
(2003) 07 JH CK 0090

In the Jharkhand High Court

Case No : Criminal Revision No. 192 of 1995 (R)

Ajay Kumar Tirkey

APPELLANT

Vs

The State of Bihar (Now Jharkhand) and Another

RESPONDENT

Date of Decision : 24-07-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (2003) 3 BLJR 1826

Hon'ble Judges : Lakshman Uraon, J

Bench : Single Bench

Advocate : A.B. Mahto, K.C. Mahto, for the Appellant; A. Sinha and A. Kumar and Dilip Kumar Prasad, for Opp. Party No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Lakshman Uraon, J.—Petitioner Ajay Kumar Tirkey, who was 1st party in the Court below, has preferred this criminal revision application against the order dated 18-11-1995, passed by Sri D.C. Mishra, Executive Magistrate, Ranchi, in M. Case No. 508 of 1989 u/s 145 of the Code of Criminal Procedure, whereby and whereunder, the possession of the 2nd party (Opp. Party No. 2) was declared in respect of the disputed land, measuring 0.65 Acres of Plot No. 162, appertaining to Khata No. 39, situated at Hindpirhi, Ranchi. By the said order, the petitioner was restrained to go over the said land till an order is passed by any competent authority in his favour.

2. The ancestors of Opp. Party No. 2, namely, Martin Tirkey (2nd party) were the recorded raiyats of the said land. The petitioner (1st party) claims that the disputed land was purchased by his father Bimal Tirkey through a registered sale deed dated 23-9-1939 and since then he was in possession and after the death of his father, the petitioner, namely, Ajay Kumar Tirkey (1st party) came in possession of the same and paid rent and got rent receipts in lieu thereof. When Opp. party No. 2 was burying the dead animals in that plot, which was objected to by the petitioner, an altercation took place and on the information of the 1st

party, a proceeding u/s 144 of the Code of Criminal Procedure (in short "Cr. P.C.") was started, which was ultimately converted into a proceeding u/s 145 Cr. P.C. in M. Case No. 508 of 1989.

3. Petitioner Ajay Kumar Tirkdey (1st party) claimed that the land was purchased through registered sale deed from the father and uncle of Martin Tirkey (Opp. party No. 2), namely, Luthar Tirkey and Suleman Tirkey, by his father, namely, Bimal Kumar Tirkey. The vendor and the vendees both have died. The 1st party claimed that after purchase, his name was mutated and, accordingly, he paid rent. The petitioner was an employee of the H.E.C. and on 8-2-1989 he found the 2nd party burying a dead cow in his land. It is further submitted that for forceful possession of the land, the 2nd party instituted a case u/s 71 A of the C.N.T. Act virtually admitted the possession of the 1st party.

4. The 2nd party in his show cause has stated that only to grab his ancestral land, the petitioner Ajay Kumar Tirkey has brought a case u/s 144/145 of the Code of Criminal Procedure. It is further submitted that filing of a case u/s 71-A of the C.N.T. Act is not an estoppel against him, as it was done inadvertently, R.S. Khata No. 39 is the ancestral property of Opp. Party No. 2 (2nd party), duly recorded in the name of Luthar Oraon and Suleman Oraon. He has denied any transfer of the disputed land in favour of Bimal Kumar Tirkey, father of the petitioner Ajay Kumar Tirkey.

5. In course of hearing, the 1st party filed rent receipts, registered sale deed, order sheet, passed in S.A.R. Case No. 72 of 1989-90 and order sheet dated 26-7-1990 as also on 20-9-1995. The 2nd party also filed Khatiyan of Khatan No. 39, certified copy of depositions of the witnesses in S.A.R. Case, order sheet dated 26-9-1990, passed in the said case, rent receipts, granted by the Ex. Landlord as also the State of Bihar. Both the parties produced eight witnesses each to support their claim of possession over the land. The learned Magistrate could not decide the possession of the parties on the basis of those documentary evidences, as the 1st party has filed rent receipts in respect of 65 Decimals of land whereas the 2nd party (Opp. Party No. 2) has filed rent receipts for the entire area of the land, recorded under Kata No. 39. He pointed out that there was no proper mutation and the rents were paid by Opp. party No. 2, which prove the stand taken by him (Opp. party No. 2) that all the documents, registered sale deed and rent receipts, filed by the petitioner, are forged and fabricated documents. The 2nd party came to know about these documents for the first time when show cause was filed by the 1st party in this proceeding. Hence the learned Magistrate passed his order on the basis of the oral evidence of the parties. He disbelieved the oral evidences, adduced by the 1st party, as they have contradicted each other, and relied on the evidences of four witnesses, out of eight witnesses, produced on behalf of the 2nd party and formed his opinion that 2nd party is in possession over the disputed land.

6. The rent receipt (Exts. A & A/1), granted in favour of Opp. Party No. 2 (2nd party) show that for the entire land, measuring 1.81 Acres, recorded under

Khata No. 39, rents have been paid for the years 1964-65 to 1987-88. On the other hand, rent receipts (Exts. 1 to 1/E), in respect of 65 Decimals of land, were filed by the petitioner (1st party) for the years 1963-64, 1974-75, 1978-79, 1982-83, 1984-85 and 1989-90. Had there been proper permission to transfer the land and the land, the land would have been mutated and in Register II the name of the 1st party must have been entered into, showing the rent payable in respect of 65 Decimals of land. The rent receipt, filed by the 2nd party (Opp. Party No. 2) shows that he paid rent for the entire area of land, measuring 1.81 Acres of Khata No. 39 till the year 1987-88, which show that all the documents regarding transfer of land by registered sale deed of the year, 1939 were not within the knowledge of the 2nd party, Opp. party No. 2 (2nd party) has filed rent receipt (Ext. A), issued in the name of Luthar and Suleman by the Ex. Landlord on 7-11-1945. This also shows that the ancestors of Martin Tirkey, Opp. party No. 2 (2nd party), were in possession of the land and paid rent to the Ex. Landlord and thereafter, the rent was also paid to the State of Bihar (Ext. A/1).

7. The learned Magistrate having considered the oral evidences, adduced on behalf of the 1st party, found contradictory statements of the witnesses. Ajay Kumar Tirkey himself was an employee of the H.E.C. and, as such, there is no question that he possessed the land and cultivated it. Jai Mangal Kujur, Witness No. 1 of the 1st party, does not know the boundary of his own land but has mentioned the boundary of the disputed land. Witness No. 2 Hemant Lakra has deposed that 1st party Ajay Kumar Tirkey (petitioner) had got no oxen to plough the land rather he gave it to Suleman Tirkey on Adhbatai. However, there is no document to show that Ajay Kumar Tirkey had given his land to Suleman Tirkey on Adhbatai. Ajay Kumar Tirkey has deposed that the land was cultivated by his father and has denied to have given the land on Adhbatai to Suleman. Sara Khalko, Witnesses No. 3, who is cousin sister of Opp. party No. 2(2nd party) has deposed that she does not know the disputed land. She has deposed that it is not a paddy field rather it is a Nala. 4th witness, namely, Hiramani, is the daughter of Suleman Tirkey. She has deposed that her father, namely, Suleman Tirkey, and her brother, namely, Kushal Tirkey, cultivate the land on Adhbatai. She is on inimical terms with Opp. party No. 2 (2nd party), namely, Martin Tirkey, who is her cousin brother. Witness No. 6, namely, Shanti Lakra, is also on inimical terms with Martin Tirkey, as Martin has also instituted a case against her. Ajay Kumar Tirkey, as Witness No. 8, has deposed that the land was given by his father to Suleman Tirkey to cultivate it on Adhbatai. As pleaded by both the parties, neither Bimal Tirkey, father of the 1st party (petitioner), nor Luthar Tirkey and Suleman Tirkey, father and uncle of Martin Tirkey (Opp. Party No. 2) are alive. Hence cultivation of land by them at this juncture is immaterial.

8. On the other hand, the witnesses of the 2nd party have deposed that 8 to 10 years prior to institution of the case, the land was seen cultivated by 2nd party (Opp. party No. 2), Rukha Oraon and Makdali Kachhap, Witnesses Nos. 5 and 6 respectively, have deposed that the land is being cultivated by Opp. Party No. 2. Martin Tirkey, as Witness No. 7, has supported the claim of his cultivation and

possession over the disputed land.

9. When considered all the pros and cons of the case, I find that the learned Court below has considered meticulously in detail the claim of possession of both the parties and found that Opp. party No. 2 (2nd party) is in possession of the disputed land and, as such, confirmed his possession, restraining the 1st party (petitioner) to disturb the peaceful possession of Opp. Party No. 2 till evicted by a competent Court, having jurisdiction to decide title and possession over the disputed land. Accordingly, I do not find any illegality or irregularity in the impugned order under revision. In this case, title of both the parties is involved. Their claim can very well be decided by a competent civil Court, in view of the decision, as reported in 2001 (3) Cri. Cas 486 (Jhr), wherein, it is held that the best course open to the parties is to approach the civil Court for their final redressal in respect to their claims and possession, concerning the disputed land.

10. In view of the above findings, I do not find any merit in this Criminal Revision Application, which is, accordingly, dismissed, with the observations, made above.