
(2017) 03 JH CK 0059
In the Jharkhand High Court
Case No : 4378 of 2005

Babloo Bankira & Ors

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 16-03-2017

Acts Referred:

[Santhal Pargana Tenancy Act, 1949](#), Section 20, Section 42

Citation : (2017) 03 JH CK 0059

Hon'ble Judges : Aparesh Kumar Singh

Bench : SINGLE BENCH

Advocate : Ashok Kr. Pandey, Dharmendra Kumar Malityar, Rohit, Chandra Prabha

Judgement

1. Heard learned counsel for the petitioners and the Respondent- State.
2. Respondent No.5 has not entered appearance despite repeated steps for service of notice and also paper publication. It is on the application of the Respondent no.5 being R.E.R Case No.21/1980-81 that the Sub Divisional Officer, Godda, Respondent no.4 directed eviction of the petitioner under Section 42 of the Santhal Pargana Tenancy Act, 1949 by the impugned order dated 21.5.1984 (Annexure-3) from the piece of land comprising Plot no. 768 and 769 at Mouza Parsha, Thana Mahagama, District Godda measuring 19 dhoors and 2 Kathas 5 dhoors respectively. In appeal being R.M.A. Case No. 20/1984-85 preferred by the aggrieved petitioners, the order dated 21.5.1984 passed by the Respondent no.4 was affirmed

by the Respondent no.3, Deputy Commissioner, Godda vide order dated 22.12.1986 (Annexure-5). The Revisional Authority, Commissioner, Santhal Pargana Division at Dumka, Respondent no.2 also did not find any infirmity in the order of eviction and the affirmed the same in R.M.R. No. 411/1986-87 by the impugned order dated 23.3.2001(Annexure-6).

3. Learned counsel for the petitioners in support of the challenge to the impugned decisions has sought to convey that the original recorded tenant, Karpuri Ram, who died leaving behind his widow and son namely Mahendra Singh, Husband of Respondent no.5 had relinquished his claim over the property in question in the year 1932 and handed over the possession to the predecessor of the petitioner namely Mahboob Mandal for construction of the house. Petitioners had remained in continuous possession thereupon since 1932 and have also constructed a house. Petitioners also contended in their show cause before the Respondent no.4 in the Ejectment proceedings that in the recent survey operation their names were recorded in respect of the land in question. They have relied upon the report of the Anchal Amin dated 5.9.1988(Annexure-4) to support their claim of possession over the plot in question since long. Petitioners contended that they have lands contiguous to the land in question which has also been amalgamated. Their predecessor, Mahboob Mandal had constructed the house in 1932 and they are in continuous possession thereupon. They have taken a plea of adverse possession having continued in possession for 12 years before coming into force of the S.P.T. Act, 1949.

4. Respondent Authorities have however come to consistent findings that no documents signed by the recorded tenant or Kurfanama were evidenced to support the existence of bonafide transaction of transfer of property by the said Karpuri Ram in favour

of the ancestor of the petitioners. Though the petitioners contended that the land has been mutated in their name but no such document was either filed nor the report of the Anchal Amin referred to the order of mutation passed in favour of the petitioners or their ancestors. The Appellate Authority, Deputy Commissioner, Godda also held that the Appellant had no documents to show and prove their alleged occupation since 1932 and that the recorded tenant had allowed them to take possession of the aforesaid land. Even before the Revisional Authority, petitioners failed to produce any single chit of paper which could substantiate their claim of possession over the land in question since 1932.

5. By way of supplementary affidavit filed in the present case on 10.3.2017 petitioners have enclosed the mutation detail (Banda Parcha) in respect of plot no. 1106/769 of Khata no. 27 and 8 under Mouja Parsha, Thana Mahagama as proof of mutation. The said document however does not show any reference of creation of jamabandi in favour of the petitioners or their ancestor. No other documents of settlement or conveyance of land in favour of the petitioner or their ancestor has either been brought on record in the present writ petition to substantiate their claim.

6. Respondents in their supplementary counter affidavit have also supported the impugned orders as per the statements made at para 10 thereof. According to them the land in question are purely jamabandi land and fall within the purview of Section 20 and 42 of the Santhal Pargana Tenancy (Supplementary Provision) Act, 1949. They are non-transferable in nature. The land in question stood recorded in the name of Karpuri Ram in the Gentzer's Settlement. Petitioners were found to be encroacher of the aforesaid land. In the proceedings initiated by the descendants of the recorded tenant, Karpuri Ram, after due opportunity to the petitioners, the impugned

decision has been taken. They also contended that no alleged kurfanama was filed in the Courts below. Land were also not mutated in the name of the petitioner, if at all they possessed it before 1949. A bunch of rent receipts with regard to the disputed land was filed by the Respondent no.5 in the Court below in support of their claim as legal heirs of the recorded tenant. Since the claim of the petitioners was found to be in teeth of the provisions of the Act of 1949, the Respondent Authorities have directed their ejectment.

7. I have considered the entire material facts noted herein above and the submission of the parties. It is apparent from the record and on perusal of the impugned orders that though petitioners claimed continuous possession over the piece of land in question since 1932 on the basis of relinquishment by the recorded tenant, Karpuri Ram, but no document or Kurfanama showing such conveyance or settlement of land in their favour either prior to 1949 or thereafter has been brought on record to substantiate their claim. Even the claim of possession has not been substantiated by any opening of jamabandi in their favour. This findings have also been consistently recorded by the inferior Courts in the impugned orders.

8. On consideration of totality of facts and circumstances, petitioners have failed to make out any case for interference in the impugned orders, which do not appear to suffer from illegality or factual infirmity. The writ petition being devoid of merit is accordingly dismissed. Interim order dated 3.1.2006 stands vacated.