
(2019) 07 JH CK 0255
In the Jharkhand High Court
Case No : Second Appeal No. 213 of 2015

Budhan Mahto And Ors

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 16-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 100
Indian Penal Code, 1860 — Section 33

Citation : (2019) 07 JH CK 0255

Hon'ble Judges : Ananda Sen, J

Bench : Single Bench

Advocate : Pradip Gangopadhyay, Upendra Nath Mahto, Moushmi Chatterjee

Final Decision : Dismissed

Judgement

1. This appeal under Section 100 of the Code of Civil Procedure, 1908, has been filed challenging the judgment dated 31.1.2015 and decree dated 10.2.2015 passed by the learned District Judge-X, Hazaribagh in Title Appeal No. 55/2011, by which, the appeal filed by the appellants has been dismissed upholding the judgment dated 30.6.2011 and decree dated 13.7.2011 passed by the learned Sub-Judge-V, Hazaribagh in Title Suit No. 4/1994.

2. The plaintiffs, who are the appellants herein filed Title Suit against the State and Forest Department seeking a declaration of their right, title and interest over Schedule-A property in the plaint. Both the parts of the land relate to Khata No. 234, Plot No. 4101. The first part consists of five acres of land whereas the second part consists of 3.50 acres of land. The plaintiffs claimed that the land was recorded in the name of Ex-landlord Amar Dayal Singh and others in the last Cadestral Survey. Some time in the year 1937-38, the ancestor of the plaintiffs, with permission of the Ex-Landlord, reclaimed 8.50 acres of land of Khata No. 234 Plot No. 4101 as they converted the same into paddy field after spending money and labour. It is further case that Ex-landlord, Amar Dayal Singh thereafter deputed Amin who measured the area of 3.50 acres and another Ex-

landlord, Nageshwar Singh deputed Amin, who also measured 5 acres of land and these two pieces of land were settled in favour of the ancestor of the plaintiffs by Hukumnama. The plaintiffs claimed that after settlement, the ancestor of the plaintiffs was recognized as Raiyat and they started paying rent to Zamindar. After vesting of zamindari, the rent was being paid to the State. It is further case of the plaintiffs that they are in possession of the land and they have full right, title and interest over the same. The defendants started objecting the possession of the plaintiffs and wanted to plant trees in the suit land. The defendants filed a criminal case bearing case number as G-19/91 under Section 33 of the Indian Forest Act, but the plaintiffs were acquitted. An encroachment proceeding was also initiated but the said proceeding was also dropped. It is also case of the plaintiffs that as the defendants disturbed their possession, thus they filed Title Suit claiming their right, title and interest over the suit land.

3. After notice, the defendants appeared and contested the suit denying all the averments made by the plaintiffs in the plaint. It is stated that the land of Plot No. 4101 (which is the subject matter of the suit) having total area 149.55 acres of land is a protected forest and to this effect, a notification being Notification No. CPF-10166/52-17-B dated 2.1.1953 has been issued. It is also submitted that the forest land cannot be settled nor the plaintiffs can claim their right, title and possession over the same. So far as encroachment case is concerned, the defendant pleaded that the Land Reforms Deputy Collector had not decided the claim of the plaintiffs rather held that the case, relates to title, which cannot be decided in encroachment proceeding. It is further contended that acquittal of plaintiffs in criminal case does not mean that the plaintiffs have right, title and interest over the suit property.

4. On the pleadings of the parties, the trial court framed seven issues, out of which, Issue Nos. 6 was to the effect whether the plaintiffs have title over the suit land.

5. The trial court after evaluating the evidences has held that the plaintiffs have failed to prove their right, title and interest over the suit property. Aggrieved by the said judgment, the plaintiffs approached the first appellate court by filing an appeal, which was also dismissed, resulting in this second appeal.

6. I have heard the counsel for the appellant and I have gone through the record.

7. The counsel appearing on behalf of the plaintiffs submits that the trial court and the appellate court failed to consider the fact that the zamindar had settled the land in favour of the plaintiffs and they are in continuous possession over the property in question. He further submits that the ancestor of the plaintiffs paid rent to the zamindar, and after vesting of zamindari, they paid rent to the State and therefore, they are in possession and are title holder of the suit property. He further submits that the first appellate court and the trial court have not considered the documentary evidence, which has been filed by the plaintiffs in support of their case. He also submits that by virtue of long possession, the

plaintiffs have perfected their title over the property in question.

8. After hearing the parties and going through the judgment of both the court below, I find that the plaintiffs' prayer in the plaint was with regard to declaration of right, title, interest and possession over the suit land. I further find that the trial court after considering the evidence of the parties concluded that the plaintiffs have failed to prove the settlement in their favour. Be it noted that the trial court has held that after vesting of zamindari, the plaintiffs have failed to prove that in the zamindari return, the name of the plaintiffs has not been mentioned as settlee of the land rather the defendants have brought a notification dated 02.01.1953 which clearly suggests that the land of Plot NO. 4101 (which is subject matter of the case) is protected forest area and the said notification has already been notified in official gazette. Further in respect of Ext.5, which the plaintiffs heavily relied upon, both the courts below dis-believed the same and have reached at a conclusion that the same is a manufactured document, which is after thought, prepared with a motive to grab the suit land. Possessing of land for long period of time does confer any right, title and interest over the suit land. Further the payment of rent is not a conclusive proof of title over the property in question. The first appellate court concurred with the findings of facts arrived at by the trial court and has independently held that the plaintiffs has failed to prove their right, title and interest over the suit land..

9. Since both the courts below have concurrently given finding of facts that the plaintiffs have failed to prove their right, title, interest and possession over the land in question, rather there is a notification that the suit land is protected forest area, no relief(s) can be granted to the appellants in this appeal.

10. Thus, I find no illegally in the judgment and decree passed by both the courts below and there is no substantial question of law, which can be framed in this appeal. Accordingly, the appeal is dismissed upholding judgment dated 31.1.2015 and decree dated 10.2.2015 passed by the learned District Judge-X, Hazaribagh in Title Appeal No. 55/2011.