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establish the prosecution case that Jagdish after knowing on the January 5, 1961, that an offence had been committed by the murder of Tonny caused some evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment. He has therefore been rightly convicted under s. 204 of the Indian Penal Code and the sentence passed on him is proper.

The appeal is accordingly dismissed.

Appeal dismissed.

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May 4.

SURAJNATH AHIR AND OTHERS

v.

PRITHINATH SINGH AND OTHERS

(K. C. DAS GUPTA and RAGHUBAR DAYAL, JJ.)

Land Reform—Suit for recovery of possession after redemption of mortgage—Limitation—Vesting of estates in the State—Subsisting title to possession, if confers right to recover possession—Bihar Land Reforms Act, 1950 (Bihar XXX of 1950), ss. 2(k) *3(1), 4(a), 4(f), 6(1) (a) (b), (c).*

The plaintiff-respondents sued the appellants for recovery of possession of the lands in dispute. The appellants had entered into possession of the lands on the strength of a mortgage deed. The mortgagors executed another mortgage with respect to their *milkiat* interest in favour of certain persons. The plaintiff-respondents bought the *milkiat* rights shares together with the *kasht* lands from the mortgagors and entered into possession of the *milkiat* property and subsequently redeemed the mortgage deeds in 1943. The appellants however did not make over possession of the lands in dispute after the mortgages had been redeemed. The trial court found that the plaintiff-respondents had no subsisting title to the lands and that the suit was barred by adverse possession and limitation. The High Court, on appeal filed by the plaintiff-respondents, allowed the appeal on the

ground that the defendant-appellants were in possession only as mortgagees and that after the redemption of the mortgage they had no right to continue in possession.

The appellants than appealed to the Supreme Court by certificate granted by the High Court. Apart from the questions of estoppel and limitation by adverse possession the main point which was raised in the appeal was that the plaintiff-respondent had no subsisting title to evict the appellant in view of the provisions of the Bihar Land Reforms Act, 1950.

Held, that the suit was instituted within twelve years of the redemption of the mortgage deed and was not therefore barred by limitation.

Section 4 of the Act vests in the State all the interests of the proprietor or tenure-holder, including the right to recover possession from the trespasser, except those interests which are expressly saved by the Act. Since no mortgage subsisted on the date of the vesting in the State the respondent could not take advantage of s. 6(1) (c) of the Act (as amended by Act XVI of 1959).

The mere fact that a proprietor had a subsisting title to possession over certain land on the date of vesting would not make that land under his 'Khas Possession'. The respondents lost their right to recover possession from the appellants even if they were trespassers, on their estate vesting in the State.

Brijnandan Singh v. *Jamuna Prasad* A. I. R. 1958 Pat. 589, *Haji Sk. Subhan* v. *Madhorao* [1962] Supp. 1 S.C.R. 123.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 533 of 1960.

Appeal from the judgment and decree dated January 28, 1959, of the Patna High Court, in Appeal from Original Decree No. 143 of 1948.

B. K. Saran and *K. L. Mehta*, for the appellants.

R. K. Garg, *D. P. Singh*, *S. C. Agarwal* and *M. K. Ramamurthi*, for the respondents.

1962 May 4. The Judgment of the Court was delivered by

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RAGHUBAR DAYAL, J.—This appeal, on a certificate granted by the High Court of Judicature at Patna, arises in the following circumstances:

The plaintiffs-respondents sued the appellants for the recovery of possession of the disputed lands and mesne profits as the family of the defendants did not have any *raiyat* interest in the disputed lands except *rehan* interest under the *rehan* deed dated July 3, 1906, and that subsequent to the redemption of that deed, they had no right to remain in possession and occupation of the disputed lands.

The plaintiffs alleged that Pranpat Bhagat and others held eight annas share of *milkiat* interest in village Sevathra, pargana Nonaur, tauzi No. 3879 and that the other eight annas share was held by Kunj Bihari Bhagat and others. These persons also held *khudkasht* lands in the village and that such lands were treated as *kasht* lands. In 1906 Ram Autar Bhagat, one of the members of the joint family of Pranpat Bhagat, executed the mortgage deed with respect to 15 bighas of land out of 16 bighas of *kasht* lands, to Sheo Dehin Ahir, on behalf of his joint family. The defendants entered into possession on the basis of that mortgage deed, they having had no connection with the land mortgaged prior to the execution of the mortgage deed.

Later on, in 1912, Ram Lal Bhagat and Munni Bhagat, of Pranpat's family, executed another mortgage deed with respect to their entire *milkiat* interest in favour of Jatan Ahir and Ram Saran Ahir who also belonged to the family of Sheo Dehin Ahir. They then got into possession of the fresh land which had been mortgaged.

Ram Lal Bhagat and others sold their *milkiat* share together with the *kasht* lands to the plaintiffs in 1915. The plantiffs entered into possession

of the *milkiat* property and subsequently redeemed the mortgage deeds in 1943. The plaintiffs also purchased four annas share beloging to the branch of Kunj Bihari Bhagat. The other four annas share of that branch was purchased by Raja Singh who then sold it to Ram Ekbal Singh, impleaded as defendant No. 6 in the plaint. The defendants, however, did not make over possession of the land in suit after the mortgage deeds had been redeemed and hence the suit was instituted for a declaration and recovery of possession.

The defendants 1 to 5 did not admit the allegations made by the plaintiffs and stated the real state of affairs to be that the disputed lands were never the *bakasht* lands of the proprietors of the village and were really the *raiyati qaimi kasht* lands of the defendants. that the plaintiffs never purchased the disputed lands, that the disputed lands were the *raiyati kasht* lands of Ram Autar Bhagat only, who let out the disputed lands in *rehan* under different *rehan* deeds alleging them to be *raiyati kasht* lands, and who had earlier treated it as his exclusive *raiyati kasht* lands, and that, ultimately, Ram Autar Bhagat sold the disputed lands to the defendants and got their names entered as *qaimi raiyati kashtkars*. It was further alleged that the defendants had acquired title to the land in suit by virtue of adverse possession.

The trial Court found that the plaintiffs had no subsisting title to the lands in suit as those lands were not sold to the plantiffs who had purchased the *milkiat* interest including the *bakasht* and *zerat* lands, that the suit was barred by adverse possession also and that it was barred by limitation. It therefore dismissed the suit.

On appeal, the High Court held that the plaintiffs did purchase the land in suit and that the defendants were in possession only as mortgagees

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and that, after the redemption of the mortgage, they had no right to continue in possession. It therefore allowed the appeal and decreed the plaintiffs' suit. The defendants have now filed this appeal.

Learned counsel for the appellants has urged five points:

(1) The record of rights supported the case of the defendants that they were the *qaimi raiyats* and that the High Court wrongly construed them.

(2) The sale deed of 1915 in favour of the respondents did not include the land in suit.

(3) Even if the plaintiffs-respondents acquired right to the land in suit by purchase, they are estopped from taking any action against the defendants-appellants who had been in possession for long.

(4) The suit is barred by limitation as the defendants had perfected their title by adverse possession and the plaintiffs had not been in possession within limitation.

(5) The plaintiffs-respondents had no subsisting title to evict the appellants in view of the provisions of the Bihar Land Reforms Act, 1950 (Bihar Act XXX of 1950).

The case set up by the defendants with respect to their acquiring the *qaimi raiyati kasht* rights, in their written statement, has been disbelieved by the Courts below and, we think, rightly. It follows that the defendants were in possession of the land in suit only as mortgagees as held by the Court below and that they had no right to possession after the mortgage had been redeemed.

By the sale deed dated October 5, 1915, Ram Lal Bhagat and others sold the property described thus in the sale deed:

> "8 (eight) annas ancestral *milkiat* interest, out of Tauzi No. 3879, in mauza Sewathra, pergana Nanaur, thana Pito, district Shahabad, Sub-registry office Jagdishpur, the *Sadar Jama* whereof is Rs. 190/- which has been in possession and occupation of us, the executants without copartnership and interference by anybody together with all the present Zamindari rights appertaining thereto, without excluding any interest and profit, together with *Zirat* lands which have been recorded in the survey papers in the names of us, the executants as *bakasht* (lands) and new and old party lands, *aam* and *Khas Chairmazrua* lands, *baharsi dih*, house of the tenants ground rent, ahar, pond, reservoir, tank, orchard, fruit-bearing and non-fruit-bearing trees and bamboo-clumps that is the entire lands and profit (derived from) zamindari below and above the surface existing or which may be derived in future without excluding anything."

They emphasized the extent of the sale property further by saying:

> "We, the executants, gave up and relinquished our respective possession and occupation of vended property today. The entire interest excluding only the *chaukidari chakran* (service) land which has been let out in settlement with us, the executants is being sold. The *chaukidari* land only is not being sound (sic)."

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It is clear therefore, as held by the High Court, that the land in suit which is included in the *milkiat* share was not excepted from sale. The only property excluded from sale was the *chaukidari chakran* land.

The long possession of the appellants therefore does not estop the respondents from recovering possession from them. The suit was instituted within 12 years of the redemption of the mortgage deed and is not therefore barred by limitation.

The only other question to determine is whether the plaintiffs-respondents cannot recover possession from the appellants in view of the provisions of the Bihar Land Reforms Act, 1950 (Act XXX of 1950), hereinafter called the Act, which came into force during the pendency of the appeal in the High Court. The trial Court dismissed the suit on March 8, 1948. The High Court allowed the appeal on January 28, 1958. The Act came into force on September 25, 1950.

Sub-section (1) of s. 3 of the Act empowered the State Government to declare by notification that the estates or tenures of a proprietor or tenure holder specified in the notification have passed to and become vested in the State. Such vesting took place on January 1, 1955. It is contended for the appellants that the respondents ceased to have any proprietary right in the land in suit when their estate vested in the State and therefore they had no right to recover possession from them.

Section 4 of the Act mentions the consequences which follow on the publication of the notification under sub-s. (1) of s. 3. According to s. 4(a), such estate or tenure including the interests of the proprietor or tenure-holder in the various objects mentioned therein shall, with effect from the date of vesting, vest absolutely in the State free from

all encumbrances, and such proprietor or tenure-holder shall cease to have any interest in such estate or tenure other than the interest expressly saved by or under the provisions of the Act. This makes it absolutely clear that after the vesting of the estate, no interest other than that expressly saved by or under the provisions of the Act remained in the respondents. The right to recover possession from the trespasser also got vested in the State. Sub-clause (f) of s. 4 provides that the Collector shall take charge of such estate or tenure and of all interests vested in the State under the section.

In this connection reference may be made to the decision of this Court in *Haji Sk. Subhan* v. *Madhorao* (1) which dealt with a similar question in the context of the provisions of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (M.P. Act No. 1 of 1951).

We have now to consider whether any interest in the land in suit was expressly saved by or under the provision of the Act in favour of the respondents.

Section 6 of the Act provides *inter-alia* that on and from the date of vesting, all lands used for agricultural purposes which were in *khas* possession of a proprietor or tenure-holder on the date of vesting shall be deemed to be settled by the State with such proprietor or tenure-holder as the case may be and such proprietor or tenure-holder shall be entitled to retain possession thereof and hold them as a *raiyat* under the State having occupancy rights in respect of such lands subject to the payment of such fair and equitable rent as may be determined by the Collector. The lands coming within this section included lands used for agricultural purposes forming the subject matter of a subsisting mortgage on the redemption of which the

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intermediary is entitled to recover *khas* possession thereof. It follows that such lands, though not in the actual *khas* possession of the proprietor on the date of vesting would also be deemed to be settled with the proprietor, who would retain their possession as *raiyat* under the State.

According to s. 2(k) of the Act,

> "'khas possession' used with reference to the possession of a proprietor or tenure-holder of any land used for agricultural or horticultural purposes means the possession of such proprietor or tenure-holder by cultivating such land or carrying on horticultural operations thereon himself with his own stock or by his own servants or by hired labour or with hired stock."

On the date of vesting, the respondents were not in *khas* possession of the land in suit as they were not in possession in any of the manner mentioned in this definition.

Section 6 does not really enlarge the scope of the expression 'Khas possession but includes lands covered by cls. (a), (b) and (c) of sub-s. (1) among the lands which can be deemed to be settled by the State with the proprietor. Clause (c) originally was :

> "lands used for agricultural or horticultural purposes and in the possession of a mortgagee which immediately before the execution of the mortgage bond were in khas possession of such proprietor or tenure holder."

This clause was substituted by another clause by s. 6 of the Bihar land Reforms (Amendment) Act, 1959 (Act XVI of 1959) and under that section the substituted clause shall be deemed always to have

been substituted, that is to say, is to be deemed to have been in the original Act from the very beginning. The substituted cl. (c) reads :

> "(c) lands used for agricultural or horticultural purposes forming the subject matter of a subsisting mortgage on the redemption of which the intermediary is entitled to recover khas possession thereof."

It is therefore necessary for the respondents, to get advantage of the provisions of this clause, that there be a subsisting mortgage on the date of vesting and that the land included in the subsisting mortgage be such that on the redemption of the mortgage the respondents be entitled to recover khas possession thereof. No mortgage subsisted on the date of vesting and therefore the benefit of this clause cannot be taken by the respondents. The land in suit does not come within the provisions of cl. (c) or any other clause of sub-s. (1) of s. 6 of the Act. This point was raised in the High Court which observed as follows in this connection :

> "In the first place the defendants were in possession as mortgagees and, even section 6 of the Bihar land Reforms Act provides that the possession of the mortgagee is the possession of the mortgagor even for the purpose of construing the meaning of Khas possession of the intermediary over the land which may be deemed to be settled with him by virtue of section 6 of the Act. The defendants' possession being the mortgagees' possession, the case is covered by the terms of section 6 itself. Apart from it, it has been held in the case of *Brij Nandan Singh* v. *Jamuna Prasad Sahu and Another* (First

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Appeal No. 205 of 1948) by a Division Bench of this Court that the words 'Khas possession include subsisting title to possession as well and any proprietor, whose right to get khas possession of the land is not barred by any provision of law, will have a right to recover possession and the State of Bihar shall treat him as Raiyat with occupancy right and not the trespassers. The contention of the learned Advocate General must fail in terms of the above decision."

On the date of vesting, the appellants were not in possession as mortgagees. The mortagages had been redeemed in 1943. Thereafter, the possession of the appellants was not as mortgagees. It may be as trespassers or in any other capacity. The land in suit, therefore, did not come within cl. (c) of s. 6 of the Act as it stood when the High Court delivered the judgment.

Reliance was placed by the High Court on the case reported as *Brijnandan Singh* v. *Jamuna Prasad* (1) for the construction put on the expression 'khas possession' to include subsisting title to possession as well, and therefore for holding that any proprietor, whose right to get khas possession of the land is not barred by any provision of law, will have a right to recover possession and that the State of Bihar shall treat him as a raiyat with occupancy right and not as a trespasser. We do not agree with this view when the definition of 'khas possession' means the possession of a proprietor or tenure-holder either by cultivating such land himself with his own stock or by his own servants or by hired labour or with hired stock. The mere fact that a proprietor has a subsisting title to possession over certain land on the date of vesting would not make that land under his 'khas possession'.

(1) A.I R. 1958 Pat. 589.

It is clear therefore that the land in suit cannot de deemed to be settled with the respondents by the State in accordance with the provisions of s. 6 of the Act. In the absence of any such settlement, no rights over the land in suit remained in the respondents after the date of vesting, all their rights having vested in the State by virtue of sub. s. (1) of s. 3 of the Act.

We are therefore of opinion that the respondents lost their right to recover possession from the appellants, even if they were trespassers, on their estate vesting in the State, by virtue of ss. 3 and 4 of the Act and that therefore, thereafter, they had no subsisting right to recover possession from the appellants. The right to possession now vests in the State. The respondents being no more entitled to recover possession of the land in suit the decree of the High Court has to be set aside. We, accordingly, allow the appeal, set aside the decree of the Court below and restore the decree of the trial Court, though for reasons other than those given by that Court in its judgment. In the circumstances of the case, we order the parties to bear their own costs.

Appeal allowed.