
(2008) 07 JH CK 0135
In the Jharkhand High Court

Chando Mohali

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 30-07-2008

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 16

Citation : (2008) 4 JCR 132

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajit Kumar Sinha, J.—The petitioner has preferred this writ petition for issuance of a writ in the nature of certiorari to quash the order dated 15.2.2001, passed by the Commissioner, Santhal Parganas Division, Dumka (respondent No. 2) in Rev. Misc. Revision No. 27 of 1986-87, whereby and whereunder, he was pleased to reject the revision application filed by the petitioner on the ground that the concurrent finding of fact cannot be interfered with.

2. The case of the petitioner, in brief, is that after the death of Puran Mohali, recorded tenant, his only son Matla Mohali inherited the entire land and property of his father, Matla Mohali, having no son and his wife having predeceased him, adopted the petitioner Chando Mohali, who acquired interest of a son and inherited the property of his adoptive father, namely, Matla Mohali. It is also the case of the petitioner that respondent No. 5 Cheche Mohali is a rank outsider and in no way related to Matla Mohali. She is the daughter of one Smith Saheb. On the other hand, the petitioner contends that being the adopted son of Matla Mohali, he is entitled to inherit the property of his adoptive father u/s 16 of the Hindu Adoptions and Maintenance Act. It is also stated on behalf of the petitioner that "Mohalis" are Hindu and they do not come under the ambit of Scheduled Tribe. The petitioner submits that the Revenue Court has no jurisdiction to decide the matter and such issue can only be decided by a Civil Court and, thus, the order of eviction was illegal and unsustainable.

3. The main contention raised is that u/s 16 of the Hindu Adoption and Maintenance Act, once an adoption deed has been executed, the same cannot be set aside by quasi-judicial authority under the provisions of Santhal Parganas Tenancy Act. The petitioner has further submitted that u/s 16 of the Adoptions and Maintenance Act, if the adoption deed is registered, the Court shall presume that the adoption has been made in accordance with the Act, unless declared otherwise.

4. On the other hand, according to the respondents, jamabandi No. 36 of Mauza-Lakhi Kundi stood recorded in the name of Puran Mohali, who died long ago, leaving behind him his only son Matla Mohali, who inherited the entire lands of jamabandi No. 36. According to the respondents, Matla Mohali died leaving behind the only daughter Cheche Mohali, respondent No. 5 herein, who came in possession of the entire land of jamabandi No. 36. It is further submitted that the petitioner had no right, title and interest and had encroached upon Plot No. 762, measuring 7 Kattha and 17 Dhurs, pertaining to the aforesaid jamabandi No. 36.

5. According to respondent No. 5, after the death of her father, Matla Mohali, she inherited the entire land, in question, and she is "Mohalin" by caste, which comes under the ambit of Scheduled Tribe. It is further submitted by the respondents that Chando Mohali, petitioner herein, is a rank outsider and is not even a member of Tribal Family. It is further contended that the petitioner belongs to "tatwa" by caste and by fraudulently obtaining a deed of adoption, he wants to grab 7 Kattha and 17 dhurs of the land, in question. It is further submitted that the Revenue Courts under the provisions of Santhal Parganas Tenancy Act are authorised to evict the petitioner and can also declare/annul such fake deed of adoption. In support of her contention, she has relied upon a decision, reported in 1975 B.B.C.J. 333 (Para-5).

6. It appears that the matter was entrusted to the Circle Officer, Dumka, to enquire into and report and after receipt of enquiry report, the petitioner had preferred a protest petition and the matter was again referred to the Deputy Collector Land Reforms, Dumka, who again considered the matter and gave its report, which was brought on record. It will be evident from, both the enquiry reports that respondent No. 5, Cheche Mohali, is the daughter of Matla Mohali and grand-daughter of Puran Mohali, As per the reports of the aforesaid two enquiry officers, the petitioner had constructed a room over 7 dhurs of land in Plot No. 762. According to the reports, Matla Mohali was drunkard and the petitioner herein after giving some money, got adoption deed executed by playing fraud.

7. The reports further confirm the fact that the Cheche Mohali, respondent No. 5 herein, is the daughter of Matla Mohali and granddaughter of recorded tenant Puran Mohali and paid the rent of jamabandi No. 36, which falsifies the contention of the petitioner that she is not the daughter of Matla Mohali. It also falsifies the recital made in the adoption deed that Matla Mohali had no daughter.

It further appears that if the petitioner was actually taken in adoption by Matla Mohali in the year, 1976, he ought to have taken steps to get his name mutated in respect of the entire lands of jamabandi No. 36 of Mauza- Lakhi Kundi and should have come in possession of the entire land of Jamabandi No. 36 whereas the petitioner has only constructed a room and that also confines in 7 Dhurs and had not taken any steps to get his name mutated in respect of total lands of jamabandi No. 36. It has also been brought to my notice that the petitioner, the adopted son, was neither a party in the case nor he has appeared to lay any claim on the lands of jamabandi No. 36.

8. In the aforesaid background, respondent No. 5 filed a petition u/s 42 of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 for evicting the petitioner from Plot No. 762 on the ground that he was encroacher of the property. The said petition was registered as R.E. Case No. 30 of 1980-81 and two enquiry reports were called for and after hearing the parties and examining all the documents on record and two enquiry reports, the Sub Divisional Officer, Dumka vide its order dated 25.3.1983 without going into the merits of the adoption, ordered eviction of the petitioner from 7 Kattha and 17 dhurs of Plot No. 762 and further directed for restoration of the same in favour of respondent No. 5 herein. The petitioner preferred an appeal against the order of the learned Sub Divisional Officer, Dumka, dated 25.3.1983, which was also dismissed by respondent No. 3 vide its order dated 13.1.1986/27.1.1986, passed in Rev. Misc Appeal No. 46 of 1982- 83. The petitioner thereafter, preferred a revision petition u/s 59 of the Santhal Parganas Tenancy Act, 1949, which was also dismissed in view of concurrent finding of fact and the revisional authority held that u/s 42, eviction can be ordered of rank outsiders and further held that in view of concurrent findings, the matter requires no interference.

9. Section 42 of the Santhal Parganas Tenancy Act, 1949 empowers the Deputy Commissioner to order ejectment of any person, who has encroached upon, reclaimed, acquired or come into possession of agricultural land in contravention of the provisions of this Act. Section 42 is quoted hereunder:

42 Ejectment of a person in unauthorised possession of agricultural land.--The Deputy Commissioner may at any time either of his own motion or on an application made to him pass an order for ejectment of any person who has encroached upon, reclaimed, acquired or come into possession of agricultural land in contravention of the provisions of this Act or any law or any thing having the force of law in the Santhal Parganas.

10. On a bare reading of the aforesaid provision, it will be evident that the Deputy Commissioner has the power of ejectment/eviction and can pass such order against "any person", who has encroached upon, reclaimed, acquired or come into possession of the agricultural land illegally and in contravention of the provisions of this Act. It has been held time and again that the word "may" in Section 42 means "must" in the scheme or background of the legislation. The Deputy Commissioner, whenever he comes across case of wrongful possession of

land held in contravention of the provisions of the Act, is bound to order for eviction as envisaged in the Act. The power u/s 42 is not administrative but statutory and has to be exercised according to the right of the parties.

11. Counsel for the petitioner has solely and heavily relied upon Section 16 of the Hindi Adoptions and Maintenance Act, 1956. The same is quoted as under:

Presumption as to registered documents relating to adoption.-Whenever any document registered under any law for the time being in force is produced before any Court purporting to record an adoption made and is signed by the person giving and the person taken the child in adoption, the Court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disapproved.

12. The section is clear and relates to a situation where the adoption made and signed will be presumed to be an adoption having been made in compliance of the provisions of this Act unless it is disapproved. Meaning thereby, the same is confined to this Act i.e. Hindu Adoptions and Maintenance Act, 1956 and it has no overriding effect over other statutory provisions. In any case, by registration of a adoption deed, the right, title and interest in the property of the person who adopts cannot be created or conferred in favour of the person adopted automatically.

13. All the three statutory quasi judicial authorities have given concurrent finding of fact and over and above, there were two enquiry reports and the statutory authorities were fully empowered under the statute to order eviction/ejectment of an encroacher and, thus, the contention raised that unless the adoption deed was annulled, no eviction can be ordered, is on the face of it erroneous and unsustainable. The contention raised is that only the civil Court can annul the adoption deed and not the statutory authority, as provided under Santhal Parganas Tenancy Act. This contention even otherwise is not sustainable for the sole reason that the three authorities have not decided the merits of the adoption deed nor has decided the right, title or interest, instead they have decided the factum of illegal possession and ordered for eviction. It is strange that the petitioner did not possess the entire lands recorded in the name of Puran Mohali and as to why he did not take any action to get the entire lands of Matla Mohali, son of Puran Mohali, mutated in his name. Section 20(5) read with Section 42 of the Santhal Parganas Tenancy Act, 1949, clearly provides that fraudulent method also includes collusive compromise decree and the same is in violation of Section 20(5) of the Act and possession based on fraud and collusion even by way of any deed of adoption or settlement can be of no consequence or help and the petitioner was, thus, rightly held to- be trespassers/encroacher and the order of eviction was perfectly valid, legal and justified.

14. Findings of all the three quasi-judicial authorities and the two enquiry reports clearly establish the right of respondent No. 5 and the fact that she is the daughter of Matla Mohali and granddaughter of recorded tenant, Puran Mohali,

and, thus, she had an established right over the land, in dispute, and she had also filed rent receipts and the petitioner was held to be a rank outsider, having no concern with the recorded tenant. It has also been clearly established that the petitioner did not belong to Scheduled Tribe and, thus, the eviction of the petitioner from the land, in question, was in accordance with the provisions of the Act.

15. In the aforesaid background, this writ petition, being devoid of any merits, is hereby dismissed but without any order as to costs.