

(2023) 01 JH CK 0022
In the Jharkhand High Court
Case No : Second Appeal No. 172 Of 2009

Bhavani Nayek And Others

APPELLANT

Vs

Makru Nayek And Others

RESPONDENT

Date of Decision : 16-01-2023

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 6
Chota Nagpur Tenancy Act, 1908 — Section 82(2)(ii)
Code Of Criminal Procedure, 1973 — Section 145
Evidence Act, 1872 — Section 91, 101, 102

Citation : (2023) 01 JH CK 0022

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Atanu Banerjee, Ajit Kumar

Final Decision : Dismissed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard1. Mr. Atanu Banerjee, learned counsel for the appellants and Mr. Ajit Kumar, learned counsel for respondent nos. 1 and 2, who has appeared pursuant to the notice issued by this Court vide order dated 12.07.2017.

2. The present second appeal has been filed being aggrieved and dissatisfied with the judgment and decree dated 31.03.2009 (decree signed on 16.04.2009) passed by the learned Additional District Judge, Ghatshila in Title Appeal No.35/1994, whereby, the judgment and decree dated 30.06.1994 (decree signed on 07.07.1994) passed in Title Suit No.46/1991 by the learned Subordinate Judge-I at Ghatshila has been affirmed by the learned appellate court.

3. The appellant/plaintiff instituted the suit being Title Suit No.46/1991 for declaration of title and recovery of possession in respect of 7.41 acres of land comprised in plot nos.1751, 1752 and 1708 appertaining to Khata No.51 of

village Badia, P.S. Musabani, District- East Singhbhum, described in the schedule of the plaint. The said suit was dismissed vide judgment dated 30.06.1994 by the learned Subordinate Judge-I, Ghatshila. Being aggrieved with that judgment, the appellant herein preferred Title Appeal No.35/1994 which was decided against the appellant vide judgment dated 31.03.2009 (decree signed on 16.04.2009).

4. The case of the plaintiff was that the suit land stands recorded under Khata no.51 of village Badia in the last survey records of 1964 in the name of Indra Narayan Bhuiyan who was the father of the plaintiff. It was said that during the survey of 1937, the aforesaid land was recorded under Khata no.376 and Sheo Charan Nayak being Paik Ghatwal of Badia Ghat was in possession thereof and thereafter Indra Narayan Bhuiyan, father of the plaintiff was appointed as Paik Ghatwal by order of the Deputy Commissioner dated 10.05.1953 in Ghatwali Case No.16 of 1953 and consequent thereof enjoyed the possession of the Ghatwali land on payment of usual panchak and cess. It was further said that within the enforcement of Bihar Reforms Act, 1950, all tenure holder interests including the Ghatwali interest vested in the State Government but the suit land being in khas possession of the father of the plaintiff as Ghatwal became his raiyati land with occupancy right by virtue of Section 6 of the Bihar Land Reforms Act, 1950. During last survey of 1964, the suit land accordingly was recorded in the name of the father of the plaintiff and after his death, the plaintiff came and continued in possession thereof on payment of rent fixed in respect to the suit land under Section 82(2)(ii) of the Chhota Nagpur Tenancy Act. The defendant being instigated by designing persons put a false claim over the suit land and got a proceeding under Section 145 Cr.P.C. initiated in respect of the same which was numbered as Misc. Case No.88 of 1984. The aforesaid proceeding under Section 145 Cr.P.C. in between both the parties in respect to the suit land was decided against the plaintiff and a revision bearing no. Cr. Rev.No.27-C of 1989 preferred before the District and Sessions Judge, East Singhbhum, was also dismissed and suit casted a cloud upon the title of the plaintiff and hence the suit for the reliefs stated above was filed by the plaintiff.

5. The defendant had contested the suit by filing written statement contending inter alia that the suit as framed is not maintainable. The plaintiff has no cause of action for the suit and the suit is barred under the provisions of the Specific Relief Act, Limitation Act and the suit is also barred by the principles of estoppel, waiver and acquiescence. It was also said that the suit is also bad for non-joinder of necessary parties. The further case of the defendant was that Niranjana Bhuiyan was Paik Ghatwal of village Badia and as such during survey of 1937, 8.38 acres of land was recorded under Khata no.376 in his name. It was further said that after the death of Niranjana Bhuiyan, his son Sheo Charan Bhuiyan came in possession thereto and continued in possession thereto till his death in the year 1968 and after his death the same land has been coming in her and her sons' possession being his widow and legal heirs. It was also said that the plaintiff's father fraudulently got himself appointed as Paik Ghatwal of village Badia in the

year 1953 and on that basis further managed to get the suit land entered in his name in the survey records of right in the year 1964. It was also said that in fact the father of the plaintiff or the plaintiff never came in possession of the suit land nor he was Ghatwal of Badia Ghat at any point of time. It was further said that in the year 1981, the plaintiff wanted to disturb the peaceful possession of the defendant over 1.10 acres land comprised in Plot no.1750 appertaining to Khata no.51 as a result of which a proceeding was initiated under Section 145 Cr.P.C. which was numbered as Misc. Case No.1111/81. The said proceeding under Section 145 Cr.P.C. was passed in favour of the defendant and such order has not been challenged before any competent court. It was also said that again in the year 1984, a proceeding under Section 145 Cr.P.C. was started in respect to the suit land between the defendant and the plaintiff which was numbered as Misc. Case No.88/84. This proceeding was also decided in favour of the defendant and Rev. Case No. 27-C of 1989 was preferred against the final order by the plaintiff before the court of the District and Sessions Judge, East Singhbhum, which was also dismissed. It was further said that the suit land has been in possession of the defendant after the death of her husband Sheo Charan Nayak and before him, the same was in possession of his father Indra Narayan Nayak. It was denied that the father of the plaintiff was ever appointed Ghatwal of village Badia or the suit land was ever in his possession or after his death in possession of the plaintiff.

6. Mr. Atanu Banerjee, learned counsel for the appellants submits that there are substantial question of law with regard to Ext.1, which is the certified copy of Khatian, which has not been taken in due consideration and that is in violation of Section 91 of the Evidence Act. On these grounds, he submits that this second appeal is fit to be admitted on substantial question of law. He further submits that the conclusion is not well founded and both the learned courts observed that because of possession, it is not proved and, therefore, Ext.-1 is wrong.

7. Mr. Ajit Kumar, learned counsel for respondent nos. 1 and 2 submits that the said Ext.1 has already been considered by the learned trial court as well as the appellate court and there is no substantial question of law and there is concurrent findings of the both the learned courts and there is no law point involved and the High Court may not interfere at the second appeal stage.

8. In view of the above submissions of the learned counsel appearing for the parties, the Court has gone through the judgment passed by the learned trial court and finds that the issue has been framed by the learned trial court. Issue no. (iii) was framed as to whether the plaintiff has title to the suit land and in answer of the said issue, the learned trial court has considered Ext.1 at paragraph no.9 of the said judgment. The learned trial court has come to the conclusion that the entry made in the record of rights is not a document of title because it is the settled principle of law that it neither creates nor extinguished any title in respect to any land and thereafter discussing the evidences on the record, the suit was dismissed. Pursuant to that the appellant/plaintiff has

preferred Title Appeal No.35/1994 and the appellate court has also framed the point and thereafter affirmed the judgment of the learned trial court. The learned appellate court has also considered Ext.1 at paragraph 6 of the judgment. Section 91 of the Evidence Act will come into play if the suit is not considered by the learned trial court as well as the appellate court. The onus lies on the plaintiff to prove the case in light of Section 101 of the Evidence Act. Recently the Hon'ble Supreme Court in *Smriti Debbrama (Dead) through legal representative v. Prabha Ranjan Debbrama and others*; [2022 LiveLaw (SC) 19] held as under:

"This is mandated in terms of Section 101 of the Evidence Act, which states that burden on proving the fact rests with party who substantially asserts in the affirmative and not on the party which is denying it. This rule may not be universal and has exceptions, but in the factual background of the present case, the general principle is applicable. In terms of Section 102 of the Evidence Act, if both parties fail to adduce evidence, the suit must fail. Onus of proof, no doubt shifts and the shifting is a continuous process in the evaluation of evidence, but this happens when in a suit for title and possession, the plaintiff has been able to create a high degree of probability to shift the onus on the defendant. In the absence of such evidence, the burden of proof lies on the plaintiff and can be discharged only when he is able to prove title. The weakness of the defence cannot be a justification to decree the suit. The plaintiff could have succeeded in respect of the Schedule 'A' property if she had discharged the burden to prove the title to the Schedule 'A' property which squarely falls on her. This would be the true effect of Sections 101 and 102 of the Evidence Act."

9. So far as the contention of Mr. Atanu Banerjee, learned counsel for the appellants with regard to the fact that Ext.-1 is not accepted by the learned courts, on perusal of the learned trial court's judgment as well as appellate court's judgment, it transpires that they have discussed Ext.-1 elaborately and thereafter delivered the judgment. There is no illegality in the judgments delivered by the learned trial court as well as appellate court.

10. In view of the aforesaid facts, reasons and analysis, there is concurrent finding of the learned courts and no law point is involved in this case and this second appeal is not fit to be admitted.

11. Accordingly, this appeal stands dismissed.