

(2025) 04 JH CK 1311

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2631 Of 2022

Dinesh Kumar Pal

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 08-04-2025

Acts Referred:

Constitution of India, 1950 — Article 226
Santhal Pargana Regulation, 1872 — Section 5

Citation : (2025) 04 JH CK 1311

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : Rajiv Sinha, Bhupal Krishna Prasad, Rahul Kumar Gupta, Kanhai Pal, Varun Prabhakar

Final Decision : Disposed Of

Judgement

Deepak Roshan, J

1. Heard learned counsel for the parties.
2. The instant writ petition has been filed praying, inter alia, for the issuance of a writ of certiorari for setting aside of the orders dated 10th of December 2021, passed by Respondent No. 2 in RM (Settlement Objection) Revision No. 150/2018-19 and the order dated 9th of March 2018 passed in Objection Appeal No. 184/2017 passed by Respondent No. 3. The Petitioners have further prayed that the order passed by Respondent No. 4 in Objection Case No. 4 of 2017 on 15th of July 2017 be confirmed.
3. Learned counsel for the petitioners submits that the petitioners have claimed right over the land appertaining to plot number 1109 (old plot number 960 and 961) and plot number 1265 (old plot number 1084 and 1085) of new jamabandi khata number 103 of mouza Shikaripara through inheritance. The lands forming subject matter of the instant writ petition was settled in favour of late Kishto Pal (grandfather of the Petitioners and father of Respondent No. 5), in the year 1961

by the then landlord. The final parcha, published on 22nd of April 2017, records joint possession of Respondent No. 5 and Balram Pal (i.e. father of the Petitioners).

It has been further pleaded that after the publication of the final parcha, Respondent No. 5 filed an objection registered as Objection Case No. 4/2017. The objection raised by Respondent No. 5 was that the plot being 1085 admeasuring an area of 1 kathas 16 dhurs, which formed a part of the newly numbered Plot No. 1265 should be recorded in the name of both brothers (i.e. Respondent No. 5 and Balram Pal) equally. Upon issuance of notice on the objection raised by Respondent no. 5, the Petitioners appeared and confirmed that Respondent No. 5 and the Petitioners were members of a joint family and as such they acquiesced to the objection raised by Respondent No. 5. On basis of the above, objection was adjudicated vide order dated 15th of July 2017.

However, Respondent No. 5 assailed the order dated 15th of July 2017 passed in Objection Case No. 4/2017, by filing an appeal registered as Objection Appeal No. 184/2017. Respondent No. 5 pleaded that an area of 5 kathas of old Plot No. 1084 (forming part of new Plot No. 1265) was settled exclusively in his name vide order dated 16th of December 1966 passed in Rev Misc Appeal No. 149/1966-67. He further admitted jointness of family and possession. In the memo of appeal, it was further stated that the land appertaining to old plot being 1085 was settled in the name of both brothers jointly. During the pendency of the appeal, a verification of the physical status of the property was directed. The amin submitted his report on 5th of March 2018, wherein it was stated that new Plot being 1265 (comprising of both old Plots i.e. 1085 and 1084) was in joint possession of both the parties. The report further affirmed the claim of the Petitioners with respect to the jointness of family. The verification was undertaken in the presence of both parties and other villagers.

Respondent No. 3, adjudicated the appeal vide order dated 9th of March 2018, wherein it was held that the total area of the new Plot No. 1265 is 31 decimal and his settlement is claimed only over 15 decimals of land by Respondent No. 5 (appellant therein), the same should be recorded jointly in the name of both the parties. The remaining area i.e. 16 decimals was declared as anavaad khata.

A revision being RM (settlement objection) Revision No. 150/2018-19 against the above order was preferred by Respondent No. 5, wherein he pleaded that the new plot No. 1265 admeasuring a total area of 31 decimal was a combination of old plot No. 1084 and 1085. Out of a total area of 31 decimals, only 1 decimal of land was in the joint possession of the parties and the rest was in the exclusive possession of Respondent No. 5.

The Petitioners appeared in revision case and submitted that the lands appertaining to plot number 1109 (old plot number 960 and 961) and plot number 1265 (old plot number 1084 and 1085) of new jamabandi khata number 103 of mouza Shikaripara was settled in the favour of the grandfather of the

Petitioner and after his demise the joint possession was passed on to his sons i.e. Balram Pal and Respondent No. 5. Balram Pal dies in jointness and the parties are still in joint possession of the land and the residential house over the land, without any partition. The said revision petition was allowed vide order dated 10th of December 2021, wherein Respondent No. 2 directed that 30 decimal of land appertaining to new plot No. 1265 be recorded in the favor of Respondent No. 5 and remaining 1 (one) decimal of land be recorded in joint possession of both parties.

4. Relying upon the above factual matrix, Ld. Counsel representing the Petitioners contended that the orders impugned stand vitiated as the same has been passed without appreciating the fact that the entire case of Respondent No. 5 is barred by principles of constructive res judicata as he had not raised the ground pertaining to the exclusive possession of 5 kathas of old plot No. 1085. He has further contended that the orders passed in appeal as well as revision are bereft of any reasons and has been passed in ignorance of the established fact that there is jointness of family and property between the parties.

5. Per contra, learned counsel for the respondent No. 5 has contended that Kisto Pal was a native resident of Susnai/Singhni and had come to Shikaripara for a while and then again returned to Susnai/Singhni. It was Respondent No. 5 who used to work for the then landlord and prior to zamindari being abolished, 20 decimals of land in the southern part of Plot No. 1084 was settled in his name. Further 5 (five) kathas of land from the same plot was settled in his name and 1 khata and 16 dhurs of land was settled jointly in the name of his brother and himself. Thereafter, a house was constructed by Respondent No. 5. He has claimed exclusive possession over the land admeasuring an area of 30 decimal appertaining to new plot no. 1265 and accepts joint possession only over 1 decimal of land.

It has further been submitted that the petitioners were continuously raising objections prior to preparation of final purchase; however, the same were not considered. It has been further submitted that the amin report cannot be taken into consideration and the villagers have made statement regarding jointness with respect to only 1 decimal of land. Respondent No. 5 has produced the photocopy of the certified copy of the order dated 16th of December 1966 with respect to the settlement of 5 kathas of land.

On basis of the above, Ld. Counsel appearing for Respondent No. 5 has submitted that the order passed in the revision case has been passed after taking into consideration all facts and the writ petition is fit to be dismissed.

6. Learned counsel for the respondent-State has supported the order dated 10th of December 2021, passed by Respondent No.2 in RM (Settlement Objection) Revision No. 150/2018-19.

7. Heard learned Counsel representing their respective parties at length and have perused the documents annexed with the respective affidavits and the averments

made therein. A perusal of the orders passed by the Appellate and the Revisional authority transpires that neither of the authorities have considered the disputed and complicated questions of facts involved in the case at hand. The attending facts of the case show that the dispute between the parties involve complicated and disputed questions of fact, which has to be adjudicated by taking evidence. The examples of some of such disputed questions are summarized as under:-

(i) Respondent No. 5, in its counter-affidavit has claimed that the settlement of the land forming subject matter of the instant writ petition was made in her name; meanwhile the Petitioners claim that the land was settled in the name of their grandfather i.e. Kisto Pal.

(ii) The issue with respect to the jointness of the family is also disputed.

(iii) Lastly, the issue with respect to the possession of the land appertaining to Plot No. 1265, as claimed by the Petitioner has been controverted by the Respondent.

8. It is trite law that reasoning is the soul of any conclusion.

Any order sans reasoning is lifeless and amount to violation of principles of natural justice. Any order bereft of reason breeds arbitrariness, uncertainty and unnecessary litigation. Providing of reasons in orders is of essence in judicial proceedings. Every litigant who approaches the Court with a prayer is entitled to know the reasons for acceptance or rejection of such request. Either of the parties to the lis has a right of appeal and, therefore, it is essential for them to know the considered opinion of the Court to make the remedy of appeal meaningful. The Hon'ble Supreme Court of India, in the case of State of Rajasthan v. Rajendra Prasad Jain (2008) 15 SCC 711 raised a cautionary voice and held as under:-

"9. The questions involved were not trivial. The effect of the admission of the accused in the background of testimony of official witnesses and the documents exhibited needed adjudication in appeal. The High Court has not given any reasons for refusing to grant leave to file appeal against acquittal, and seems to have been completely oblivious to the fact that by such refusal, a close scrutiny of the order of acquittal, by the appellate forum, has been lost once and for all. The manner in which appeal against acquittal has been dealt with by the High Court leaves much to be desired.

10. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief in its order, indicative of an application of its mind; all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court order not sustainable. Similar view was expressed in State of U.P. v. Battan."

9. It is also now well settled proposition of law that hotly contested disputed question of facts is to be proved by the party and Courts while exercising writ

jurisdiction should refrain from adjudicating any such dispute. Reference in this regard is made to the case of Roshina T vs. Abdul Azeez K.T. and Ors. (2019) 2 SCC 329, wherein the Hon'ble Apex Court has held as under:-

"14. It has been consistently held by this Court that a regular suit is the appropriate remedy for settlement of the disputes relating to property rights between the private persons. The remedy Under Article 226 of the Constitution shall not be available except where violation of some statutory duty on the part of statutory authority is alleged. In such cases, the Court has jurisdiction to issue appropriate directions to the authority concerned. It is held that the High Court cannot allow its constitutional jurisdiction to be used for deciding disputes, for which remedies under the general law, civil or criminal are available. This Court has held that it is not intended to replace the ordinary remedies by way of a civil suit or application available to an aggrieved person. The jurisdiction Under Article 226 of the Constitution being special and extraordinary, it should not be exercised casually or lightly on mere asking by the litigant"

10. Considering the disputed and complicated questions of facts; some of which are mentioned in Paragraph-7 hereinabove and the settled position of law, this Court cannot return any finding on the merits of the case. However, it cannot ignore the fact that the order dated 10.12.2021, passed by Respondent No. 2 in RM (Settlement Objection) Revision No. 150/2018-19 and order dated 09.03.2018 passed in Objection Appeal No. 184/2017 passed by Respondent No.3; are devoid of any reasons and has travelled beyond the scope of the pleadings of the parties and accordingly the same deserves to be, and, is hereby, quashed and set aside.

The matter is remitted back to Respondent No. 3 (i.e. the Appellate Authority) for fresh consideration. It goes without saying that the Appellate Authority shall adjudicate the lis keeping in mind the issues involved and in accordance to the legislative mandate under Section 5 of the Santhal Pargana Regulation, 1872.

The entire exercise shall be completed by the concerned Respondent as early as possible, preferably within a period of twelve weeks from the date of receipt/production of copy of this order.

11. Accordingly, the instant Writ Petition stands disposed of in the manner indicated hereinabove. Pending I.As., if any, also stand closed.