
(2010) 03 JH CK 0098
In the Jharkhand High Court

Chanku Oraon

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-03-2010

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 71A

Citation : (2010) 03 JH CK 0098

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—In this writ petition the petitioner has challenged the order dated 29/03/2000 (Annexure 3), passed by the Special Officer, Ranchi, the appellate order dated 03/09/2001 (Annexure 4), passed by the Deputy Commissioner, Ranchi and the revisional order dated 14/03/2002 (Annexure 5), passed by the Commissioner, South Chhotanagpur Division, Ranchi, whereby, the application filed by respondent Nos. 6 to 8 u/s 71A of the Chhotanagpur Tenancy Act for restoration of the lands, was allowed.

2. The facts, in short, are that the lands of Khata No. 85 measuring 8.29 acres was recorded in the names of Tona Oraon, Cherga Oraon, Letho Oraon and Jhuba Oraon. Tona Oraon and Letho Oraon died issueless. Cherga Oraon had one daughter Nagia Orain, who was married to one Jata Oraon. The said Jata Oraon was taken in as "Ghar Damad" by Cherga Oraon. According to the petitioner, as per Oraon customary law Jata Oraon became the legal heir and successor of Cherga Oraon. The petitioner is the son of Jata Oraon through Nagia Orain and, therefore, he has claimed to be the legal heir of Cherga Oraon. Jhuba Oraon died leaving behind two sons namely, Gandura Oraon and Suka Oraon. Suka Oraon died issueless and Gandura Oraon had three sons namely, Manga Oraon, Jhuba Oraon and Ghuran Oraon, i.e. respondent Nos. 6 to 8. Manga Oraon, i.e. respondent No. 6 herein, is the grand son of Jhuba Oraon.

According to the petitioner, the respondent No. 6 Manga Oraon filed an application for restoration u/s 71A of Chhotanagpur Tenancy Act against the petitioner, praying for restoration of lands under the proceeding. The said case was registered as S.A.R. Case No. 427/1978 in the Court of Special Officer, Ranchi.

Further according to the petitioner, on being noticed, he appeared and filed written statements stating interalia that his father was the "Ghar Damad" of Cherga Oraon and, therefore, he is also the legal heir and successor of the recorded tenant. He possessed the lands under proceeding and the same was also mutated in his name. He was also paying rent. The Special Officer, by his order dated 19/01/1982, rejected the application for restoration filed by respondent No. 6 holding that the petitioner was also a legal heir of the recorded tenant Cherga Oraon. The aforesaid order dated 19/01/1982 has been annexed as Annexure 1 to the writ application. It is stated that the said order became final since it was never challenged before any other higher court.

Further case of the petitioner is that subsequently, respondent No. 6 Manga Oraon filed an application for cancellation of Jamabandi standing in the name of the petitioner in respect of 53 decimals of lands out of 8.29 acres of lands under Khata No. 85. The petitioner appeared and contested the case and after hearing the parties, the Deputy Collector, Land Reforms, Sadar, Ranchi by his order dated 24/06/1999 (Annexure 2) rejected the application for cancellation of Jamabandi on the ground that the dispute related to title, which can be decided only by the Civil Court. Thereafter, respondent Nos. 6 to 8 filed an application u/s 71 A of the Chhotanagpur Tenancy Act, praying for restoration of various plots of Khata No. 85 against the petitioner contending that the respondent Nos. 6 to 8 were the heirs of the recorded tenant and the petitioner is the son of Nagia Orain, i.e. daughter of Cherga Oraon and, therefore, he being the son of the daughter of Cherga Oraon, cannot be a legal heir of Cherga Oraon. The said case was registered as S.A.R. Case No. 12/9798. The petitioner contested the case filed against him and stated that he was the legal heir of Cherga Oraon, who adopted his father as "Ghar Damad" and since this dispute/issue was already adjudicated upon and decided earlier in S.A.R. Case No. 427 of 1978, in favour of the petitioner by order dated 19/01/1982 (Annexure 1), which became final and, therefore, the second application filed for restoration of the lands in question by the respondents was barred by resjudicata.

3. The Special Officer, by order dated 29/09/1999, rejected the restoration application on the ground that the same was barred by resjudicata. This order of the Special Officer was challenged by the respondents in appeal. The appellate court set aside the order passed by the Special Officer and remanded the matter back to the Special Officer for fresh decision. After remand, the Special Officer by order dated 29/03/2000 (Annexure 3) allowed the restoration application in favour respondent Nos. 6 to 8 holding that the petitioner being the son of the daughter of Cherga Oraon was not his legal heir.

4. The petitioner challenged the order of the Special Officer by filing an appeal before the Deputy Commissioner, Ranchi but the same was dismissed by order dated 03/09/2001, contained in Annexure 4. Thereafter, the petitioner preferred revision before the Commissioner, South Chhotanagpur Division, Ranchi but the same was also dismissed at the stage of admission itself by order dated 08/01/2002 (Annexure 5).

5. The petitioner has challenged the aforesaid three orders, contained in Annexure 3, 4 and 5 to this writ petition, mainly on the ground that all the three courts did not consider the point of resjudicata raised by him. The petitioner submitted that in the earlier proceeding u/s 71 A of the Chhotanagpur Tenancy Act initiated at the instance of Respondent No. 8, the point as to whether the petitioner was the legal heir of Cherga Oraon or not was already decided holding that the petitioner was the legal heir of the recorded tenant. The said point has now become final since the order passed in earlier proceeding u/s 71 A of the Chhotanagpur Tenancy Act was never challenged before any other higher court and, therefore, the three courts had no jurisdiction to hold that the petitioner being the son of a daughter is not the legal heir of Cherga Oraon.

6. The State respondents have filed counter affidavit supporting the impugned orders contained in Annexure 3, 4 and 5. The Respondent Nos. 6 and 8 have filed separate counter affidavits contesting the claim of the petitioner.

7. It is not disputed by the respondents that respondent No. 6 Manga Oraon had filed an application for restoration earlier in the year 1978, which was registered as S.A.R. Case No. 427 of 1978 and in that proceeding the Special Officer, Ranchi after considering the documentary as well as oral evidence on record, held that the petitioner Chanku was the grand son (Nati) of Cherga Oraon, the recorded tenant. Since Cherga had no male issue and, as such, he brought the father of Chanku as "Ghar Damad". Chanku always lived with his Nana and Nani. Even Bujharat in respect to the lands was also created in the house of Chanku by his Nana, i.e. Cherga Oraon. Accordingly, it was held that Chanku was the legal heir of the recorded tenant Cherga Oraon.

8. It is also not disputed that this order passed by the Special Officer on 19/01/1982 contained in Annexure 1 to this writ petition was not challenged by the respondents before any other higher court and, therefore, in such a situation the aforesaid order dated 19/01/1982 became final.

9. Therefore, the issue as to whether the petitioner was the legal heir of the recorded tenant Cherga Oraon or not, was already decided by a competent court of law in between the parties in the earlier proceeding u/s 71A of the C.N.T. Act. In such a situation, the question as to whether a second application for restoration of the lands in dispute filed by the respondent Nos. 6 to 8 raising the same very point, which was already decided in the earlier proceeding can be said to be maintainable?

10. In a series of decisions, this Court has held that the second application for

restoration on the same ground is not maintainable since the same would be barred by resjudicata. Reference in this regard may be made to the cases of "Ashwini Kumar Roy v. State of Bihar reported in 1987 BLT 332 (Pat) (RB); Anupama Roy Vs. State of Bihar and Others, ; Gadia Oraon and Others Vs. State of Jharkhand and Others, and in the case of Sarmistha Sinha & Meera Prasadversus State of Jharkhand and Ors. reported in 2010 (1) JCR 130 (jhr).

11. In the present case also I find that since the point in issue between the parties were already decided in earlier proceeding u/s 71 A of the Chhotanagpur Tenancy Act initiated at the instance of Respondent No. 6 and, therefore, the subsequent application filed by the private respondents is held to be not maintainable being barred by resjudicata. Accordingly, this writ petition is allowed. The impugned orders, contained in Annexure 3, 4 and 5, passed by the Special Officer, Ranchi, Deputy Commissioner, Ranchi and the Commissioner, South Chhotanagpur Division, Ranchi are hereby quashed.

However, in the facts and circumstances of the case, there shall be no order as to cost.