

(2011) 08 JH CK 0031
In the Jharkhand High Court
Case No : S.A. No. 35 of 2008

Anil Kujur and Others

APPELLANT

Vs

Cirll @ Mandu Kujur and Others

RESPONDENT

Date of Decision : 10-08-2011

Acts Referred:

Citation : (2012) 1 JCR 351

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Narendra Nath Tiwari

1. This is the plaintiffs "second appeal, who lost suit for prtition in two courts below.
2. The parties are by caste Oraan and are members of Scheduled Tribes. Hindu Law is not applicable to them. There Is no presumption of jointness of the family members.
3. Partition Suit No. 165 of 2002 was filed by the plaintiffs In the court of Subordinate Judge at Ranchi, seeking decree for partition of their half share In the suit. The case of the plaintiffs Is that the plaintiffs and defendants are Joint. The plaintiffs have got half share in the suit property. They requested for partition of their shore, but the defendants refused. Hence the suit.
4. The defendants contested the suit. According to the defendants, the suit lands are not Joint properties. The Revisional Survey Record of Rights recorded exclusive possession of the parties. The parties were all along separate In mess and residence. The persons, who were shown in possession of respective land, were in peaceful cultivating possession thereof openly and adversely and to the notice of all concerned and they also perfected their right even by adverse possession.

5. Issues were framed by learned Trial Court. The parties led their evidences.

6. Learned Trial Court, after discussing and considering the facts and evidences on record, came to the finding that the parties are separate in mess, cultivation and residence. They have been living In their own houses separately as per their possession recorded in the record of rights. He has further held that the possession of the respective parties has been separately recorded in the cadastral survey record of rights (1907-1911). On that basis, he has also held that by remaining In exclusive possession of the plot shown in their respective possession for such a long period, the parties have acquired title by adverse possession over their respective lands.

7. Learned Trial Court decided almost all issues against the plaintiffs and dismissed the suit.

8. The plaintiffs, thereafter, preferred appeal, being Title Appeal No. 36 of 2007, against the said judgment and decree, in the court of Judicial Commissioner, Ranchi. The said appeal was finally heard and decided by Additional Judicial Commissioner-IX, Ranchi.

9. Learned Lower Appellate Court heard the parties and considered the grounds as well as the evidences and materials on record. After thorough discussion and consideration of the same, learned Lower Appellate Court concurred with the findings of the Trial Court and put its seal on the judgment and decree of the learned Trial Court holding that the suit lands were partitioned between the parties long ago and their respective possession was separately recorded in the record of rights and they have separate mess, cultivation and possession for several decades and the parties have even acquired title by adverse possession of their respective land in which they have been coming in peaceful possession to the notice and knowledge of all concerned, Learned Lower Appellate Court upheld the judgment and decree of the learned Trial Court and dismissed the appeal.

10. In this appeal, the judgment and decree of the learned Lower Appellate Court has been assailed on the ground that the findings of the courts below are contrary to law and are perverse. There Is no document of partition by metes and bounds. The courts below have erroneously presumed partition between the parties only on the basis of their separate mess, residence, cultivation and possession recorded In the survey record of rights. The courts below have failed to lake Into consideration that both the parties are descendants of one common ancestor and that they have been cultivating lands separately only for convenience, without any partition by metes and bounds.

11. I have heard learned counsel for the appellant and perused the judgments of the learned courts below, As has been mentioned above, the parties are not Hindus and there Is no application of Hindu Law. There is no legal presumption of jointness In Oraon family, the plaintiffs, in that case, should have specifically pleaded jointness and proved the same. On the contrary, the plaintiffs have themselves stated that the parties are separate in mess and cultivation (even

though for the sake of convenience).

12. It is well settled that separate mess, residence, cultivation and dealings for a long time go to demonstrate partition. In the instant case, the parties have been shown in exclusive possession of their respective lands recorded in the record of rights, published in the year 1907-11 and 1930-35 i.e. for about 100 years. There is no contrary pleading or proof of reunion of the parties at any point of time. In view of the above, the plaintiffs failed to make out/establish the case of jointness.

13. Learned Trial Court as well as learned Lower Appellate Court have considered the facts and evidences in right perspective and have arrived at the findings that there is no jointness among the parties and they are in separate possession of their respective lands for a long time and they have also acquired title by adverse possession over respective plots. In their possession, the concurrent findings recorded by the learned courts below are well considered and based on legal evidences and are binding on this court in second appeal.

14. I find no error in the impugned judgments and decrees of the courts below, giving rise to any substantial question of law.

15. This appeal is, accordingly, dismissed.