

(2003) 07 JH CK 0020
In the Jharkhand High Court
Case No : CWJC No. 3758 of 1996 (R)

Ganesh Sao and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 29-07-2003

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 46(4)
Constitution of India, 1950 — Article 226

Citation : (2003) 4 JCR 394

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : A.N. Deo, for the Appellant; M.L.K. Chitra, JC to SC I, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—Heard Mr. A.N. Deo, learned counsel for the petitioner and Mr. M.L.K. Chitra, learned J.C. to the S.C.-I for respondents No. 1 to 5. Although respondents No. 6 to 9 appeared in the instant case by filing vakalatnama, yet no body has appeared on their behalf, although on 26.6.2003 they had appeared and submitted that on account of their files having been misplaced, the matter should be adjourned for about a week. Consequently, the matter was adjourned and it was placed one month thereafter, i.e., on 28.7.2003. Today, when the case was called out, no body appeared on their behalf. In that view of the matter this Court has no option, but to proceed and dispose off the matter on the basis of the pleadings already on record which includes the writ application and the counter affidavit of the respondents No. 2 to.

2. The petitioners, in the instant, case have filed this writ application challenging the validity of Annexures 2 and 4. Annexure 2 is the appellate order passed by the Additional Collector in Appeal No. 28 of 1988 by which he was pleased to allow the appeal filed by the respondent No. 6 thereby setting aside the order dated 8.8.1988 passed by the Land Reforms Deputy Collector, Hazaribagh in

Restoration Case No. 48 of 1986. By Annexure 4 the Revisional Authority, namely, the Commissioner, North Chhotanagpur dismissed the revision filed by the petitioner on 8.8.1996 thereby confirming the order passed by the Additional Collector vide Annexure 2.

3. The short facts which are necessary to be taken note of in the instant case are that lands situated on Plot Nos. 502, 504 and 505 in Khata No. 62 of Village Bongai (Ramgarh) measuring an area of 0.95 decimals; 0.43 decimals: 0.25 decimals and 0.63 decimals were recorded in the cadestral survey report in the name of Sheo Charan Bedia who died immediately after the survey, leaving behind him four sons, namely, Pusha Bedia, Bulku Bedia, Nanku Bedia and Shaym Lal Bedia.

4. Shaym Lal Bedia also died leaving behind him his widow Chepia Bedia and three minor children.

5. On 5.12.1945 the aforementioned sons and the daughter-in-law of the recorded tenant, namely Kusha Bedia, Bulku Bedia, Nanku Bedia and Chepia Bedia sold 0.43 decimals out of Plot No. 504 and 0.25 decimals out of Plot No. 505, i.e., 0.68 acres of land to Banshi Sao by a registered deed of sale dated 5.12.1945. About ten days I hereafter, i.e., 15.12.1945 the heirs of recorded tenant, namely, Sheo Charan Bedia further settled 0.95 decimals of land situated on Plot No. 502 in favour of Kanhai Sao and put him in possession as a Rayat. This Kanhai Sao, according to the petitioner, perfected his title by adverse possession and then by virtue of a registered deed of sale dated 31.5.1961, he sold the aforementioned 0.95 decimals of land to Basudeo Sao, i.e., the father of these petitioners and put him in possession of the land. Thus from a perusal of the aforementioned facts, it is clear that both the initial aforementioned transactions are of 1945 when permission of the Deputy Commissioner was not required. Moreover, Bedias were include within the definition of Schedule Tribe only in the year 1956 and therefore, in the year 1945 when the aforementioned lands passed out of the house of the recorded tenant, Bedias were not Schedule Tribes.

6. This apart, it is also apparent that the proceedings for restoration was initiated at the instance of the report of the Halka Karmachari of Ramgarh before the Land Reforms Deputy Collector in the year 1986. This therefore appears to be a case where the matter was also barred under the first proviso appended to Section 46(4)(a). This Court, therefore, does not understand as to how the appellate authority, namely the Additional Collector made an observation that the Land Reforms Deputy Collector who had initially dropped the proceedings on the ground of adverse possession came to an erroneous conclusion. Similarly, this Court also does not understand as to how the Revisional Authority came to a conclusion without there being cogent evidence to the effect that the respondents were dispossessed in the year 1986 or that the sale was on the basis of forged and un-registered documents. Considering the fact that the private respondents have not appeared before this Court although they had filed

vakalatnama and taking into consideration the aforementioned findings which prima facie appear to be erroneous, it would only be in the interests of justice to remand the matter to the Appellate Authority for dealing with the matter afresh and for passing a fresh order in accordance with law. Consequently, the impugned order as contained in Annexures 2 and 4 are set aside and the matter is remanded to the Appellate Authority to pass a fresh order in accordance with law after giving opportunity to all the parties concerned.

The writ application is accordingly allowed. No order as to costs.