
(2008) 07 JH CK 0142
In the Jharkhand High Court

Emil Oraon @ Imil Oraon

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 29-07-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144

Citation : (2008) 4 JCR 220

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—The petitioner in this writ application has prayed for issuance of an appropriate writ for quashing the order dated 01.03.2000 (annexure 1) passed in S.A.R. Case No. 37 of 1998-99 whereby the disputed lands were restored in favour of the respondent No. 5 and also for quashing the order dated 13.02.2002 (Annexure 2) passed by the Additional Collector, Gumla in S.A.R. Appeal No. 3 of 2000 and order dated 25.06.2002 (Annexure 3) passed by the Commissioner, South Chhotanagpur Division, Ranchi in S.A.R. Revision No. 37 of 2002 whereby the appeals filed by the petitioner against the order of the Land Reform Deputy Collector, was dismissed.

2. The petitioner and the respondent No. 5 belong to the Oraon community of the scheduled tribes. The disputed lands under Khata No. 46 and 47 bearing different plot numbers and measuring a total area of 10.96 acres situated in village Kanji within P.S. Duri, district Gumla, was originally recorded in the C.S. Khatiyan in the name of one Manua Oraon. According to the genealogical table relied upon by the petitioner, Manua Oraon died leaving behind two sons namely Tulu Oraon and Bhanda Oraon. Tulu Oraon had a son namely Phakir Oraon and a grand son Joseph Oraon. Bhanda Oraon had a son namely Pilu Oraon and grand son Imil Oraon. On the death of Manua Oraon and his son Tulu Oraori, the lands were recorded in the R.S. Khatiyan in the name of Phakir Oraon son of Tulu Oraon. The property eventually devolved upon Phakir Oraon's son Joseph Oraon

who had no son and who died leaving behind him his widow Sohani Urain and a daughter Margret Urain who was married even during the life time of her father and has a son namely Arvind Vijay Toppo. After the death of Joseph Oraon, the name of his widow Sohani Urain was entered in the Register-II of the revenue records and rents receipts used to be granted to her by the Anchal Adhikari. By a registered deed of gift dated 03.01.1974, Sohani Urain gifted the lands to her grand son Arvind Vijay Toppo.

3. The petitioner has staked his claim of right in the disputed lands on the ground that since Joseph Oraon did not have any son, his widow and married daughter could not be inherited any right by way of succession over the lands since the customary rites in their community prohibits such inheritance. Under such circumstances, the lands which belonged to Joseph Oraon had reverted to the petitioner since he being the grand son of Bandha Oraon and great grand son of Manua Oraon, was the agnate of deceased Joseph Oraon. On the basis of such claim, the petitioner filed a title suit No. 25 of 1994 in the court of the Munsiff, Gumla praying for a decree for declaration of his right and title over the disputed lands and also for declaring the gifted deed executed by Sohani Urain as null and void. The suit was decreed in favour of the petitioner, though ex-parte, declaring the petitioner's right and title over the disputed lands and also declaring the gift deed as null and void. The donee Arvind Vijay Toppo, who was one of the defendants in he said suit, did not prefer any appeal against the judgment and decree passed by the Munsiff, Gumla in the aforesaid title suit No. 25 of 1994. In support of his claim of right over the land, the petitioner had relied upon two separate C.S. Khatiyans, one pertaining to Khata No. 20 of village Kanji which showed that the father of the recorded tenant Phakir Oraon namely Tulu Oraon was the son of the common ancestor Manua Oraon. The other C.S. Khatiyani of Khata No. 22 of village Harradipa showed that the father of Bhandha Oraon was Manua Oraon.

Prior to the institution of the title suit No. 25 of 1994, a proceeding u/s 144 Cr.P.C. was initiated in which the petitioner was one of the parties while Arvind Vijay Toppo and the respondent No. 5 were the members of the second party. The petitioner's contention is that though he was made a party in the proceeding u/s 144 Cr.P.C. but the respondent No. 5 did not file his written statements nor did he advance any sort of claim over the disputed lands and therefore, in the title suit, the respondent No. 5 was not made a party. However, much later, the respondent No. 5 filed a case for restoration of the disputed lands in his favour vide S.A.R. Case No. 37 of 1998-99 and another case vide S.A.R Case No. 24 of 1999-2000 before the Land Reform Deputy Collector, Gumla. The petitioner had filed his objections in both the cases, but by the impugned order (Annexure 1) the Land Reform Deputy Collector, Gumla dismissed the objection of the petitioner and ordered for restoration of the possession of the land in favour of the respondent No. 5. The appeals preferred by the petitioner before the appellate authorities were also dismissed by the impugned orders (Annexure 2 and Annexure 3).

4. A counter affidavit has been filed on behalf of the respondent No. 5, denying and disputing the entire claim of the petitioner, including the genealogy, as stated by the petitioner. While admitting the fact that the land under Khata No. 46 and 47 of Mauza Kanji, P.S. Duri, District Gumla was recorded in the Revisional Survey operation in the name of Phakir Oraon, son of Tulu Oraon, the respondent No. 5 has claimed that Tulu Oraon was the only son of Manua Oraon. The lands which Tulu Oraon inherited from his father Manua Oraon, had devolved upon his son Phakir Oraon who was the recorded tenant and on the death of Phakir Oraon it had devolved upon his son Joseph Oraon. Though, Joseph Oraon did not have a son but his daughter Margret Urain was married even during the life time of Joseph Oraon and her husband Alphons Oraon was accepted as a "Ghar Damad" in the family and Arvind Vijay Toppo is the son of Margret Urain. The contention of the respondent No. 5 is that the petitioner has no relation or concern whatsoever with the Khatiyhani Raiyats as because the petitioner is an inhabitant of a different village altogether i.e. village Harradipa within P.S. Chainpur in the district of Gumla and this fact was confirmed even by the Circle Officer, Dumri (Annexure 1) in his inquiry report. The further contention of the respondent No. 5 is that though the C.S. Khata No. 22 pertaining to the lands within Mauza Harradipa, P.S. Chainpur district Gumla records the name of Bonda Bondu Oraon son of Manua Oraon and in the corresponding R.S. Khata No. 34 of the same village, the name of the petitioner's father Astanis Oraon son of Pillu Oraon has been recorded but the same has no concern whatsoever with the record of rights pertaining to the disputed lands of Mauza Kanji, P.S. Dumri which stands recorded exclusively in the name of Tulu Oraon, grand father of Joseph Oraon and later in the name of Phakir Oraon father of Joseph Oraon. The further contention of the respondent No. 5 is that since the husband of Margret Urain was accepted in the house of her father as a "Ghar Damad". after performing all the customary rites, the properties which earlier belonged to Joseph Oraon had devolved upon Margret Urain's husband Alphons Oraon. On the death of Alphons Oraon in a road accident in 1968, Sohani Urain, widow of Joseph Oraon, after obtaining permission from the competent authority, executed a registered deed of gift of the entire lands measuring 21.90 acres under Khata No. 46 and 47 of Mauza Kanji in favour of her grand son Arvind Vijay Toppo in the year 1974. The lands were accordingly mutated in the name of Arvind Vijay Toppo and he used to pay rents to the State. Later in the year 1985, Arvind Vijay Toppo sold 10.96 acres of lands after obtaining permission from the competent authorities, to the respondent No. 5. The further contention of the respondent No. 5 is that the proceeding u/s 144 Cr.P.C. vide miscellaneous Case No. 552 of 1992, was decided in favour of Arvind Vijay Toppo. The petitioner, knowing fully well that the disputed lands stood transferred by way of registered sale deed executed by Arvind Vijay Toppo in favour of respondent No. 5, had intentionally omitted to implead the respondent No. 5 in the title of eviction suit No. 25 of 1994. The suit was decreed ex-parte without the knowledge of the respondent No. 5 and therefore, ex-parte judgment and decree passed in the said suit is not binding upon the respondent No. 5 and even otherwise, since the decree was obtained

on the basis of a false genealogy, such decree is invalid. It is further pleaded that since earlier the petitioner had obtained possession of the disputed land by force, the respondent No. 5 filed a case before the D.C. L.R., Gumla for restoration of the lands in his favour vide S.A.R. Case No. 37 of 1998-99 and vide order dated 01.03.2000 (Annexure 1), the lands were restored in favour of the respondent No. 5. The respondent No. 5 has supported the impugned orders as passed by the D.C.L.R., Gumla and the orders passed by the appellate authorities in his favour.

5. The questions which have been raised by the petitioner in this writ application are:

(i) Whether the respondent No. 2, 3 and 4 have jurisdiction to pass impugned orders u/s 71(A) of the C.N.T. Act ?

(ii) Whether the findings in the impugned orders are perverse on the ground that the customary rights amongst the tribal community of Oraon under which the widow of a Raiyat, whose husband dies without leaving a male descendant, does not inherit the properties of her husband and such properties would revert to the agnates of the deceased husband, have not been considered ?

(iii) Whether the disputed lands could have been legally restored to the respondent No. 5 despite the fact that he is not the legal heir of the Khatiyani Raiyat.?

6. There is no dispute to the fact that according to the customary rights of Oraons in the scheduled tribe community, the widow of a Khatiyani Raiyat has no right of inheritance of her husband's properties and in absence of a male descendant, his properties would revert to his agnates.

The dispute, however, is on the petitioner's claim that he is the agnate of the deceased husband of Sohani Uraon and in support of his claim, the petitioner has relied upon the two C.S. Khatiyans, one pertaining to the lands situated in village Kanji and the other peitaining to the land situated in village Harradia. According the petitioner, the two khatiyans confirm the genealogy stated by him that the original Raiyat namely Manua Oraon had two sons namely Tulu Oraon and Bhandra Oraon and that while Joseph Oraon is the grand son of Tulu Oraon, the petitioner i; the grand son of Bhandra Oraon and as such, the petitioner is the agnate of Joseph Oraon. The petitioner has also relied upon the ex-parte decree passed in his favour by the civil court.

7. From the statements of facts as appearing in the counter affidavit of respondent No. 5. it transpires that the claim of the petitioner of his being an agnate of the deceased Joseph Oraon was inquired into by the Circle Officer, who in his report, had declared that the petitioner Emil Oraon was in no way related to the family of the Khatiyani Raiyat namely Phakir Oraon since the petitioner was a resident of totally different village. It was also stated in the report of the Circle Officer that the originally recorded tenant Manua Oraon had only one son

namely Tulu Oraon and on his demise, the lands devolved upon his son Tulu Oraon and was inherited in due course, by his son Joseph Oraon. It also transpires that the disputed lands were recorded in the exclusive name of Tulu Oraon son of Maniu Oraon and his son Phakir Oraon in the revisional survey records. There is no indication in the survey records that Tulu Oraon had any brother by the name of Bhandra Oraon son of Manua Oraon. Merely because the revisional survey records pertaining to the lands in Mauza Harradia mentions the name of Bhandra Oraon son of Manua Oraon, a resident of a total different village, in itself, is not sufficient to confirm that the name Manua Oraon represents to one and the same person. The petitioner has not produced any other document to confirm that he is related to the Khatiyani Raiyat of the disputed lands.

8. Admittedly, a proceeding u/s 144 Cr.P.C. was initiated between the petitioner and Arvind Vijay Toppo in which respondent No. 5 was also a party, yet in the title suit filed by the petitioner before the civil court, the respondent No. 5 was not impleaded as a necessary party. The plea taken by the petitioner is that since respondent No. 5 did not claim any right over the disputed lands, therefore, he was not a necessary party to the suit. If he was not a necessary party to the suit on the ground that he had not put forward any claim or right over the disputed lands, then there was no occasion for him to implead respondent: No. 5 as a party in the proceeding u/s 144 Cr.P.C. The respondent No. 5 has rightly claimed that the ex-parte judgment and decree passed in favour of the petitioner in the title suit No. 25 of 1994 was not binding on him.

9. From the perusal of the impugned order of the Deputy Collector, Land Reform, Gumla (Annexure 1), it transpires; that the claim of the petitioner over the disputed lands and the grounds advanced by him, were considered and rejected on the basis of evidences adduced in the proceeding including the C.S. and R.S. Survey records and the judgment and decree passed by the civil court, filed by the petitioner, and by holding that the petitioner has no relation whatsoever with the Khatiyani Raiyats and therefore, his claim of being an agnate of Late Joseph Oraon, husband of Sohani Urain is baseless, the petitioner's claim was rejected. The decree of the civil court was also considered and it was held that the ex-parte decree did not bind the respondent No. 5 since he was not impleaded as a necessary party nor opportunity given to him to rebut the petitioner's claim. The suit was decreed ex-parte also against the defendant Arvind Vijay Toppo. Furthermore, no issue was framed as to whether the petitioner was in fact the agnate of the Khatiyani Raiyat. The findings of the D.C.L.R., Gumla are based on facts and these findings have been confirmed by both the appellate courts vide the impugned order Annexure 2 and Annexure 3 respectively, and the same cannot be re-agitated by the petitioner in the present writ petition and since there is no perversity in the findings as recorded in the impugned orders, this Court would not interfere with the same in this writ application. Since the very basis of the petitioner's claim that he has a right to the disputed properties on the ground of his being an agnate of deceased (recorded Raiyat), has been

rejected, the other issues regarding the rights of the tribal widow in her husband's properties in absence of a male descendant, as per the customary rights, is irrelevant and need not be addressed.

10. In the light of the above discussions, I do not find any merit in this application. Accordingly, this writ application is dismissed at the stage of admission.