

(2023) 02 JH CK 0008
In the Jharkhand High Court
Case No : Second Appeal No. 14 Of 1994(R)

Bijla Oraon And Others

APPELLANT

Vs

Widow Of Deceased And Others

RESPONDENT

Date of Decision : 06-02-2023

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 5, 6, 7
Chota Nagpur Tenancy Act, 1908 — Section 6, 19, 71A, 139
Code Of Civil Procedure, 1908 — Section 100

Citation : (2023) 02 JH CK 0008

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Sachi Nandan Das, Om Prakash Singh, Sidhartha Roy

Final Decision : Dismissed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Sachi Nandan Das, learned counsel for the appellants and Mr. Sidhartha Roy, learned counsel for the respondents.
2. This second appeal has been preferred being aggrieved and dissatisfied with the judgment and decree dated 03.12.1993 passed by the learned 6th Additional Judicial Commissioner, Ranchi in T.A. No.25/1991/T.R. No.47/1991 dismissing the appeal and affirming the judgment and decree of the learned trial court in Title Suit No.193/1985 dated 18.02.1991 passed by the learned Sub-Judge I, Khunti.
3. The appellants/plaintiffs instituted Title Suit No.193/1985 for confirmation of title and recovery of possession over the suit land, described in detail in the Schedule, given at the foot of the plaint, besides cost of the suit. On contest, the learned trial court has dismissed the suit. Being aggrieved with that judgment, the appellants/plaintiffs have filed T.A. No.25/1991/T.R. No.47/1991, which was dismissed vide judgment dated 03.12.1993 by the learned 6th Additional Judicial Commissioner, Ranchi affirming the judgment of the learned trial court.

Aggrieved with that judgment, the present second appeal has been filed by the appellants.

4. The appellants/plaintiffs instituted Title Suit No.193/1985 alleging therein the plaintiffs and defendant no.3 are the members of Schedule Tribe. The suit land fully described in the schedule given in the plaint are recorded in the R.S. in the name of Ravia Oraon, the father of the plaintiffs. Ravia Oraon owned and possessed the same as his raiyati land. He died 8 years ago leaving behind the plaintiffs and the defendant no.3 as his heirs and legal representative. After the death of Ravia Oraon, the plaintiffs and defendant no.3 came in possession over the suit property. The suit land corresponds to the lands recorded in C.S. Khata no. 36 standing in the name of Budhua Oraon and Bandhana Oraon, son of Gande Oraon. Bandhana Oraon died leaving behind his son Tore, who died issueless sometimes before the R.S. Bandhana died, leaving behind his son Ravia Oraon, the father of the plaintiff and defendant no.3. Ravia Oraon was in possession of the suit property during the revisional survey and as such his name was recorded in R.S. Khata no. 54 corresponding to C. S. Khewat No.8 in R. S. Khewat no.8. The plaintiff's father and their grandfather used to pay rent in respect of the land in suit to the landlord. At the time of vesting of Jamindari in the State of Bihar, Ravia Oraon was found in the possession of the suit land and as such rent was assessed in his name and he used to pay rent to the State of Bihar regularly as raiyat. The ex-landlord had no concerned or possession over the suit land. When the father of the plaintiffs refused to pay the Adhbatai produce of the suit land to the landlord after the vesting of his interest in the State of Bihar, the landlord manufactured fictitious public document in collusion and conspiracy with the local officials on the false allegations and the plaintiffs' father and plaintiff no.1 were falsely involved in a criminal case. The plaintiff's father and plaintiff no.1 were convicted in or about the year 1961-1962 for life. In spite of the said fake document, the landlord never came in possession of the suit property. Subsequently, the suit land were sold to Gajadhar Mahto and other residents of Ormanjhi police station in the year 1967 by landlord. But the said purchasers did not get possession of the suit land. The said purchasers sold the suit land to defendant nos. 1 and 2 who were inimical to the plaintiffs much before on a nominal price. The defendant nos. 1 and 2 being armed with fictitious sale deed started to lay false claim over the suit land and tried to take the possession over the same but without any success. Recently, the plaintiffs came to know that the defendant nos. 1 and 2 managed to get a case u/s 71(A) of the Chotanagpur Tenancy Act filed by the defendant no.3 and obtained order in their favour. The plaintiff being not party of that proceeding are not bound by the order. They are as usual in possession over the suit land. It was further alleged that the defendant nos. 1 and 2 being emboldened by the order passed u/s 71A of the C.N.T. Act, are denying the title of the plaintiff over the suit land and threatened to take possession of the same and therefore, the suit was filed.

5. The defendants have appeared and contested the suit by filing written statement, wherein, they stated that the suit as framed is not maintainable and

the same is barred by law of limitation, adverse possession, and u/s 139 of the C.N.T. Act. The suit is bad for non-joinder of Gajadhar Mahto and others, vendors of defendant nos. 1 and 2 as they are necessary parties to the suit. The plaintiffs have no cause of action for the suit. It has been admitted that the suit land stands recorded in the R. S. in the name of Ravia Oraon, but it was denied that the suit land are ancestral lands of the plaintiffs. It was also denied that Ravia Oraon was in possession of the suit land during his life time and after his death the plaintiffs and defendant no.3 came in joint possession of the same. In para 7 of the written statement, the defendants have denied that Cadestral Survey Khata No. 36 corresponds to R.S. Plot No. 54. It was also denied that the father and grandfather of the plaintiff's paid rent in kind after the R. S. It was the plea of the defendants that Ravia Oraon was cultivating the suit land in batai at the time of R.S. and hence R. S. record of right was prepared in his name. But soon after the final publication of the record of rights, the said Ravia Oraon gave up cultivation of the suit lands as he was not in a position to pay half of produce of the suit land to the ex-landlord according to the entries in the khatian. The landlord took the suit land in his khas possession and continued to possess the same at all points of time. At the time of vesting of tenure interest under the provisions of Bihar Land Reforms Act 1950, the ex-landlord was in khas possession of the land and hence rent for the suit land was assessed in the names of the ex-landlord under Sections 5,6 and 7 of the Bihar Land Reforms Act, 1950. The ex-landlord, therefore, acquired statutory occupancy rights over the suit lands. The successor in interest of the ex-landlord transferred the suit land to Gajadhar Mahto and others by registered deed of sale dated 25.04.1967. After purchase the transferee duly came in possession over the suit land. Their names were mutated and they paid rent till they sold the suit land to the defendants nos. 1 and 2 by a registered sale deed dated 10.06.1975. After purchase of the suit land these defendant nos. 1 and 2 came in peaceful possession of the suit land and they are still in possession of the same. Their names have also been mutated and they are paying rent for the same to the State of Bihar. In para 12 of the written statement, it was submitted that the defendant no.3 is the own brother of the plaintiffs. The defendant no.3 had filed an application against the defendant nos. 1 and 2 for the restoration of the suit land, which was rejected after contest. The defendant no.3 filed an appeal and the same was also dismissed. The aforesaid facts was within the knowledge of the plaintiffs. The defendants have also denied that the sale deeds executed by the ex-landlord in favour of Gajadhar Mahto and others on 25.04.1967 and subsequent sale deed executed by Gajadhar Mahto and others in favour of the defendants are false and fabricated documents. The plea that the aforesaid sale deeds are genuine documents and they are in possession of the suit lands on the basis of the aforesaid documents. The other assertions made in the plaint was also denied by the defendants. According to the defendants, the plaintiffs have got no right, title and interest in the suit property. It was also denied that the plaintiffs are continuing in possession of the suit land.

6. Vide order dated 18.07.1995, this second appeal was admitted on the following substantial questions of law:

A) Whether adverse inference drawn against the plaintiffs on the basis of dismissal on the basis of dismissal of the petition under Section 71-A of the Chotanagpur Tenancy Act was proper and legal?

B) Whether the statutory presumptions as to the correctness of entries in the Khatian is available to the plaintiffs-appellants even after vesting of the property under the Bihar Land Reforms Act?

7. Mr. Das, learned counsel for the appellants submits that the learned courts dismissed the suit and appeal on erroneous approach of law. He further submits that the learned courts committed error of law even after discussing all the evidences both documentary and oral adduced on behalf of the appellants/ plaintiffs regarding entries in the record of right regarding possession, merely decided the issues in favour of defendant nos. 1 and 2 without assigning any reason why such evidences are disbelieved in giving such findings. He also submits that mere reliance on the declaration of erstwhile landlord under the Land Reforms Act, 1950 and form-M thereunder cannot be relied only on the basis of vague general notice without any personal notice served upon the appellants who are successor of recorded tenant and as such the declaration and subsequent orders are illegal and passed in collusion with the authorities to grab the land of the appellants. On these points, he submits that the law points are required to be answered in favour of the appellants.

8. On the other hand, Mr. Roy, learned counsel for the respondents submits that the learned trial court has framed 12 issues and while deciding issue nos. vii, viii, ix, x and xi, the learned trial court has considered entire evidence and thereafter has come to the conclusion about the possession of the defendants. He further submits that the learned appellate court has also framed the points and thereafter decided the appeal. According to him, when concurrent findings are there on the issue in question, the High Court may not interfere sitting under Section 100 of the Code of Civil Procedure.

9. In view of the submissions of the learned counsel for the parties, the Court has gone through the L.C.R. as well as the judgment of the learned trial court and the appellate court. The learned trial court has framed 12 issues and while deciding issue nos. vii, viii, ix, x and xi and after going through the evidence as well as exhibits, the documentary evidence adduced on behalf of the plaintiffs and defendant nos. 1 and 2 and the decision relied by the counsel for the plaintiffs, the learned trial court held that alleged M form is a genuine, valid and legal document. Rent was paid in terms thereof by the ex-landlord and the father of the plaintiffs was a Adhabataidar and therefore he was not a raiyat. The learned trial court has further held that even if he was a raiyat (tenant), the purchaser Gajadhar Mahto and others or the defendant nos. 1 and 2 came in possession over the suit lands through their respective purchases paid rent to the

State of Bihar. Therefore, the sale deeds of the year 1967 and 1955 are genuine and valid and for consideration and have been acted upon. The learned trial court has also taken into consideration Chotanagpur Tenancy Act, 1908 especially Sections 6 and 19 and found that the defendants failed to prove their tenancy right in light of occupancy over the land and to continue possession and, thereafter, the learned trial court has dismissed the suit.

10. The learned appellate court has framed points as to whether the plaintiffs have got right, title and possession over the suit land and considering that the learned appellate court has considered the petition filed under Section 71-A of the Chotanagpur Tenancy Act by defendant no.3, which suggests that it was within the knowledge of the plaintiffs for restoration of the suit lands, but the same was unsuccessful. The learned appellate court found that revisional record of right suit property stands recorded in the name of Ravia Oraon, father of the plaintiffs and original defendant no.3 as Adhbataidar. Abdul Hamid was the tenure holder of village Tiki, Ext.8/a is the certified copy of Khewat of village Tiki, Ext.8/A suggests that Khata No.54 of village Tiki stands recorded in the name of Ravia Oraon, son of Budhua Oraon. The rent payable for the suit property to the tenure holder was half of the produce of the lands. In column 5 of Ext.8/A, the status of Ravia Oraon has been shown as of Adhbataidar. The Khewat stands in the name of Abdul Sattar. Ext.3 series are the certified copy of sale deed transferring the tenure interest of Mouza Tiki by Abdul Sattar in favour of Sk. Rehman and by Sk. Rehman in favour of Sk. Abdul Hamid and Jalil Mian. Considering that the learned appellate court has come to the conclusion that recorded tenure holder transferred his interest in favour of Sk. Rehman and Sk. Rehman transferred the same in favour of Sk. Abdul Hamid and Sk. Jamil Mian by two separate sale deeds, even the witnesses of the plaintiffs have also supported the same. Exts. 4, 5, 5/a and 6 also supported the conclusion that Sk. Jalil and Sk. Abdul Hamid were the tenure holder of village Tiki. Ext.4 is the certified copy of the plaint of rent suit no.5/1952 filed in the court of the S.D.O., Khunti by Sk. Jalil and Sk. Abdul Hamid against Ravia Oraon for realization of arrear of rent for Sambat 2008. Ext.5 is the deposition of Ravia Oraon recorded in the aforesaid rent suit. It is an admitted position that Ravia Oraon was raiyat. Considering all these aspects, the learned appellate court has come to the conclusion that the appellants/plaintiffs have been able to prove possession of the suit land only till the year 1951. The rent roll was prepared in the name of the admitted tenure holder Sk. Abdul Hamid just after vesting of the estate in the State of Bihar. The appellants/plaintiffs did not file any suit in the court for declaration of the order for preparation of fair and equitable rent in M form as null and void and without jurisdiction. Rent roll was prepared after due observation of the provisions of law and no objection was filed by the appellants/plaintiffs before the camp court of the Circle Officer and after considering all these aspects of the matter, the learned appellate court has affirmed the judgment of the learned trial court and dismissed the appeal.

11. The learned trial court and the appellate court have given cogent reason and

come to that finding. In that view of the matter two fact finding courts have come to concurrent findings. There is no illegality in the judgments. No perversity has been shown against the judgments of the learned courts. The law points framed by this Court are answered accordingly. No interference is required in this second appeal by this Court.

12. Accordingly, this second appeal stands dismissed.

13. Let the L.C.R. be sent back to the concerned court forthwith.