

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1364 OF 1999

ASHARAFI SINGH

.....APPELLANT(S)

VERSUS

KAPILDEO RAI (DEAD) BY LRS. AND OTHERS

....RESPONDENT(S)

J U D G M E N T

Dr.AR.LAKSHMANAN, J.

Heard learned counsel appearing on behalf of both sides.

The counsel for the appellant argued only one contention before the High Court

that the land in question does not come within the provisions of Bihar Consolidation of

Holdings and Prevention of Fragmentation Act, 1956 (for short 'the Act') inasmuch as

the appellant had purchased the land in question through registered sale deed

dt.12.01.1983 and by Notification dt.09.01.1978, the village where the land is located has

come within the jurisdiction of the Patna Regional Development Authority and,

therefore, Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956

has no application. The said contention was reiterated by the learned counsel for the

appellant before us. The said contention, in our view, has no force.
Section 2(9) of

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 defines the

"land" which means agricultural lands and includes horticultural land, kharaur land,

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land with bamboo clumps, pasture land, cultivable waste land, home steads, tanks, wells and water-channels. The definition of "land" in Section 2(9) of the Act was considered

by the High Court of Patna in Mirza Sulaiman Beg & Ors vs. Harihar Mahto & Ors.

reported in 1985 (33) Bihar Law Journal Reports 585. The Bench was also of the view

that confining the land to being strictly agricultural land in nature, in fact, extends it to matters and things, which cannot strictly be labelled as 'agricultural land' - for instance,

includes 'homestead', and, by itself, a homestead was not an agricultural land stricto

sensu. In our opinion, Section 2(9) of the Act has emphatic and also couched in very wide language. That being so, we are of the opinion that there is no legal infirmity in the

order passed by the Division Bench affirming the order passed by the learned Single

Judge.

In the instant case, Notification was issued on 26.11.1970. Section 5 of the Act deals with land not be transferred without sanction. This Section reads as under :-

"5. Land not to be transferred without sanction.- During the period

commencing from the date of the publication of the notification under Section 3

to the date when the scheme of consolidation comes into operation in any

notified area, in person shall transfer or partition any land in such area except

with the previous sanction of the consolidation officer and if the sanction is

granted, the transfer or partition, as the case may be, shall be subject to the

rights and liabilities attached to the term under the scheme of consolidation in respect of such area."

The Section is very clear. The transfer or partition, as the case may be, shall be

subject to the rights and liabilities attached to the term under the scheme of

consolidation in respect of such area. In the instant case, the sale was made in favour of

the appellant on 12.01.1983 which is after the Notification. It is also pertinent to notice

that the consolidation proceedings were over on 10.1.1975 and 20.2.1975. The learned

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Single Judge also has elaborately considered the entire matter placed before him and

came to the right conclusion which was rightly affirmed by the Division Bench. We,

therefore, see no reason to interfere with the order passed by the Division Bench of the

High Court. The appeal is accordingly dismissed. There shall be no order as to costs.

.....J.

(Dr.AR.LAKSHMANAN)

.....J.

(A.K.MATHUR)

NEW DELHI;

SEPTEMBER 19, 2006.

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 1364 OF 1999

ASHARAFI SINGH

Appellant (s)

VERSUS

KAPILDEO RAI(DEAD) BY LRS.AND OTHERS

Respondent(s)

(With office report)

Date: 19/09/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE Dr. JUSTICE AR. LAKSHMANAN

HON'BLE MR. JUSTICE A.K.MATHUR

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For Appellant(s)

Mr. Akhilesh Kumar Pandey,Adv.

Mr.Sudhanshu Saran, Adv.

For Respondent(s)

Mr. Lakshmi Raman Singh,Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is dismissed in terms of the signed Judgment.

There shall be no order as to costs.

(Satish K. Yadav)

Court Master

(Phoolan Wati Arora)

Court Master

(Signed reportable judgment is placed on the file)