

(2025) 07 JH CK 1283

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1449 Of 2011

Deena Nath Prasad, S/o Late Chani Prasad

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 14-07-2025

Acts Referred:

Constitution of India, 1950 — Article 226
Chhotanagpur Tenancy Act, 1908 — Section 46

Citation : (2025) 07 JH CK 1283

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : Manoj Tandon, Shivani Bhardwaj, Neha Bhardwaj Akansha Priya, Sanjay Kr. Tiwari, Mihir Kunal Ekka

Final Decision : Disposed Of

Judgement

Gautam Kumar Choudhary, J

Heard, learned counsel for the parties.

1. The instant Writ Petition has been filed against the order dated 09.03.2010 passed by Respondent No.2 in S.A.R. Revision Case No.91 of 2009 whereby and whereunder the order of restoration passed in SAR Case No.334 of 2005-06 and in Restoration Appeal Case No.21R-15/09-10 has been affirmed.

2. As per the case of the petitioner, the land, in question, measuring an area of 3.5 Kattha under Khata No.21 and Plot No.252, Mouza-Pandra was transferred by Karia Oraon in favour of Ram Nandan Paswan by unregistered sale deed executed on 21.05.1963. After the said purchase, the petitioner came in physical possession of the said land and in the year, 1979, the said Ram Nandan Pawan transferred the land by way of unregistered gift to his wife and thereafter his wife transferred it to her daughter by way of unregistered gift and the property was succeeded by one Kiran Kumari being daughter of Saraswati Devi.

3. Petitioner is husband of said Kiran Kumari.

4. The impugned order has been assailed mainly on the ground that the transfer of possession took place way- back in the year 1963, whereas the restoration case was filed in the year, 2005-06 after more than 40 years ago which is not within the reasonable time as per the ratio laid down in catena of judgment passed by Hon'ble the Supreme Court in the case of Situ Sahu and Ors. vs. State of Jharkhand and Ors. (2004) 5 SCC 340 and Jai Mangal Oraon vs. Mira Nayak (2000) 5 SCC 141 as well as in the case of Anupama Roy vs. State of Bihar and Ors. [2003 SCC OnLine Jhar 380].

5. However, learned court below without examining this aspect of the matter has passed the order of restoration.

6. Learned SC.I for the State while opposing the prayer has submitted that the transfers were done in violation of Section 46 of the C.N.T. It is further argued that transfer of land is in violation of the provisions of the Indian Registration Act, and Transfer of Property Act, as the claim is founded on an unregistered sale deed, in which valuation of Rs 91 has been given only to circumvent the rigors of law.

7. It is further submitted that there is no documentary proof to substantiate the case of the petitioner that he came into physical possession after the said transfer, petitioner did not produce any document before the SAR Court or its appellate authority.

8. Respondent Nos.6 to 8(a) had appeared through a counsel after issuance of notice. On repeated calls, nobody has appeared on behalf of them today.

9. Petitioner is facing concurrent orders of restoration passed by competent Court in SAR Case, which was affirmed in appeal and revision.

10. While explaining the writ jurisdiction Hon'ble Supreme Court held in Sangram Singh v. Election Tribunal, Kotah, Bhurey Lal 1955 SCC OnLine SC 21 : AIR 1955 SC 425 :

14. That, however, is not to say that the jurisdiction will be exercised whenever there is an error of law. The High Courts do not, and should not, act as courts of appeal under Article 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognised lines and not arbitrarily; and one of the limitations imposed by the Courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense, for, though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be.

11. In the present Case the claim of the petitioner is based on an unregistered deed of sale which is indisputably in violation of Section 46 of the CNT Act. The

plea of limitation also does not inspire any confidence, as the transfer deed is unregistered and therefore its antiquity cannot be determined. There is no other document to suggest that the said deed was ever acted upon.

Writ petition is without any merit and is accordingly dismissed with cost. Cost assessed to be ₹ 5000 to be paid to Respondent Nos.6, 7 and 8(a).

Pending I.A., if any, stands disposed of.