
(2025) 07 JH CK 1215

In the Jharkhand High Court

Case No : Second Appeal No. 35 Of 2011 With Cross Objection No. 01 Of 2012

Anirudh Pathak

APPELLANT

Vs

Quraisha Bibi, Wife of Late Akhtar Khan

RESPONDENT

Date of Decision : 09-07-2025

Acts Referred:

Chota Nagpur Tenancy Act, 1908 — Section 64, 67A(a), 67A(b), 84(3), 92, 180(2), 258
Specific Relief Act, 1963 — Section 34

Citation : (2025) 07 JH CK 1215

Hon'ble Judges : Pradeep Kumar Srivastava, J

Bench : Single Bench

Advocate : Rajeev Ranjan Tiwari, Amit Kumar Tiwari, T.N. Jha, T.N. Jha, Rajeev Ranjan Tiwari, Amit Kumar Tiwari

Final Decision : Dismissed

Judgement

Pradeep Kumar Srivastava, J

1. I have already heard the arguments advanced by Mr. Rajeev Ranjan Tiwari, learned counsel for the appellant as well as Mr. T.N. Jha, learned counsel appearing for the respondents.

2. This instant second appeal has been preferred by the appellant being aggrieved and dissatisfied with the judgment and decree dated 17.02.2011 (signed on 07.03.2011) passed by learned Additional District Judge, F.T.C.-I, Garhwa in Title Appeal No.20 of 2008 affirming and upholding the judgment and decree dated 22.09.2008 (signed on 03.10.2008) passed by learned Munsiff, Garhwa in Title Suit No.51 of 2003, whereby and whereunder the suit of the plaintiff has been dismissed.

3. Appellant has raised following substantial questions of law for adjudication in this second appeal :-

(i) Whether since the plaintiff was claiming raiyati rights on the basis of reclamation and conversion into Korkar, the learned Courts below have gravely

erred in deciding issue No.VII against the plaintiff by relying upon the Amendment Act 25 of 1947, although the plaintiff had pleaded case of reclamation during 1945-46?

(ii) Whether the learned Courts below erred in not placing reliance on the possessory title, ought to have taken into consideration, since the appellant is in possession much prior to 1944 and he is recorded raiyat and, therefore, presumption as provided under section 84 sub-section (3) of the Chhotanagpur Tenancy Act was liable to be taken into consideration?

4. On the other hand, the defendants/respondents have also filed cross-objection No.01 of 2012 which has been admitted on following substantial question of law :-

"Whether the ex-landlord manager of the wards and Encumbered Estate who was then managing Nagar Untari estate had settled the suit land to Shekhawat Khan and Shamsheer Khan by granting customary parwana on 11.11.1940, has been wrongly decided on the ground that the suit land is Government land.

5. Factual matrix giving rise to this appeal is that the plaintiff has filed the aforesaid title suit claiming declaration of his right, title, interest and possession over the suit land and defendants have no right, title or possession over any part of the suit land along with cost of the suit. The basis of the claim of plaintiff is that the plaintiff has ancestral raiyati land in Village Bakoiya, P.S. Manjhiaon Plot No.248 inherited by Ram Sahayee Pathak and his three brothers and after partition between the brothers dated 16.02.1972, the land of pertaining to Plot No.248 area 28 decimal in Village Bakoiya, came into share of Ramprit Pathak (father of the plaintiff). It is alleged that father of the plaintiff along with above land of Plot No.248 reclaimed the Plot No.247 and amalgamated the same for cultivating paddy crops. The Circle Officer Manjhiaon fixed the fair rent against the said land and since then from the date of vesting of the intermediary interest into the State of Bihar, the Government realized regular rents from him. The schedule land of 23 decimal of Plot No.247 has been amalgamated with lands of Plot No.248, therefore, Plot No.247 has no separate existence but the name of the plaintiff also appears in the column of illegal possession at the time of revisional survey operation. Defendants have no right, title and interest over the suit land pertaining to Plot No.247 or disturbing the possession of the plaintiff and defendants attempted to trespass the aforesaid land of the plaintiff and extended threatening on 03.08.2003 to dispossess them, hence, this suit. The defendants appeared and filed their written statement besides the legal piece of limitation, waiver, acquiescence and estoppels. The specific claim of defendants is that Ramprit Pathak has never obtained and cultivated or amalgamated the lands of Plot No.247 at any point of time, as alleged land belong to proprietor of Nagar Untari Estate Bhaiya Rudra Pratap Deo, who was the malik of the said village as per khatian entry so without permission of the said malik, no one was empowered to cultivate Gair Mazarua land of the said village. It is further pleaded that the proprietor of Nagar Untari Estate malik of G.M. land of Plot

No.247 under Khata No.92 in the nature of Tanr, area 47 decimal settled through Hukumnama by the Manager of the Wards and Encumbered Estate dated 11.11.1940 in favour of Shekhawat Khan and Shamsheer Khan by customary parwana and put the said raiyats in possession thereof. Thereafter, the settled raiyats ancestor of defendants paid rent to the settler as well as the proprietor of the Nagar Untari Estate and rent receipt was also issued to them. As such, defendants have inherited the said land or in possession of the same and cultivating paddy crops every year. It is further alleged that the plaintiff have not right, title and interest over the suit land only on the basis of revenue receipts as no jamabandi was ever created and fair rent was settled by any competent authority, rather the plaintiff is adamant to dispossess the defendants from the suit land forcibly and without any authority of the law, hence, suit is liable to be dismissed.

6. On the basis of pleadings of the parties, following issues were settled for adjudication by the learned Trial Court:

- (i) Is the suit maintainable as framed?
- (ii) Has the plaintiff valid cause of action for the suit?
- (iii) Is the suit barred by law of limitation, waiver, and acquiescence and estoppel?
- (iv) Is the suit bad by Section 34 S.R. Act?
- (v) Is the suit barred by Section 92 as well as Section 258 C.N.T. Act?
- (vi) Is the suit under valued, if so, whether court fee paid by plaintiff is inadequate?
- (vii) Is the suit land raiyati land of the plaintiff and the defendants have no right, title or interest in the suit land?
- (viii) Is the suit bad for non-joinder of necessary party namely the State of Jharkhand?
- (ix) Whether ex-landlord manager of the wards and encumbered Estate who was then managing Nagar Untari estate had settled the suit land to Shekhawat Khan and Shamsheer Khan by granting customary parwana on 11.11.1940?
- (x) Whether plaintiff is entitled to get relief as prayed for?

7. The learned Trial Court after considering the pleading of the parties as well as oral and documentary evidence adduced in this case and the law applicable in the factual position decided the four issues No.4, 7, 8 and 9 with specific observation that the suit land being Gair Mazarua malik vested in the State of Jharkhand after abolition of zamindari, the opening of jamabandi and issuance of rent receipt in favour of plaintiff is absolutely baseless and beyond the jurisdiction of the Circle Officer. No evidence has been adduced as to how and when the plaintiff's jamabandi was open and from whose order and when the rent was assessed in his favour. Mere issuance of rent receipt, does not confer

any title to the plaintiff in respect of the suit land. Therefore, he is not entitled for the relief as claimed for. Similarly, it was also observed while deciding the issue No.9 that the defendants have also failed to prove their case regarding any settlement in their favour by the ex-landlord although customary parwana was marked as Ext.A and zamindari rent receipts B series. The defendants have also produced Ext.C, the certified copy of khatian of last cadastral survey, mouza Bakoiya No.141 G.M. malik land. The defendants have also filed Exts.D and E respectively showing notification of Revenue Department, Government of Bihar dated 16.06.1966 and letter of Revenue Department dated 01.08.1966 goes to show that power of fixation of rent for the Government land is withdrawn from the Circle Officer and authorized through all S.D.Os. and D.C.L.R. in the District of Chota Nagpur Division to discharge the function of Revenue Officer in the said Act and to empower the said Officer to discharge function of a Deputy Commissioner under Section 67A(a) and 2025:JHHC:18389 S.A. No.35 of 2011 & C.O. No.01 of 2012 Page | 9 (b) of (2) of Section 180 of the said Act within their respective jurisdiction. It was further observed on the basis of aforesaid documentary evidence that since the lands are pertaining to Plot No.247 is Gair Mazarua malik Government land and settled in favour of neither of the party by the competent authority, therefore, the defendants have also no right, title and interest over the suit land and accordingly, dismissed the suit on contest without cost.

8. The plaintiff preferred first appeal No.20 of 2008 before the Court of District Judge which was registered as Title Appeal No.20 of 2008, whereby the Appellate Court also concurred with the findings recorded by learned Trial Court and dismissed the appeal vide judgment dated 17.02.2011, which has been assailed in this second appeal.

9. Learned counsel for the appellant has argued that present appeal has been admitted vide order dated 29.11.2011 on following substantial questions of law:

(i) Whether since the plaintiff was claiming raiyati rights on the basis of reclamation and conversion into Korkar, the learned Courts below have gravely erred in deciding issue No.VII against the plaintiff by relying upon the Amendment Act 25 of 1947, although the plaintiff had pleaded case of reclamation during 1945-46?

(ii) Whether the learned Courts below erred in not placing reliance on the possessory title, ought to have taken into consideration, since the appellant is in possession much prior to 1944 and he is recorded raiyat and, therefore, presumption as provided under section 84 sub-section (3) of the Chhotanagpur Tenancy Act was liable to be taken into consideration?

10. Learned counsel for the appellant has vehemently argued that the learned Trial Court as well as the first Appellate Court has committed grave error of law while deciding issue Nos.7, 8 and 9. There are abundant documentary evidence adduced by the plaintiff showing his continuous possession over the suit

land after reclamation since the year 1945-46 which has been ignored by the learned Trial Court as well as Appellate Court. Similarly, the possession of the plaintiff has been shown in the revisional survey record of rights. Jamabandi has also been opened in his favour and revenue receipt is also being issued in favour of plaintiff and regularly paid by him. The findings recorded by both the Courts below are based on extraneous facts and evidence without proper appreciation of the same relying upon the documentary evidence of the defendants which has no legs to stand, therefore, impugned judgment and decree of dismissal of the suit of the plaintiff by both the Courts below is liable to be set aside along with cross-objection filed by defendants/respondents.

11. On the other hand, pressing his cross-objection, learned counsel for the respondents has submitted that the suit property was settled by Manager of the Wards and Encumbered Estate of the then Nagar Untari Estate Bhaiya Rudra Pratap Deo and the continuous possession of the defendants over the suit land and claim of plaintiff about amalgamation of Plot No.247 into Plot No.248, is baseless and beyond the weight of evidence and also contrary to law. The learned Trial Court as well as first Appellate Court has committed a grave error of law in deciding the issue No.9 against the defendants whereby cloud has been spread on his own title and possession, question of title of the defendants cannot be considered in the suit filed by the plaintiff. It is the suit which might be decreed or dismissed, as such, the findings recorded against the defendants while deciding issue No.9 is absolutely unwarranted under law. Accordingly, subject to the aforesaid plea of the respondents/defendants, this appeal is devoid of merit and fit to be dismissed.

12. I have gone through the judgments passed by learned Trial Court as well as learned first Appellate Court in the light of contentions as pointed out by the parties and the substantial questions of law as framed by this Court.

13. As regards, first substantial question of law, it is admitted fact that except entry in revenue records and issuance of rent receipts as well as illegal possession of the plaintiff shown in the revisional survey record of rights which is not yet final. There is nothing else to substantiate the raiyati right acquired by the plaintiff over the suit land pertaining to Plot No.247. The plaintiff has miserably failed to prove as to under what authority and when jamabandi was opened in his favour in respect of suit land. It is also not brought on record as to when the suit land was settled to the plaintiff by the Government. There is also concurrent finding that as per claim of plaintiff his father has reclaimed the Plot No.247 since the year 1945-46 but no cheat of paper has been produced showing that the said land in respect of suit land any permission was accorded to the plaintiff's father since the year 1945-46. It also appears that for the first time before the learned Appellate Court, the appellant/plaintiff has taken the plea that his father converted the land into Korkar but there is no such pleading in the plaint nor any witnesses examined by the plaintiff except the plaintiff himself have been able to prove their possession over the suit land in the year 1945-46.

No evidence of assessment of rent about the suit land by the Deputy Commissioner of the District under the provisions of prevailing C.N.T. Act, 1908 has been brought on record. The learned Appellate Court has also rightly held that on 05.05.1948 Section 64 of the C.N.T. Act was amended and substituted whereby prior permission of Deputy Commissioner was required to exercise right to convert land into Korkar. The only exception was that if the cultivator was entitled on the date of the commencement of the C.N.T. Act (Amendment 1947), by virtue any entry in the record of rights or any local custom or uses to convert such land into Korkar without consent of the landlord. The plaintiff has completely failed to prove any consent/permission acquired by the landlord for cultivation of the suit land. Ext.3 Khatian filed by the plaintiff also shows his illegal possession during revisional survey record of rights which has not yet been final. It is settled law that mere issuance of rent receipt, however, illegal exercise has been made by the appellant in this case to obtain the rent receipt cannot be a document of title. Therefore, the first substantial question of law appears to have been rightly decided by the first Appellate Court on the basis of evidence adduced by the plaintiff/appellant which requires no interference.

14. So far second substantial question of law concerning possessory title of the appellant is concerned, is also not tenable in view of the fact that the revisional survey record of rights has not yet become final and there is no presumption of such possession to be culminated into title, therefore, on that basis alone the fundamental relief of the appellant regarding declaration of his title has rightly been denied by the learned Trial Court as well as learned Appellate Court.

15. So far points raised on behalf of respondents through his cross-objection that the land was settled by Manager of the Wards and Encumbered Estate of the then Nagar Untari Estate Bhaiya Rudra Pratap Deo in favour of father and grandfather of the defendants respectively is concerned, it is found that defendants had adduced, settlement customary parwana (Ext.A), unregistered customary parwana (Ext.A/1) and rent receipts issued by the ex-landlords (Ext.B series) and other exhibits which are related to negating the claim of the plaintiff/appellant. Except the aforesaid documents, no other evidence has been led by the respondents/defendants showing their recognition of possession after vesting of zamindari in the State. No demand has been opened nor any rent receipt has been issued in favour of defendants. Therefore, the learned Trial Court as well as the learned Appellate Court have rightly held that the suit land belongs neither to plaintiff nor to defendants rather it is Government land and no party can claim right, title and interest in the suit land. The simple question raised by cross-objector/respondents is that their title could not have been decided by the learned Trial Court as well as learned Appellate Court while deciding issue No.9. There is no legal substance in the above argument in view of the fact that a clear-cut plea was taken by the respondents/defendants showing acquisition of title and possession over the suit land and in order to decide the claim of the plaintiff. It was also necessary to decide the claim of the defendants, therefore, the points taken in cross-objection by the respondents/defendants are also not tenable.

16. In view of the aforesaid discussions and reasons, I do not find any valid substantial question of law as pointed out by the parties to interfere with the impugned judgment and decree passed by learned Court below dismissing the suit of the plaintiff. Therefore, this second appeal and cross-objection devoid of merit which are hereby dismissed.

17. Pending I.As., if any, stand disposed of.

18. Let a copy of this judgment along with Trial Court record be sent back to the concerned Trial Court for information and needful.