

(2019) 12 JH CK 0251
In the Jharkhand High Court
Case No : Second Appeal No. 636 Of 2016

Arvind Kabi And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 17-12-2019

Acts Referred:

Specific Relief Act, 1963 — Section 34
Code Of Civil Procedure, 1908 — Section 80, 80(1)
Code Of Civil Procedure, 1908 — Order 41 Rule 31

Citation : (2019) 12 JH CK 0251

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Bhaiya Vishwajeet Kumar, Pooja Kumari

Final Decision : Dismissed

Judgement

Heard Mr. Bhaiya Vishwajeet Kumar, learned counsel for the appellants and Ms. Pooja Kumari, learned counsel for the respondent-State.

This Second Appeal has been filed against the judgment dated 29.09.2016 and Decree dated 03.10.2016 passed and signed by the learned District &

Additional Session Judge-II in Title Appeal No.16 of 2010 whereby, he has been pleased to dismiss the appeal and uphold the judgment dated

27.07.2010 and Decree signed on 09.08.2010 passed and signed by the learned Sub-Judge-I in Title Suit No.2 of 2003.

The appellants/plaintiffs instituted the suit for declaration of right, title and interest and also for confirmation of possession and for injunction restraining

the defendant for any overt act or forcible dispossession of the appellants/plaintiffs from the suit land during the pendency of the suit and also decree

for recovery of Khas possession in case defendants forcibly ousted.

The case of the appellants/plaintiffs was that the appellants/plaintiffs are the permanent resident of Seraikella and the appellants/plaintiffs

ancestor had their property under Khewat No.2 recorded under Khata No.28, Plot No.138 area 2 Bighas 11 Kathas and 10 Dhurs recorded the

survey and settlement operation of 1925-27 known as Abdul settlement. The Maliki Khatian was prepared in the name of Ghasiram Kabi & Ors.

Ghasiram Kabi, Prafull Kr. Kabi sons of Late Gokul Chandra Kabi and Ramesh Chandra Kabi S/o Late Rudra Prasana Kabi were the Joint

Khatadars of the said land. The appellants/plaintiffs after death of their ancestors have jointly inherited and succeeded to the said landed property. The

property has devolved on them in equal share. The property was situated in Mouza Sundarpur and Sindurpur, Thana No.294, Halka No.8 of Seraikella

Anchal. Previously the land was parti, anabandi land and later on the appellants/plaintiffs ancestors gave ridges and prepared some khata and

started growing gora crops in their raiyati right. The appellants/plaintiffs have been coming in an interrupted continuous possession of the land since

dying of their forefathers. During the last Survey settlement operation suit land wrongly recorded under R.S. Khata No.62, Plot No.60, area 1.05

acres purani kabil/abad. The said land is situated adjoining N.R. Government High School Seraikella. The R.S. Khata No.62 was prepared in the name

of State of Bihar wrongly and appellants/plaintiffs could not know the incorrect entry. There is no earthly reason not there is any justification for such

recording. The said wrong record of right never infringe the right and title of the appellants/plaintiffs. The same can never create a title in favour of

the State of Bihar. The State of Bihar never acquired any right and title nor he had or has any possession filed B.P.L.E. Case No.08/1985-86. The

Karamchari of Halka No.8 reported to Anchal Adhikari and admittedly the appellants/plaintiffs were found to plough the said land on 16.02.1986. The

report also suggested that the said land of Anabad malik Khata no.28, Plot No.138, Area 2 bighas, 11 Kathas and 10 dhurs gora under Khewat No. 2

of Khewatdar Ghasiram Kabi and others. The Anchal Adhikari without any rhyme or reason ignoring the actual physical possession of the plaintiffs

passed an order arbitrarily and ordered to issue eviction order. The said order was never complied and as usual the appellants/plaintiffs

possession over the land.

The further case of the appellants/plaintiffs was that neither the wrong settlement entry nor the B.P.L.E. order has ever effected the right, title of appellants/plaintiffs at any point of time. Since in no occasion anybody ever disturbed the actual physical possession and wrong record cannot give any scope for accruing title, there was no necessity of filing any suit or case. In the month of March, 2002 the Karamchari of Anchal Office, Seraikella all of sudden gave out a positive threat in presence of some local people that the State of Jharkhand shall not allow the appellants/plaintiffs to continue their possession and the State will oust the appellants/plaintiffs from the suit land. On such threat the plaintiffs's right and title was shaken and a cloud has cast over their actual right and title. The appellants/plaintiffs through their counsel caused to send a legal notice u/s 80 C.P.C. registered with A/D sent through post and the same has been served on the D.C. Seraikella as representative of the State of Jharkhand. The cause of action for this suit arose in the month of March, 2002 at mouza Sundapur while threat was given by the Karamchari and on 04.06.2002 while notice U/S 80 C.P.C. was sent and the same was received, but no reply was given at Seraikella within jurisdiction of this Court. There is not mentioned the valuation of the suit land in the plaint but seristedar reported the value of the suit is Rs.1,57,500/- and court fees Rs.5480/-.

The Defendant No.1 contested the suit and filed his written statement. The defendant Nos. 2 to 4 were made party as intervener during the pendency of the suit and they also filed their written statement. The contention of defendant No. 1 inter alia is that the suit is not maintainable in its present form and appellants/plaintiffs have got no cause of action for the suit and suit is also barred by limitation, waiver, estoppel and acquiescence and by the provisions of Specific Relief Act. The suit is grossly undervalued and suffers from non-joinder and mis-joinder of necessary parties. The suit is barred under the provision of Section 34 of the Special Relief Act, as much as no relief has been prayed against the final order passed in B.P.L.E. Case.

Further pleaded that the suit is not maintainable for want of service of notice U/S 80(1) C.P.C. upon the defendant. The further contention of the defendant was that neither the ancestors of the appellants/plaintiffs nor the plaintiffs had or has inherited or succeeded the suit property at any point of time neither suit land was Parti and Anabad land and ancestors of plaintiffs had never exercised any act of possession over the suit land in any

manner at any point of time and neither the ancestors of plaintiffs nor the plaintiffs ever possessed any portion of the suit land. The suit land was correctly recorded in the name of State of Bihar in the last survey operation as the State had or has perfect right, title, interest and possession over the suit land and in the year 1986 the appellants/plaintiffs having illegally encroached upon the suit land, the Anchal Adhikari, Seraikella rightly started B.P.L.E. Case No. 8/85-86 against the appellants/plaintiffs and after service of notice upon them and after hearing, rightly passed final order against the plaintiffs for removal of the encroachment before filing of this suit. The ancestors of the appellants/plaintiffs as well as the respondents/defendants were very much known about the last survey settlement with regard to the suit property and in spite of that they never ventured to file any objection against the survey entry. The B.P.L.E. Case No. 8/85-86 with respect to the suit land was rightly instituted against the plaintiffs and the final order has been passed by the C.O. Seraikella long before the filing of the suit and the said order is binding upon the plaintiffs as there was no appeal or revision against them. Neither an appeal nor revision was filed against the same nor is any relief against the said order sought in the suit. The appellants/plaintiffs have never possessed the suit land in any manner at any point of time. The suit land has rightly been recorded in the name of State of Bihar having its perfect right, title and interest over the suit land. No threat was ever advanced by any staff of Seraikella Anchal to anybody in the month of 2002 or any other date as falsely alleged, and no legal notice U/S 80 C.P.C. was ever served upon the defendant.

The further case of the defendant was that no cause of action for this suit arose on and from 04.06.2002 or on and from any other date and no notice U/S 80 C.P.C. was ever served or ever received by the defendant. The value of the suit land valued in the plaint was not at all correct and denied by the defendants. Further pleaded that the present market value of this suit property will be more than 3 lacs unless and until the appellants/plaintiffs valued the suit on the said amount and paid advelorem court fees on the said value the present suit cannot proceed. Thus, the defendant prayed to dismiss this suit with cost.

The defendant Nos. 2 to 4 appeared as interveners and filed written statement stating therein interalia that the present suit is not maintainable in its

present form or for the reliefs sought. The plaint has also not been properly verified as required under the C.P.C. The plaintiffs cannot have any valid

cause of action to bring the suit. The suit of the plaintiff's is vexatious one in as much as the appellants/plaintiffs have not come before this court

with clean hands and they have brought this suit by suppressing the material facts. The suit is bad for non-joinder of the parties. The surviving female

heirs of Ghasiram Kabi, Gokul Chandra Kabi and Ramesh Chandra Kabi have not been added as parties in that suit. Further pleaded that the suit has

been grossly undervalued and court fees is insufficient and after up gradation of Seraikella as a district head quarter the landed property in that

locality is commonly sold at the rate of Rs.70,000/-per katha unless and until the suit land is properly valued and adequate court fees is paid by the

plaintiffs the suit cannot proceed.

The contention of the defendants was that the old plot No. 138 was having an area of 2 bighas, 11 kathas and 10 dhurs, whereas R. S. Plot No. 6 is

having an area of 1.05 acres which is much less than the area mentioned in the old plot. It is nowhere mentioned in the plaint as to what happened to

the rest area of old plot No. 138. The suit is fit to be dismissed on this score alone. It was admitted that the appellants/plaintiffs are permanent resident

of Seraikella. It was further contended by the defendants that the statement mentioned in Para-2 of the plaint is misrepresentation of fact. It was

submitted by Ghasiram Kabi, Gokul Chandra Kabi and Ramesh Chandra Kabi were Brahmottar tenure holders having right to settle land with raiyats

and to realize rent. Their tenure right vested under the provision of Bihar Land Reforms Act, 1956. This fact has been suppressed by the plaintiffs and

no point of time the plaintiffs inherited the suit land nor exercised any act of possession over the suit land. It was further stated by these defendants

that outgoing tenure holders of village Sindurpur viz Ghasiram Kabi, Gokul Chandra Kabi and Ramesh Chandra Kabi settled C. S. Plot No. 138 area

of 2 bighas, 11 kathas and 10 dhurs with Ghasi Sahu, grandfather of these defendants on raiyati right by a settlement patta dated 25.08.1941 and

accepting salami of Rs.40/-. The outgoing tenure holders used to realize regular rent from Ghasi Sahu and after vesting of the intermediary interest in

the state of Bihar under the provision of B.L.R.E. Act, 1956 the said Ghasi Sahu used to pay rent of the suit land to the State of Bihar. It was further

submitted that out of the aforesaid land in C.S. Plot No. 138, the Government of Bihar during the year 1964 acquired 0.14 Dec. of land for extension

of kandra-Seraikella road and notices of acquisition were served upon Ghasi Sahu. However, at the time of payment of compensation Ghasi Sahu had

died and his only son Ban Bihari Sahu received the compensation. After acquisition of land (0.14 Dec.) Ban Bihari Sahu, the father of these

defendants remained in physical possession of 1.05 acres in C. S. Plot No. 138 of Mouza-Sindurpur, where he grow various crops annually.

It was further contended that the recording of the suit land in the name of State of Bihar has got no jurisdiction nor the state ever acquired any right,

title or exercised any act of possession over the suit land. It is wrong to say by the plaintiffs that his right has been infringed rather the right, title and

interest of these defendants has been infringed. It was further contended that the right, title and interest of the ancestors of the appellants/plaintiffs

have already vested in the year 1956 before vesting of their intermediary interest a raiyati right was already created in favour of the grandfather of the

defendants in respect of the suit land. It was further submitted that till publication of the draft record of right of the last survey settlement the suit land

was recorded in the name of the father of these defendants but surprisingly in the finally published record of right, the same was wrongly and

erroneously recorded in the name of State of Bihar. However, the right of the defendants were all along in peaceful possession since the year 1941.

The allegation mentioned in Para-9 of the plaint that the State of Bihar vide B.P.L.E. Case No. 08/1985-86 and plaintiffs were found to plough the suit

land on 16.02.1986 is nothing, but an evil design which was done in collusion with the halka Karmchari and at the instance of the appellants/plaintiffs to

enable them to lay a false claim over the suit land. The proceeding in no way affected the right, title and interest of these defendants nor the plaintiffs

can acquire any right over the suit land. Since after the settlement of the suit land with the grandfather of these defendants neither the plaintiffs nor

their predecessors in interest exercised any act of possession. It is also submitted in this context that after the taking settlement Ghasiram Sahu

possessed the suit land and after death, his son Ban Bihari Sahu was in physical possession and on his death these defendants are in peaceful

possession of the suit land. The appellants/plaintiffs have never acquired any right, title and interest over the suit land. It was further pleaded that the

cause of action is imaginary and defendants have no knowledge about the notice U/S 80 C.P.C. on behalf of the appellants/plaintiffs. It was further

mentioned that in the year 1986 the local revenue staff had attempted to disturb the possession of the defendants's father on the suit land and,

therefore, a notice U/S 80 C.P.C. on behalf of Ban Bihari Sahu was served upon the D.C., Singhbhum and Anchal Adhikari Seraikella. The then

Anchal Adhikari made enquiry and finding the genuine documents and physical possession of Ban Bihari Sahu, he dropped the matter. So, no cause of

action arose in the month of March, 2002 and at any point of time for the present suit. Thus, these defendants prayed to dismiss the suit of the

appellants plaintiffs with cost.

On the basis of the pleadings of the parties, the trial Court entered into the lis and framed nine issues to decide the suit, the trial court while considering

the Ext.2 series which is the rent receipt came to the finding that the Ext.2 series has been issued without any authority after vesting of the estate in

the State of Bihar the proprietor become the State and the Raja had no right to receive the rent then whom the ancestor of the appellants/plaintiffs

paid and if the rent paid to the ex-landlord that was illegal and rent receipts Ext.2 series is illegal, forged and fabricated. After vesting State of Bihar

was entitled to receive the rent. While deciding the issue No.6, the trial Court came to the finding that the R.S survey record prepared in the year 1961

which was final at the time of the recording of the survey authority found that the land vacant Anabad and the land vested in State of Bihar after

notification under Bihar Land Reforms Act, 1950 and the ancestors of the appellants/plaintiffs had not initiated to claim the suit land in their raiyati

right. They did not obtain Form-M. They did not file return for compensation in Form-K. They did not file application before Deputy Commissioner for

correction of records vested in the State of Bihar and at the time of survey, before the survey authority also, they have not filed any objection. The

survey entry is final. The trial court while deciding all the issues has minutely discussed the evidences and the exhibits came to that finding and

dismissed the suit on contest.

Aggrieved with this, the appellants/plaintiffs filed the Title Appeal No.16 of 2010 which was decided vide judgment dated 29.09.2016 by the learned

District Judge-II, Serikella, Kharsawan, the learned Appellate Court has also

discussed the exhibits and the evidences adduced by the parties, P.W-3

is the appellants/plaintiffs himself he has stated that his ancestor was Khewatdar and the suit land was recorded in the Maliki Khatian in the name of

Ghasiram Kabi and at the time of Seraikella Ruling Chief they also paid rent. He stated that earlier the disputed land was parti but their ancestor re-

claimed those lands and in the survey there was an erroneous entry. He admitted that BPLE Case No.8/1985-86 instituted and in that case

Karamchari reported that appellants/plaintiffs ancestor were in cultivable possession and order of eviction was wrong. In para-13 he has admitted that

Ghasiram Kabi was not Jamindar rather he was Khewatdar. He admitted that after vesting of estate of Seraikella all lands of Ruling Chief vested in

the Government. He stated that since the alleged suit land was Brahamuttar land therefore, it was not vested in the Government. However, it was not

pleaded in the plaint that the land in question was Brahamuttar land. He admitted that in the settlement there is Kharia purcha and he has not got any

Kharia purcha in his name. He stated that he had no knowledge about wrong entry in the name of Bihar Government this denial is evasive and

deemed to be admission. He admitted in the year 1986 when there was a BPLE case he comes to know that wrong entry in the name of Bihar Sarkar

was made. Discussing this evidences, the learned Appellate Court also came to the finding that appellant/plaintiffs failed to support the case regarding

his title over the suit land.

While deciding the issue No.2, the Appellate Court has come to the findings that from the perusal of the plaint, it appears that the appellants/plaintiffs

admitted that in the year 1961 the suit land was recorded in the name of Bihar Sarkar. In his evidence the appellant/plaintiffs evasively denied that he

had no knowledge about the entry in the Khatian. There is clear cut admission in the plaint that in the BPLE Case No.08/1985-86, there was an order

for removal of encroachment and the appellants/plaintiffs in his evidence also admitted that in the year 1985-86 in BPLE Case, he got information that

the land is recorded in the name of Bihar Sarkar and still within 12 years he failed to challenge entry in the Khatian of Revisional Survey. Thus, the

suit is clearly barred by law of limitation. Further, since the ancestor of the appellants/plaintiffs namely, Ghasiram Kabi had knowledge of the removal

of the encroachment order passed against him they never challenged the order

before any superior authority and the appellants/plaintiffs being their legal representative they must be bound by the representation made by their ancestors.

The appellate Court after discussing the evidences and the exhibits of the P.Ws also dismissed the appeal vide judgment dated 29.09.2016. Aggrieved with this, the appellants/plaintiffs have preferred this Second Appeal.

Mr. Bhaiya Vishwajeet, learned counsel for the appellants submits that the appellants/plaintiffs is in possession of the land and the appellants/plaintiffs have been able to prove his case before the learned court below about the right, title interest by way of leading evidence and by way of filing documents. He further submits that there is substantial question of law involved in this Second Appeal and is fit to be admitted.

Per contra, learned counsel appearing for the respondent-State by way of referring several paragraphs of the judgment of the learned Trial Court as well as the Appellate Court submits that there is sufficient compliance of Order-41 Rule 31 of the code of civil procedure and there is no apparent error on the record and there is no substantial question of law involved in this Second Appeal.

Having heard the learned counsel for the parties, this Court finds that appellants/plaintiffs have admitted that in the year 1961, the suit land was record

in the name of Bihar Sarkar, there was an order of removal of encroachment and the appellants/plaintiffs in his evidence and also admitted about the

BPLE Case. He has admitted by way of that proceedings he came to the know about that the land in question was recorded in the name of Bihar

Sarkar and he has instituted the suit after a substantial time spent and not within the 12 years. It also transpires that the suit is also barred by

provisions of Section 34 of the Specific Relief Act as no relief has been prayed against the final order passed in BPLE case.

This Court is not inclined to further discussed the evidences adduced by the parties as there is no substantial question of law involved in this appeal,

accordingly, this Second Appeal stands dismissed