
(2018) 05 JH CK 0014
In the Jharkhand High Court
Case No : Writ Petition(C) No.5172 of 2006

Anandi Mahto

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 08-05-2018

Acts Referred:

Constitution of India, 1950 — Article 226
Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 — Section 20, 20(5), 42
Santal Parganas Settlement Regulation, 1872 — Section 27

Citation : (2018) 05 JH CK 0014

Hon'ble Judges : ANUBHA RAWAT CHOUDHARY, J

Bench : Single Bench

Advocate : Lalit Kumar Lal, D.C. Mishra, Sahil, Sahil, Rajesh Kumar

Final Decision : Dismissed

Judgement

1. Heard Mr. Lalit Kumar Lal, counsel appearing for the petitioners.
2. Heard Mr. Rajesh Kumar, counsel appearing for the private respondents.
3. Heard Mr. Sahil, counsel appearing for the respondent-State.
4. This writ petition has been filed for the following reliefs:
â??For quashing the order dated 24.7.06 passed in Revenue Misc. Appeal No. 84/1989-90 by the Commissioner, (Respondent no. 2) and as contained
in Annexure- whereby the order of the charge Officer, Respondent No. 3 dated 30.05.89 (Annexure- 4) has been set aside although the facts,
evidence and the law did not warrant any interference with the said order dtd. 30.5.89 of the Charge Officer which found and upheld the
petitionerâ??s possession over the plots in question as valid, because, 12 years continuous possession prior to 1.11.49 and accordingly to direct that

the petitioner's name be recorded in respect of the land/plots in question and for such other relief or reliefs to which the petitioner is legally entitled to.

2. Counsel for the petitioners submits as follows:

a) The property in dispute i.e. plot no. 295, area 1 bigha kathas 17 dhurs of mouza Khasia P.S. Hasdiha, Distt. Dumka stood recorded in the name of

Anandi Kapri and Kisto Kapri.

b) Widow of Anandi Kapri namely, Pato Kaprian executed two Kurfanamas one in the year 1934 and another in the year 1935 in favour of father of

the original writ Petitioner (since deceased and substituted) and since thereafter, the petitioners came into possession of the property and continued

possession to the full knowledge of the private respondents on payment of rent for which Kurfanama receipts were granted by the widow of Anandi

Kapri and from 1960-61 the rent was paid to State of Bihar.

c) The Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 came into force with effect from 01.11.1949 and it is specific case of the

petitioners that prior to 01.11.1949, the father of the original petitioner had perfected his title by way of adverse possession by remaining in possession

for 12 years over the land as per the provisions of Section 27 of Regulation III of 1872. He submits that this section was repealed and replaced by

Section 20 of the Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 with effect from 1.11.1949. He submits that as the petitioners had

perfected their title by way of adverse possession prior to 1.11.1949, the petitioners could not be evicted under the provisions of Section 20 read with

Section 42 of the Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949.

d) Counsel for the petitioners submits that in the survey settlement and at the initial stage the name of the original petitioner was recorded with

remarks illegal possession with respect to the said property and without any notice and hearing, the Assistant Settlement Officer, by his order dated

10.01.1981 recommended to the Settlement Officer, Dumka for eviction of the original petitioner from the aforesaid property which was accepted by

the Settlement Officer, Dumka and the order of eviction was passed on 08.04.1981. It was recorded in the order dated 10.01.1981 that the father of

the original petitioner has acquired this property by virtue of Kurfanama.

e) However, when the order of eviction was passed and the petitioner filed Revenue Miscellaneous Revision No. 113 of 1981-82 before the

Commissioner, Santhal Pargana, Bhagalpur, the said authority was pleased to set-aside the order of eviction on 05.05.1984 and remanded the matter

back to the Settlement Court for disposal in accordance with law.

f) Thereafter, the matter was registered as T.L. Case No. 27 of 1987 before the court of Charge Officer No. 1 at Dumka and it was contended

before the Charge Officer that the Kurfanama of the year, 1934 and 1935 were not taken into consideration by the Assistant Settlement Officer on

the ground that the said document had certain interpolations but the said allegation was incorrect.

g) Counsel for the petitioners further submits that vide order dated 30.05.1989 the Charge Officer No. 1 at Dumka passed an order that the original

petitioner is in possession of the property and he submits that from the perusal of the order dated 30.05.1989 it appears that the Charge Officer was of

the view that the possession of the property is by virtue of the Kurfanama executed as back as in the year, 1934 and 1935 and accordingly, the said

authority refused to evict the original petitioner from the property under Section 42 of the Santhal Pargana Tenancy (Supplementary Provisions) Act,

1949. Against this order, the private respondents filed an appeal which was numbered as R.M.A. Case No. 84 of 1989-90 and the order passed by the

Charge Officer No.1, Dumka dated 30.05.1989 was set-aside vide order dated 24.07.2006 which is the impugned order in this writ

petition.

h) The counsel for the petitioners while assailing the impugned order has submitted that there is no doubt that the Kurfanama is an un-registered

document and even if it is assumed to be an illegal document, the possession of the original petitioner was by virtue of this Kurfanama since the year,

1934-35 and 12 years was completed prior to 01.11.1949 i.e. the date on which Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 came

into effect. Therefore, the original petitioner had perfected his title by virtue of the adverse possession and accordingly, the petitioners could not have

been evicted.

i) The counsel for the petitioners submits that the solitary question of law which is involved in this case is

whether the petitioners are entitled to retain the property on account of the fact that they have perfected the title by way of adverse possession by

completing 12 years of possession much prior to 1.11.1949 by virtue of the aforesaid two Kurfanamas executed in the year, 1934 and 1935 even if the

said documents are assumed to be illegal ?

j) He submits that as a finding was recorded by the Charge Officer No.1, Dumka in order dated 30.05.1989 that the petitioner is in possession of the

property by virtue of the Kurfanama executed in the year, 1934 and 1935, the Commissioner while deciding the R.M.A. Case No. 84 of 1989-90 could

not have set-aside the order and on this ground alone, the impugned order is perverse and is fit to be set-aside.

3. Counsel for the petitioners has relied upon the judgment passed by this Honâble Court reported in 1985 BBCJ 12 (Full Bench) to submit that it

has been settled by this Court that if a person is in possession of the property for the last 12 years prior to 01.11.1949 then he cannot be evicted by

resorting to Section 20 and 42 of Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 as by this time he has already perfected his title by

way of adverse possession.

4. Counsel for the private respondents, on the other hand submits that admittedly the property in question was recorded in the name of Anandi Kapri

and Kisto Kapri who expired in the year, 1945 and 1947 and therefore, there was no occasion for the widow of the recorded tenant for executing any

Kurfanama in the year, 1934 and 1935. He Further submits that the wife of Anandi Kapri was Bindu Devi and not Pato Kaprian and therefore, the

Kurfanamas could not have been executed by Pato Kaprian.

5. He further submits that the Kurfanama itself was a forged and fabricated document and the petitioners cannot rely upon such Kurfanama and he

submits that the property in question was given to Laxman Sah by a Bhugatbandha deed of the year, 1966 and after completion of six years the

respondent again came in cultivating possession.

6. Counsel for the respondents submits that there is neither any finding nor any material on record to show that the petitioners were in possession of

the property since 1934-1935 by virtue of the said Kurfanama which has been relied upon by the petitioners and accordingly, the claim of perfecting

title by way of adverse possession prior to coming into force of Santhal Pargana

Tenancy (Supplementary Provisions) Act, 1949 does not arise.

7. Counsel for the respondents also submits that in absence of such finding that the petitioners were in possession of the property since over 12 years

prior to 01.11.1949, no relief can be granted to the petitioners in exercise of powers under Article 226 of the Constitution of India and there is no

perversity in the impugned order.

8. Counsel for the respondent- State submits that there is no conclusive finding by any of the authorities that the original petitioner was in possession of

the property by virtue of the Kurfanama or was in possession of the property for over 12 years prior to 01.11.1949 and therefore, the claim of the

petitioners that they have perfected their title over the property by way of adverse possession much prior to coming into force of Santhal Pargana

Tenancy (Supplementary Provisions) Act, 1949 has no basis. He also submits that the judgment which has been relied upon by the petitioners reported

in 1985 BBCJ 12 (Full Bench) has been set-aside by the Honâ??ble Supreme Court in the judgment reported in 1998 (1) PLJR 3 and accordingly,

otherwise also no relief can be granted to the petitioners on the basis of the aforesaid Full Bench judgment of this Honâ??ble Court.

9. After considering the submissions advanced on behalf of the parties and after going through the materials on record, this Court is not inclined to

grant any relief to the petitioners on account of the following facts and reasons:

(a) From the perusal of the case record it appears that during the survey settlement initially the name of the original petitioner was recorded with the

remark â??illegal possessionâ?? with respect to the property and order dated 10.01.1981 was passed, wherein the claim of the petitioner that he is in

possession of the property by virtue of the Kurfanama has been mentioned and it has also been mentioned in the same order that there are certain

overwriting in the Kurfanama and thereafter, the said authority recommended the matter to the Settlement Officer, Dumka for eviction of the original

petitioner from the aforesaid property and an ex-parte order dated 08.04.1981 was passed, against which the petitioners had filed their revision being

Miscellaneous Appeal No. 114 of 1981-82 before the Commissioner and the order of eviction was set-aside and the matter was remanded back to the

Settlement Court for disposal in accordance with law. This Court is not inclined to accept the contention of the petitioners that vide order dated

10.01.1981, a finding has been recorded that the original petitioner is in possession of the property on the basis of the Kurfanama since the execution of Kurfanama itself i.e since 1934-35 .

(b) After the order of remand, a fresh order dated 30.05.1989 was passed in which no finding was recorded that the petitioner is in possession of the property since 1934-35. From the perusal of the entire order dated 30.05.1989 this Court does not find any finding in the said order that the original petitioner came into possession of the property since the year 1934-35 on the basis of the said Kurfanama. In fact there is no finding in the said order regarding the point since when the father of the original writ Petitioner was in possession of the property although it mentions about Khurfanama and khurfa receipt and government receipt. In fact the said order only records a finding that the possession of predecessor of the petitioners is very old and they have perfected their title. Against this, appeal was filed being R.M.A. Case No. 84 of 1989- 90, in which vide order dated 24.07.2006 the Commissioner has recorded a specific finding at paragraph no. 2 which reads as follows:

“The respondent cannot acquire title unless it is proved that he was in continuous possession over the land for 12 years prior to coming into force of the Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949. The charge officer in T.L. 27/1981 have not specifically ascertained to as to from which times the respondent of this case was coming into possession of the land.”

(c) This Court finds that there is nothing on record to establish that the original petitioner was in possession of the property for the last 12 years prior to coming into force of Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 and the findings recorded vide impugned order dated 24.07.2006 by the Commissioner is correct and the same cannot be disturbed in writ jurisdiction in absence of any perversity. This Court is of the considered view that such disputed questions of fact cannot be raised and adjudicated in writ jurisdiction.

(d) Moreover, there is a serious doubt/dispute so far as the Kurfanama is concerned particularly in view of the fact that the Kurfanama was said to have been executed by Pato Kaprian and there is a doubt whether she was the wife of the recorded tenant or not. The respondents have claimed that

wife of the recorded tenant was Bindu Devi. There is also a dispute as to when the recorded tenant died, particularly in view of the fact that the specific case of the private respondents is that the recorded tenants has expired in the year, 1945 and 1947 and therefore, there was no question of execution of Kurfanama by widow of the recorded tenants in the year, 1934 and 1935. The private respondents have throughout questioned the legality and validity of the khurfanama and it was their specific case that the same is forged and fabricated.

(e) There are other disputed questions of facts which are involved in this case which may not be discussed because the specific case of the petitioners

is that even if the Kurfanama is taken to be illegal document, the father of the original petitioner had perfected his title by virtue of being in possession

of the property by virtue of this Kurfanama for the last 12 years prior to coming into force of Santhal Pargana Tenancy (Supplementary Provisions)

Act, 1949 i.e. prior to 01.11.1949. The petitioners have failed to establish that the father of the original petitioner was in possession of the property for

the last 12 years prior to coming into force of Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 i.e. prior to 01.11.1949.

(f) As the petitioners have failed to establish that they were in possession of the property for the last 12 years prior to coming into force of the said

Act i.e. prior to 01.11.1949, there is no requirement for this Court to go into the applicability of the ratio of the judgment passed in the case of â??Deo

Narayan Singh & Others Vs. The Commissioner of Bhagalpur Division & Othersâ?? reported in 1985 BBCJ 12 (F.B.) wherein it has been held that a

person cannot be evicted by resorting to provisions of section 20 and 42 of Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 if he has

perfected his title by being in continuous possession of property since more than 12 years prior to 01.11.1949. It would be relevant at this stage to point

out that this judgment has been set-aside by the Honâ??ble Supreme Court in the judgment reported in (1997) 10 SCC 51 wherein it has been

specifically recorded at para 9 as follows:

â??In the result the appeal is allowed. The judgment and order of the High Court are quashed and set aside. Similarly the decision rendered by the

Additional Deputy Commissioner, Dumka dated 30th September 1975 as well as the decision rendered by the Commissioner dated 2nd June 1976 are

also quashed and set aside and the application moved by respondent Nos. 4 to 15 under Section 20 Sub-section (5) read with Section 42 of the Act is

ordered to be dismissed. In the facts and circumstances of the case there will be order as to costs.â??

The said judgment also records as under:

â??We make it clear that in view of the aforesaid decision of ours we have not thought it fit to consider the correctness of the decision of the Full

Bench of the High Court in the case of Bhauri Lal Jain as well as the impugned judgment of the Full Bench in connection with the adverse possession

of the vendee under an invalid transaction of land in area being violated of Section 27(1) of the Regulation or Section 20 (1) of the Act. That question

is, therefore, kept open.â??

10. Considering the aforesaid findings of Honâ??ble Supreme Court, in an appropriate case where this Court finds that any person is in possession of

the property for the last 12 years prior to 01.11.1949, the issue can be considered, but there is no such requirement in the instant case particularly in

view of the fact that the petitioners have not been able to establish that the father of the original petitioner was in possession of the property for the

last more than 12 years prior to 01.11.1949.

11. Accordingly this Court does not find any perversity or illegality in the impugned order dated 24.07.2006 and does not find any merit in the writ

petition, therefore, the writ petition is Â dismissed.Â