid judgment reads as under: -

“56. From the aforesaid discussions, I have arrived at the following conclusions:—

(i) That there is no incidence of transferability of Raiyati holdings in Santal Parganas.

(ii) That Section 20 of the Act is not ultra vires on the ground of its being violative of the fundamental rights guaranteed under the Constitution.

(iii) That Section 42 of the Act is a legislation in respect of Entry No. 21 of List II — State List, of the Seventh Schedule to the Constitution, and is not violative of being repugnant to the provisions of the Limitation Act, Central Legislation, dealing with acquisition of right by adverse possession.

(iv) That the Limitation Act was applied to the District of Santal Parganas under Regulation III of 1872, and adverse possession could be acquired under an in valid transfer, in contravention of Section 27(1) of the Regulation. Those, who did not acquire title by adverse possession under Regulation III of 1872, could be evicted under the old Section 20(5) or Section 42 of the Act, even after the repeal of Section 27(3) of the Regulation, as the Act was supplemental to the Regulation.

(v) That Section 20 of the Act was prospective and that there could not be acquisition of title by adverse possession in case of transfer or settlement etc., in contravention of Section 20(1) and (2) of the Act.

(vi) That Section 42 of the Act is a valid piece of legislation.

(vii) That Section 20(5) of the Act, as amended, is a valid piece of legislation and is not ultra vires the Constitution on the grounds urged by Mr. Sinha.”

5. He has then referred to the judgement passed by the Hon’ble Patna High Court *Full Bench* reported in **1984 SCC Online Pat 219 (Deonarayan Singh and Others versus Commissioner of Bhagalpur Division and Others)** and that the point of consideration before the Hon’ble Full Bench was whether the prescriptive period of twelve years for perfecting the title by adverse possession (the original

transfer being in contravention of S. 27 of the Regulation 3 of 1872) would stop running from 1st of November, 1949, being the date of enforcement of Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949. The learned counsel has then referred to paragraph 20 of the aforesaid judgment. Paragraph 20 of the judgement is quoted as under:-

“20. On a conspectus of the relevant statutory provisions, on principle and in the light of the aforesaid precedent, it would appear that three distinct situations may arise in the context of perfecting title by adverse possession where the original transfer is in contravention of the statute. For the sake of clarity these may be dealt with individually in the reverse chronological order.

- (i) A transfer in contravention of sub-sec. (1) or (2) of S. 20 of the Act. Obviously such a transfer would inevitably be after the enforcement of the Act on the 1st of Nov. 1949. In view of the clear provisions of sub-sees. (3), (4) and (5) of S. 20 itself and the related provisions of Ss. 42, 64, 65 and 69 of the said Act and the adjudication of the Full Bench in proposition (v) in Bhaurilal Jain's case (AIR 1973 Pat 1) (supra), no question of any acquisition of title by adverse possession or perfecting the same in this context can at all arise.*
- (ii) A transfer in contravention of S. 27 of Regulation III of 1872 with regard to which the prescriptive period of 12 years has not elapsed on the 1st of Nov. 1949. In such a case time for perfecting title by adverse possession would in law stop running from the date of the enforcement of the Act on Nov. 1, 1949, and if the prescriptive period of 12 years is not completed before that, the right or title would remain inchoate and cannot be perfected thereafter by virtue of adverse possession. This would follow from proposition (iv) of the Full Bench in Bhaurilal Jain's case (supra). In such a case the Deputy Commissioner under S. 42 of the Act read with the other relevant provisions may at any time on his own motion or on an application made to him pass an order ejecting the transferee holding the transfer in contravention of the statute.*
- (iii) A transfer in contravention of S. 27 of Regulation III of 1872 in which the transferee has been in continuous adverse cultivating possession for 12 years prior to the 1st of Nov. 1949. In view of cl. (a) of the proviso to sub-sec. (3) of S. 27 of the said Regulation, the transferee herein became immune to eviction if he had been in continuous cultivating possession for 12 years. He was thus allowed to perfect his title by way of adverse possession. This equally follows from proposition (v) in Bhaurilal Jain's case laying down that the provisions of S. 20 were prospective and not retrospective in effect and*

consequently they would not invalidate the title already perfected by adverse possession under Regulation III of 1872 despite its repeal and substitution on 1st Nov. 1949 by S. 20 of the Act.”

6. The learned counsel submits that since the Kurfanama is dated 15.05.1948 which reflected that Jar Ali was in possession more than 12 years prior to 15.05.1948, therefore there can be no dispute that Jar Ali had perfected his title by way of adverse possession.

7. He has then referred to Exhibit-7 and has submitted that Kurfanama was duly exhibited in the earlier title suit and the same was acknowledged and ultimately it was recorded that Jar Ali was in possession of the suit property for more than 12 years and has acquired title by adverse possession.

8. The learned counsel has submitted that the case of the appellants is covered by paragraph 20(iii) of the aforesaid judgment as Jar Ali had perfected the title by way of adverse possession prior to coming into force of supplementary provisions of Santhal Pargana Tenancy Regulation which came into effect from 01st November, 1949.

9. Learned counsel for the appellants has further submitted that Exhibit-6, which is the order dated 22.05.1970 and was numbered as R.E.R Case No. 26 of 1968-69, reveals that it was filed by Sk. Talim and he was not the recorded tenant with respect to the suit property and has submitted that the proceeding was itself not maintainable at his instance. He has also submitted that Sk. Talim was not a party to Exhibit-7.

10. Learned counsel has submitted that the recorded tenant as well as the plaintiff of the present case, both were impleaded as party in R.E.R Case No. 26 of 1968-69 and it was alleged that the Exhibit-7 was collusive and originally the Sub-Divisional Officer refused to entertain the petition.

11. Learned counsel has also submitted that since Sk. Talim was not the recorded tenant, the petition itself was not maintainable. He has also submitted that this order was subject matter of Miscellaneous

Appeal No. 172 of 1970-71 which was filed by Sk Talim however, the appellate authority has allowed the appeal.

12. The order of appellate authority reveals that Sk Jar Ali was directed to be evicted from all the plots mentioned in Kurfanama dated 15.05.1948 and the plots were restored back to the recorded tenant who were the respondent 2nd party in the appeal. The revision filed against the same was also dismissed which remained unchallenged.

13. Learned counsel has submitted that entire proceedings at the instance of Sk. Talim was not maintainable and therefore all the order have no bearing in this case and they are nullity.

14. *Learned counsel for the respondents* has referred to paragraph 4 of the appellate courts judgment and has submitted that it was specific case of the contesting defendant who were successors of Sk. Sanjho that Kurfanama dated 15.05.1948 was forged and fabricated and the plaintiff never came in possession. The story of bhugatbandha in favour of Ram Nagina was fabricated and the suit was collusive. The suit was contested by Sk. Sujan, the intervener defendant, who put forth his claim by pleading Sk Jar Ali and Talim Ali were the brothers and the property was partitioned much earlier to settlement and further all the shareholders were in exclusive separate possession. It was also asserted that Bibi Gafina and Hanifa were also the daughters of Sk. Sanjho. Kamruddin was the successor of Hanifa. The property came in the share of Sk. Abdul was possessed by his daughter Bibi Jaitun and Bibi Kari. He denied the execution of any kurfanama.

15. *During the court proceeding it transpires that the Kurfanama was executed by Sk. Chhedhi S/o: Sk. Sanjho, Most. Gafina, W/o: Sk. Abdul and Bibi Jaitun, W/o Sk. Kamruddin. The intervener was Sk. Sujan S/o: Kamruddin.*

16. The learned counsel submits that courts have rightly come to conclusion that the Kurfanama itself was forged and fabricated and therefore, it is submitted that no right could have flown to the appellants through Kurfanama.

17. During the course of hearing learned counsel for the respondent could not point out any discussion with respect to Exhibit-7 in the appellate court's judgement.

18. *In response*, learned counsel for the appellants has submitted that in Exhibit-7 [Title Suit No. 125 of 1968] the plaintiffs were Sk Chedi, Bibi Gafina and Bibi Jaitun and the defendant was Jar Ali and there were aforesaid three persons who had granted the Kurfanama.

19. Argument concluded.

20. Judgment is reserved.

(Anubha Rawat Choudhary, J.)

Binit/Rakesh