

(2024) 04 JH CK 0020
In the Jharkhand High Court
Case No : Second Appeal No.238 Of 2015

Gajnafar Ahmad And Others

APPELLANT

Vs

Uma Devi And Others

RESPONDENT

Date of Decision : 29-04-2024

Acts Referred:

Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 — Section 59, 63

Citation : (2024) 04 JH CK 0020

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : Jasvinder Mazumdar, Manoj Kumar Sah

Final Decision : Dismissed

Judgement

Gautam Kumar Choudhary, J

Heard the learned counsel on behalf of the appellants on the point of admission.

1. Instant appeal is filed against the judgment of affirmation passed in Title Appeal No.4/2008 by which the appeal preferred by the plaintiff/appellant has been dismissed.

2. The suit land was recorded in the name of Ali Ahmad and Sk. Rahim Bux. Sk. Rahim Bux died issueless and his share devolved upon Ali Ahmad. Ali Ahmad died leaving behind his two sons namely Zafar Ahmad and Gajanfar Ahmad (Plaintiff no.1). Zafar Ahmad died leaving behind four sons i.e. plaintiff nos.2-5. Plaintiffs inherited the suit property including that of Rahim Bux who died issueless.

3. The land was being cultivated by hired labors some times during 1947-48. It is further case that one eviction case being R.E.R. Case No.391 of 1947-48 filed in the Court of Sub Divisional Officer, Godda by some mischievous elements on the plea that land had been given under Bhauli to them for cultivation and the land owners were not in cultivating possession. S.D.O., Godda after enquiry held that

the land was cultivated on Bhauli and recommended on 16.10.1948 for eviction of Ali Ahmad and for fresh settlement of land. The S.D.O. recommended the eviction which was accepted by the Deputy Commissioner and the land was settled on 15.07.1950 to different Raiyats.

4. Zafar Ahmad son of Ali Ahmad preferred appeal against the order passed the S.D.O. being R.M.A. No.88 of 1960-61 for restoration of entire land and the same was allowed by Additional Collector vide order dated 14.02.1962 after excluding the land of which possession was delivered to eight Raiyats. It is averred that the delivery of possession of the Raiyats were given only on paper. Defendants in the present survey, illegally claimed the suit land and got Parcha illegally issued in their name by ASO, Tasdic Camp in November, 1996. Hence, they instituted the suit for declaration of their right.

5. Case of the defendants is that the Suit is not maintainable in view of Sections 63 of the SPT Act. The land was duly settled in their favour on 18.5.1951 and they came in cultivating possession of the land in question. Respondent no.1 has specifically pleaded that his father was not impleaded in R.M.A. No.88 of 1960-61. Respondent no.2 have pleaded that plaintiff had been duly removed and the land was settled in their favour under due process of law. The said settlement attained its finality as revision was not preferred against the order passed in Miscellaneous Appeal confirming their possession and settlement.

6. The case of the defendants is that plaintiffs were never in possession of the suit land after order passed in R.M.A. No.88 of 1960-61.

7. On the basis of pleadings, following main issues were framed:-

I. Whether the suit was barred by Section 63 of SPT Act?

II. Whether the settlement dated 15.07.1950 was legal and valid?

III. Whether the draft publication issued in favour of defendant no.1-5 was illegal.

8. The learned trial Court dismissed the suit recording a finding against the plaintiff and dismissed the suit.

9. The first appellate Court concurred with the finding on the basis of evidence regarding the settled possession, dismissed the appeal considering the order passed in R.E.R. Case No.391 of 1947-48 and Revenue Misc. Appeal No.88/60-61. It also noted that the order confirming settlement in favour of eight of the settlees was affirmed in the revenue miscellaneous case was affirmed against which the appellants had remedy under Section 59 of the SPT Act to prefer revision before the Commissioner, which was not availed and consequently the order passed by the Deputy Commissioner attained finality.

10. It is argued by the learned Counsel on behalf of the appellant that order passed by SDO regarding the land being cultivated by bhoulidars was not in accord with the report of the Third Officer of Godda Court, who had submitted the report that Ali Ahmad was cultivating the land. The Deputy Commissioner

approved the recommendation of the SDO without applying his mind and settled the land to different Raiyats. The order passed by the SDO, was set aside in RMA No.88 of 1960-61 which was partly allowed by the Additional Collector vide order dated 14.2.1962 and the restoration of land was allowed after excluding the lands of which possession was delivered to eight raiyats.

11. After considering the submissions advanced on behalf of both sides, the matter for consideration is whether the issues raised in the Second Appeal involves a substantial question of law for admitting the Appeal?

12. Possession is a question of fact and concurrent findings of fact had been recorded that after the settlement having been made in 1951, the settlees came in actual physical possession of the land and continued over it thereafter. The settlement was affirmed in the judgement passed in RMA No.88 of 1960- 61 which attained its finality after the appellants did not prefer revision against the said order as provided under statute. Under the circumstance, I do not find any substantial question of law to admit the Second Appeal, which accordingly stands dismissed at the stage of admission.