
(2022) 03 JH CK 0071
In the Jharkhand High Court
Case No : Second Appeal No. 232 Of 2008

Etwari Mian And Others

APPELLANT

Vs

Patiya Devi And Others

RESPONDENT

Date of Decision : 30-03-2022

Acts Referred:

Chota Nagpur Tenancy Act, 1908 — Section 72(5)

Citation : (2022) 03 JH CK 0071

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : Manjul Prasad, Vishal Kumar

Final Decision : Dismissed

Judgement

Gautam Kumar Choudhary, J

1. The appellants are the defendants, who have preferred the instant appeal against the judgment and decree passed in Title Appeal No. 62 of 2012 by which the appeal filed by the appellants-defendants was dismissed and the judgment and decree dated 21.07.2012 in Title Suit No. 50 of 2008, has been affirmed.

2. For convenience, the parties shall be referred by their original placement in the suit and will include their substituted legal representatives.

3. The case of the plaintiffs, in short, is that the lands of Khata No. 22 of village-Gaghra was recorded in the name of Sahdeo Raut, who was also known as Sahdeo Mahto, who died in the year 1935 leaving behind his widow Most. Sohwa and a daughter Nanhiya Devi, who inherited the property of Sahdeo Raut and came in possession over the entire land of Khata No. 22. The said Most. Sohwa died in the month of May, 1957 and after her death her daughter Nanhiya Devi being the sole heir came in possession over the land of Khata No. 22 and paid rent and took receipts from the State of Bihar. Nanhiya Devi died leaving behind her son Kali Mahto and daughter Kalsi Devi, who inherited and came in possession over the entire property. Kalsi Devi, who is daughter of Nanhiya Devi

died issueless and Kali Mahto being sole heir of Nanhiya Devi became absolute owner of the entire lands of Khata No. 22. Further case of the plaintiffs is that out of 22 acres, 11.20 acres were sold to different parties by Kali Mahto and his mother Nanhiya Devi and the remaining 10.80 acres was in possession by Kali Mahto which is the suit property. After the death of Kali Mahto his heirs Most. Sitiya and two sons namely Babulal Mahto and Ashok Yadav, came in possession over the suit land and paid rent continuously and obtained rent receipts from the State of Bihar (now Jharkhand).

4. The defendants do not belong to the family of the plaintiffs and they have no right to claim the lands in suit, but the defendants for the first time on 20.05.2008 threatened and told that they have obtained the Hukumnama from the ex-landlord and have obtained rent receipt from the State of Bihar. It is further case of the Plaintiff that Hukumnama was forged and fabricated and the ex-landlord never brought the land in his possession and he had no right to grant Hukumnama to the defendants because Sahdeo Raut died leaving behind his heirs. The cause of action for the suit arose on 20.05.2008 when the defendants threatened the plaintiffs to dispossess them from the suit land.

5. The case of the defendants is that the plaintiffs are not related with the raiyat Sahdeo Raut of Khata No. 22 and they have no right to file the suit. Further, Sahdeo Raut died issueless and his wife had predeceased him. Most. Sohwa and Nanhiya were not the widow and daughter of Sahdeo Raut and therefore, were not legal heirs of Sahdeo Raut. They were imposter having no blood relation with them and they never possessed the suit land. Teko Mahto of village Barkitand had five sons namely Kali Mahto, Tahal Mahto, Murat Mahto, Radhey Mahto and Suresh Mahto and the said Kali Mahto was married with Sitya daughter of Girdhari Mahto of Village-Mahuwatand. Babulal Mahto and Ashok Mahto are the two sons of Kali Mahto and the said Kali Mahto had a sister namely Kailsi Devi daughter of Teko Mahto, who died issueless. According to defendants, Kali Mahto, Kailsi Devi and Nanhiya never came in possession over the suit land and never paid any rent to the state.

6. The then landlord Beni Mahto, holder of Khewat No.2, granted Hukumnama for Khata No. 22 Area 11.88 acres in the year 1330 Sal, which is equivalent to 1923 and since then they have been coming in possession by paying rent to the ex-landlord and after vesting to the State of Bihar obtaining rent receipts. Register-II has been also opened in the name of Doman Mian in whose name Hukumnama was granted and after the death of Doman Mian, Register-II, was opened in the name of his son Sukar Mian and his name has also been entered in continuous Khatiyan and after the death of Sukar Mian his son Etwari Mian came in possession over the lands settled to Doman Mian. Etwari Mian sold 10 Kathas of land to his sister Bibi Jumni on 16.10.1979. The defendant's further case is that Jamabandi of Khata No. 22 has been opened in the name of several other persons.

7. The learned trial Court on the pleadings of the parties framed the

undermentioned issues, which are as follows:

- (i) Is the suit maintainable?
- (ii) Has the plaintiffs cause of action for the suit?
- (iii) Is the suit barred by the law of limitation and adverse possession?
- (iv) Is the plaintiff heir of the recorded raiyat of Khata No. 22?
- (v) Has the plaintiff title and possession over the suit land?
- (vi) Whether the lands of Khtata No. 22 was resumed back by the ex-landlord in the year, 1928?
- (vii) Whether Sahdeo Raut died issueless?
- (viii) Is the plaintiff entitled for the relief or relieves as claimed in the suit?

8. Plaintiffs claim title over the land on the basis of inheritance from the recorded tenant. Defendants claim title on the basis of settlement by Hukumnama from the ex-landlord.

9. The learned Trial Court decreed the suit as the main plank of the defense case that Sahdeo Raut, the recorded tenant of the suit land, died issueless and the entire lands reverted back to the ex-landlord Beni Mahto and that Most. Sitiya and Nanhiya were not his heirs have been falsified by Exhibit G which is the sale deed dated 18.03.1940. In the recital of the deed, it is mentioned that in the survey records Sahdeo Raut, the husband of Sukeri @ Sohwa is recorded as Raiyat and after his death, Sohwa came in possession of the same and she was transferring the lands to the purchasers. This deed falsifies the assertion of the defendant that wife of Sahdeo Raut predeceased him. Further, P.W.1 and P.W.2 have deposed that 75 years ago Sahdeo Raut died leaving behind his widow Most. Sohwa and daughter Nanhiya.

10. In view of the above findings the Trial Court concluded that the plea of the ex-landlord resuming possession over the suit land in 1928 does not hold ground. Unless the land was declared to be abandoned it could not have been settled. This raised serious question on the claim of title on the basis of the Hukumnama.

11. The Court of Appeal concurred with the finding of the Trial Court that Sahdeo Raut died in the year 1935 leaving behind his widow Sohwa Devi and daughter Nanhiya Devi. The Hukumnama i.e. settlement has been disbelieved on the ground that a salami of Rs.1 01 was taken but there is no receipt of this amount brought on record. No boundary has been mentioned in the settlement deed. Further prior permission of the Deputy Commissioner was not taken before the surrender of the land by recorded tenant in favour of the ex-landlord.

12. The appeal has been preferred on the ground that the requirement for permission of the Deputy Commissioner under the Chotanagpur Tenancy Act, 1908 (in short CNT Act) was introduced by 1947 amendment in Section 72

(5) of the C.N.T. Act and at the time of the settlement made in favour of Doman Mian the requirement of obtaining permission was not there. Further, evidence of possession in favour of the appellants like rents receipts, certified copy of register II have not been considered. The confirmation of Raiyati right by grant of Sada Hukumnama evidencing payment of Salami followed by grant of rent receipts and possession were not considered.

13. It is an admitted position that Sahdeo Raut was the recorded tenant. The plaintiffs have led evidence in support of their case that they were heirs and descendants of the recorded tenant. The three main pillars of the defense case is that the recorded tenant Sahdeo Raut died issueless and his wife had predeceased him. Secondly, the land was surrendered in favour of the ex-landlord and lastly it was settled in favour of Doman Mian. The Trial Court as well as the Court of Appeal have recorded a finding of fact that Sahdeo Raut had not died issueless and that he was survived by his wife Sohwa and daughter Nanhiya Devi. There is no surrender deed brought on record, under the circumstance who surrendered and when the land was surrendered are all left to mere conjecture. The pleadings of the defendants on these crucial facts has remained unsupported by evidence. In the absence of prove of these facts the claim of title on the basis of unregistered Hukumnama, is of not much help.

Under the circumstance, in view of the concurrent findings of the Courts below, I do not find that no substantial question of law is raised in the present appeal for its admission.

The appeal is dismissed with cost.