

(2024) 06 JH CK 0040
In the Jharkhand High Court
Case No : Writ Petition (C) No. 5126 Of 2018

Dewashish Sadhu

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 25-06-2024

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2024) 06 JH CK 0040

Hon'ble Judges : Anil Kumar Choudhary, J

Bench : Single Bench

Advocate : Arbind Kumar, R. R. Mishra, P. K. Rai, Surabhi, Ravi Prakash Mishra

Final Decision : Disposed Of

Judgement

Anil Kumar Choudhary, J

1. Heard the parties.

2. This Writ Petition has been filed under Article 226 of the Constitution of India with a prayer to set aside the order dated 20.06.2018 (copy of which has been kept at Annexure-3 of this Writ Petition) passed by respondent No.2 and also for setting aside the order dated 30.12.2016 (copy of which has been kept at Annexure-2 of this Writ Petition) passed by the respondent No.3 and for reinstatement of the order dated 05.10.2016 (copy of which has been kept at Annexure-1 of this Writ Petition) passed by the Assistant Settlement Officer (A.S.O.) Dumka in Parcha Correction Case No.200/2010.

3. The brief facts of the case is that the respondent No.4 filed an application for his name to be included in the new Parcha; after deleting the name of the opposite party by Time Barred Application No.200/2010 before the Assistant Settlement Officer (A.S.O.) Dumka on the ground that the respondent No.4 is the descendant of the recorded tenant and the claim of the writ petitioner who was the opposite party in the said case, was based on the claim of adoption, which claimed adoption was a fake one. The Assistant Settlement Officer (A.S.O.)

Dumka observed that the applicant could not produce any substantial evidence and the case is related to adjudication of right and title and rejected the application. The respondent No.4 of this Writ Petition filed Settlement Objection Appeal Case No.157/2016-17 before the Settlement Officer, Dumka. The Settlement Officer, Dumka considering the genealogical table issued by the Circle Officer and the Voter List, observed that the respondent No.4 has produced the documents to be the descendant of the recorded tenant whereas the writ petitioner is no way related to the recorded tenant of the Gantzer's Settlement in respect of the land in question nor his name is appearing in the genealogical table. The Settlement Officer, Dumka further observed that it would not be lawful to record the name of an outsider in the Hal Khata No.81/18 and allowed the appeal. Being aggrieved by the order passed Settlement Officer, Dumka, the writ petitioner filed Objection Appeal No.5/2017-18. The same was dismissed by the respondent No.2-Commissioner, Santhal Pargana Division, Dumka as the respondent No.2-Commissioner found that the dispute between the parties is civil in nature and it could not be decided in summary proceeding.

4. Learned counsel for the petitioner submits that the respondent No.2 after having observed that the dispute between the parties is civil in nature and could not be decided in a summary proceeding and ought to have set aside the order passed by the respondent No.3 as the consequence of the order passed by the Settlement Officer, Dumka is that; the same has confirmed the order passed by the respondent No.3. It is next submitted that there were ample materials in the record to suggest that the writ petitioner was the adopted son of Most. Besi Dasi. It is next submitted that Anil Chandra Sadhu is the biological father of the petitioner and Ashish Sadhu is a different person and the respondent No.2 has failed to consider these facts and erroneously dismissed the appeal.

5. Learned counsel for the petitioner next relies upon the judgment of the Hon'ble Supreme Court of India in the case of Hamza Haji vs. State of Kerala & Another reported in (2006) 7 SCC 416 wherein the Hon'ble Supreme Court of India has reiterated the settled principle of law that a party who had secured a judgment by fraud should not be enable to enjoy the fruits thereof. It is next submitted that as the appellate order was passed by playing fraud by the respondent No.4, hence, it is submitted that the prayer, as prayed for in this Writ Petition, be allowed.

6. Learned counsel for the respondents on the other hand submits that the writ petitioner never took any plea before the Settlement Officer, Dumka to the effect that Ashish and Devashish are not the one and same person so, obviously there was no finding in the said order and this is not open for the writ petitioner for the first time to take such a plea before this Court. It is next submitted that though it has not been specifically mentioned by the respondent No.2 but the respondent No.2 was very much satisfied about the order of the Settlement Officer, Dumka, by which the Settlement Officer has allowed the appeal. Hence, it is submitted that this Writ Petition, being without any merit, be dismissed.

7. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, it is pertinent to mention here that the undisputed fact remains that the respondent No.2 has passed the impugned order dated 20.06.2018 in Objection Appeal No.5/2017-18 in exercise of its appellate power. It is needless to mention that when the appellate court exercises its power it has to give the finding as to whether the order/judgment challenged before it, is in accordance with law and facts and in case it finds that the order impugned before it is not correct, it has to allow the appeal and if it finds the order to be correct and legal it has to affirm the judgment/order challenged before it.

8. Now, coming to the facts of the case, the respondent No.2-Commissioner, Santhal Pargana Division, Dumka has neither categorically stated that the order of the Settlement Officer, Dumka impugned before it is correct nor has he stated in the order impugned before this Court dated 20.06.2018 that the order passed by the Settlement Officer is not sustainable in law but without arriving at any conclusion either way, still has dismissed the appeal which is not sustainable in law because the same amounts to not exercising the jurisdiction of appeal indisputably vested upon the respondent No.2- Commissioner, Santhal Pargana Division, Dumka.

9. Accordingly, the order dated 20.06.2018 passed by the respondent No.2-Commissioner, Santhal Pargana Division, Dumka in Objection Appeal No.5/2017-18 is quashed and set aside and the matter is remitted back to the respondent No.2- Commissioner, Santhal Pargana Division, Dumka to pass a fresh order in accordance with law after giving opportunities of being heard to the parties.

10. It is made clear that as the matter is remitted, hence, this Court has not expressed any opinion on the merits of the appeal and the respondent No.2-Commissioner, Santhal Pargana Division, Dumka is directed to pass a reasoned order in accordance with law without being prejudiced by this judgment in this Writ Petition.

11. This Writ Petition stands disposed of accordingly.